The Planning Inspectorate

Appeal Decision

Site visit made on 24 April 2018

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 May 2018

Appeal Ref: APP/R5510/X/17/3181586
103 Raynton Drive, Hayes, UB4 8BQ

- 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 Amritpal Toor against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 55801/APP/2017/1408, dated 19 April 2017, was refused by notice dated 19 June 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 conversion of a dwelling into two self-contained flats.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Procedural Matter

2. The description of the use applied for in the banner heading is taken from the application form. However, the Council's refusal notice, which refers to use of the dwelling as two self-contained flats, is a more accurate description of the development for which a certificate which is sought. Therefore, I have used that description on the certificate.

Main Issue

3. The main issue is whether the available evidence demonstrates that the use of the appeal property as two self-contained flats began more than four years before the date of the application and has been continuous thereafter.

Reasons

4. The appeal property is a two storey building constructed as a single dwelling, which has been extended to the side and rear. During my visit I observed that the part of the property known as 103 has a lounge, living/dining area, kitchen and a room containing an ensuite bathroom on the ground floor, with a bathroom and three bedrooms on the first floor. The part known as 103A has a living/dining area and kitchen on the ground floor, with a bathroom and two bedrooms on the first floor. Therefore, both units have all of the facilities required for day-to-day living.

5. The effect of Section 191(2) of the Act is that use of the property as two self-contained flats would be lawful if no enforcement action can be taken in respect of them because the time for taking enforcement action has expired. The effect of Section 171B (2) of the Act is that no enforcement action could be taken in respect of the flats more than four years from the date on which the breach began.

6. The Planning Practice Guidance (PPG) advises that the applicant is responsible for providing sufficient information to support their application. It goes on to say that where a Council has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous in order to justify the grant of a certificate on the balance of probability.

7. In his Statutory Declaration dated 30 August 2016, the appellant said that 103 and 103A had been registered separately for Council Tax since 1 June 2010 and that both had been occupied by tenants and used as residential dwellings for a minimum of four years. This is supported by Mr R Sidhu's Statutory Declaration of 30 August 2016, in which he stated that he is a tenant of 103 and had been living there continuously for at least four years. It is also supported by Mr B Dhanju's Statutory Declaration of the same date, in which he stated that he is a tenant of 103A and had been living there continuously for at least four years. In itself, this evidence is precise and unambiguous. It should therefore be given considerable weight in the absence of any evidence to indicate otherwise.

8. The appellant also provided copies of the tenancy agreements and Council Tax bills for 103 and 103A. The earliest tenancy agreement provided for 103 is dated 1 June 2010; the most recent one expired on 1 January 2018. The tenancy agreements for 103 are all signed by Mr and Mrs Sidhu. There is no copy of a tenancy agreement for 103 between 1 January and 31 December 2016. Even so, the Council Tax bill for 103 for 2016/17 was addressed to Mr and Mrs Sidhu at that address. The appellant's tenancy schedule shows that Mr and Mrs Sidhu had a tenancy agreement for 103 during 2016. The tenancy agreement for 103 in 2017 was signed by the same tenants. This all support's the appellant's case, as it suggests that there was no break in the continuity of the residential use of 103 in the four years prior to the date of the application.

9. The earliest tenancy agreement provided for 103A is dated 24 August 2013 and the most recent one expired on 24 August 2017. The tenancy agreements for 103A are all signed by Mr and Mrs Dhanju. No copy of a tenancy agreement was provided for up to 24 August 2013, at the beginning of the four year period. However, the Council Tax bills for 2012/13 and 2013/14 were addressed to Mr and Mrs Dhanju at 103A. The appellant's tenancy schedule suggests that Mr and Mrs Dhanju had a tenancy agreement for 103A from 24 August 2012 to 24 August 2013. This all supports the appellant's case, as it suggests that the use of 103A separately from 103 began more than four years prior to the date of the application and that there was no break in the continuity of its use as such thereafter.

10. Extracts from the Valuation list shows that 103 and 103A have been rated separately for Council Tax purposes since 1 June 2010. A Council letter dated 22 September 2015 confirms the Council Tax liability for 103 between 1 June

2010 and 31 March 2016. Council Tax bills were addressed to 103 for the years 2016/17 and 2017/18. A Council letter dated 19 May 2016 details Council Tax payments made in respect of 103A between 15 April 2011 and 31 May 2012. Council Tax bills were addressed to 103A for all of the years between 2012/13 and 2017/18. This all shows that 103 and 103A were continually rated as separate dwellings for Council Tax purposes immediately before and throughout the four year period and therefore lends further support to the appellant's case.

11. The Council did not produce any evidence of their own. They considered that the appellant had not demonstrated that the use applied for had been continuous throughout the four year period. This was due in part to the absence of copies of all of the tenancy agreements and Council Tax bills for both units. Nevertheless, for the reasons set out above when the tenancy and Council Tax records are analysed together they suggest that there has been continuity in the use of both units as self-contained flats during the four year period.

12. The Council also required the submission of utility bills and other documents such as TV licences and details of rental payments made and received throughout the four-year period in order to corroborate the Statutory Declarations. Even so, established case law makes it clear that an appellant's evidence should not be rejected simply because it is not corroborated by independent evidence[1]. Moreover, given my findings on the appellant's evidence set out above, further documentation would be unnecessary as in my judgment, the appellant has proved his case to the required standard.

13. Therefore, there is no evidence to contradict or make the appellant's version of events less than probable, his evidence being sufficiently precise and unambiguous and supported by the available contemporaneous documentation. Consequently, I find the available evidence enables me to conclude that the property has, on the balance of probability, been in continuous use as two self-contained flats for more than four years prior to the date of the application.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use of the property as two self-contained flats was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR

[1] Gabbitas v SSE & Newham LBC [1985] JPL630.

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 19 April 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The available evidence demonstrates that, on the balance of probability, the use as two self-contained flats commenced more than four years before the date of the application and has been continuous thereafter.

Signed

Stephen Hawkins

Inspector

Date:15 May 2018
Reference: APP/R5510/X/17/3181586

First Schedule

Use of dwelling as two self-contained flats.

Second Schedule

Land at 103 Raynton Drive, Hayes, UB4 8BQ.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 May 2018

by Stephen Hawkins MRTPI

Land at: 103 Raynton Drive, Hayes, UB4 8BQ.

Reference: APP/R5510/X/17/3181586.

Scale: Not to scale.