



Appeal Decision

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2020

Appeal Ref: APP/T5150/X/19/3227373

Ground Floor Flat, 58 Lancelot Road, Wembley HA0 2BN

- 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 Halil Kaculi against the decision of the Council of the London Borough of Brent.
 - The application Ref 18/3897, dated 10 October 2018, was refused by notice dated 18 December 2018.
 - 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 Retention of existing ground floor flat.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is a 2 storey mid-terrace property. Although the appellant states, on the application form, that they are seeking a certificate in relation to the first floor flat, they confirm on the appeal form, as reflected in the Council's decision notice, that it is the ground floor flat in relation to which a certificate is sought. I have therefore proceeded on this basis and have amended the description of the development accordingly.
3. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. Neither the appellant nor the Council have objected to the appeal proceeding on this basis.

Reasons

4. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not require planning permission or because the time for enforcement action has expired (s191(2)). In this case, the appellant seeks to rely on the passage of time.
5. It is necessary to consider whether a ground floor flat at 58 Lancelot Road has been used continuously for a period of four years or more prior to the date of

- the application, that is from at least 10 October 2014, so as to be immune from enforcement. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued for the aforementioned four-year period.
6. I am mindful that planning practice guidance states *"In the case of applications for existing use, if a local planning authority 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 to justify the grant of a certificate on the balance of probability."*
 7. The appellant has stated on the appeal form that the property was converted into two flats (ground and first floor) over 5 years ago, with Council tax and housing benefits having been paid during this time. He states, on the application form, that the use was begun on 13 March 2014.
 8. The Council says that both ground and first floor flats were listed separately for Council tax in April 2015, suggesting that the conversion of the property occurred later than indicated by the appellant. The Council also says that it was apparent from its site visit in December 2018 that the use had been returned to a single dwellinghouse, through the removal of partition doors between the flats.
 9. However notwithstanding the Council's representations, the appellant has not provided evidence to substantiate the claim that the use of the ground floor flat commenced in March 2014, or that such use continued over the entire immunity period, without any material break. I conclude that the appellant has failed to discharge the aforementioned duty to provide sufficiently precise and unambiguous evidence to justify the grant of a certificate, on the balance of probability.
 10. Therefore for the reasons given above, I conclude, on the balance of probability, that the Council's refusal to grant a certificate of lawful use or development in respect of Retention of existing ground floor flat 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.

Roy Merrett

INSPECTOR