The Planning Inspectorate

Appeal Decision

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2018

Appeal Ref: APP/R5510/X/17/3180363
84 Cowley Mill Road, Uxbridge, UB8 2QD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Emdadur Rahman against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 869/APP/2017/1093, dated 28 June 2017, was refused by notice dated 25 March 2017.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the use of rear of ground floor and first floor as 3 self-contained studio units.
- **Summary of decision: Appeal dismissed.**

Procedural Matter

1. As the appeal depends on the submissions of the parties in respect of when the material change of use occurred and that the use has continued for a period of four years, it is unnecessary to carry out a site visit.

The site and relevant planning history

2. The appeal property is a two storey building in a mixed use with an estate agent's office and a ground floor studio flat on the ground floor and two studio flats on the first floor.

Reasons

3. The central issue is when the change of use occurred and whether the mixed use has continued without interruption for a period of 4 years prior to the date of the issue of the notice.

4. The appellant in a Design and Access Statement refers to the site being converted in 2009 and that it has been in continual use since. Drawings showing existing and proposed floor plans, dated 17 October 2014, were submitted with the LDC application. The application form submitted by an agent refers to there being one existing flat and 3 bedsit/studios proposed.

5. The conversion date is contradicted in the appellant's affidavit which states that following acquisition of the property in 2007, which consisted of 4 rooms, bathroom, kitchen and a shop, he converted them in 2008 to 3 studio self-

contained flats and a shop. He further states that the 3 flats have been in continuous use by tenants.

6. Correspondence from Hillingdon Council Building Control Services dated 25 August 2010 indicates that unauthorised conversion works had been undertaken. The Council has confirmed that the 3 flats were set up for Council tax from 9 September 2011. A letter dated 18 January 2015 from Charters Associates confirms that they have represented the appellant since 2009 and have been preparing and filing income tax returns for the appellant's property portfolio, including Flats 84, 84b and 84c Cowley Mill Road.

7. In appeals such as this the onus of proof rests with the appellant and the level of proof is the balance of probability. The appellant considers that the Council has ignored the affidavit and not given any weight to the letter from the accountant. However the affidavit does not represent a properly made statutory declaration as no reference is made to the statute under which it is made. I therefore cannot give it full weight.

8. Additionally there is ambiguity in the date of the conversion submitted by the appellant; documents and drawings post-dating the appellant's claimed conversion date refer to there being one existing flat; and, the accountant's letter does not explicitly state the date from which tax returns relating to the three studio flats were prepared, only to the property portfolio.

9. Whilst the Council tax and Building Control evidence suggests that a change to three flats may have occurred before a certain date, in the absence of evidence relating to the continuity of use for the relevant four year period, it has not been shown on the balance of probability that the use has become lawful through the passage of time such that the Council would not have been able to take enforcement action should they have considered it expedient to do so. Information from utility bills, tenancy agreements and bank statements showing rental income would normally assist in demonstrating the continuity of the use for the relevant four year period.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the rear of the ground floor and first floor as 3 self-contained studio units was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Decision

11. The appeal is dismissed.

P N Jarratt

Inspector