



Appeal Decision

Site visit made on 7 July 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2020

Appeal Ref: APP/K3605/X/19/3243495

111 Hersham Road, Walton-on-Thames KT12 1RN

- 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 V Mingoia against the decision of Elmbridge Borough Council.
 - The application Ref 2019/2179, dated 6 August 2019, was refused by notice dated 9 October 2019.
 - 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 described as: Existing self contained residential dwelling (C3) to first and second floors set above an existing ground floor restaurant (A3).
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Summary of Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal concerns the lawfulness or otherwise of the use of the first and second floors of the appeal building as a dwelling. The parties are however content that the appeal can proceed by the written representations procedure and by means of an unaccompanied site visit. I have no reason to disagree and so will proceed to determine the appeal on the basis of the written evidence before me.

Main Issue

3. The main issue is whether the Council's decision to refuse a certificate of lawfulness for the use of the first and second floors of the appeal building as a dwelling is well founded.

Reasons

4. In cases such as this the onus is on the appellant to demonstrate, on the balance of probabilities, that the use has continually subsisted for a period of at least 4 years prior to the submission of the certificate of lawfulness.
5. The appeal building consists of a ground floor restaurant with two floors above. I could see during my site visit that it is similar in design and appearance to others within the terrace in which it is situated. It is contended that it is therefore clear that the first and second floor residential accommodation has been in existence since its first construction. Whilst that may, or may not, be

the case, the appeal application relates to a dwelling as opposed merely residential accommodation which may then have been used for purposes ancillary to a ground floor use. Furthermore, this also does not automatically assist the appellant as there may have been intervening uses which may have changed the lawfulness of the upper floors of the appeal building, since it was first constructed.

6. The appellant purchased the appeal building in 2018 with the accommodation above. It is contended that it was occupied by at least four residents, none of whom appeared related to the restaurant use below. This is however a summation as opposed based upon actual evidence of any relationship or indeed whether the upper floors of the appeal building were being used as a dwelling.
7. A survey drawing has been provided to demonstrate that the first and second floors are totally independent from the ground floor and self-contained. However, this drawing, whilst showing the type of layout contended, was only prepared in November 2018. It is also said that a drawing from 2011 shows independent access, but whilst that might be the case, the appeal application is concerned with the actual use of the upper floors of the appeal building, and whilst an independent access lends some support to the contention that it was not used in connection with the ground floor restaurant, it does not demonstrate on the balance of probabilities that this use was indeed the case or provide evidence of actual use for a relevant period.
8. Two Statutory Declarations have been provided. One is undated at the head of the document and asserts that the flat has been occupied since 2004 as a residential dwelling by one or more people. The second, states the same, but since 2014. They contain very little descriptive content.
9. They are also produced in essentially the same manner and form of words which casts considerable doubt in my mind that they represent a demonstrable first-hand account of the use of the upper floors of the appeal building. They therefore do not contain the information necessary to demonstrate the claimed use on the balance of probabilities. They are accordingly a vehicle that can add detail or evidence to purported events, without which, and given their brevity, are ambiguous and so I can afford them only limited weight.
10. There are also very few bills or other records that have been provided to demonstrate any form of residential occupation, although I appreciate the appellant only purchased the appeal building in 2018. The lack of precise and detailed evidence again casts considerable doubt in my mind that a relevant period has been demonstrated.
11. I appreciate that the appellant's evidence does not need to be corroborated. I also accept that a video said to have been provided to the Council was taken on the day the appellant purchased the appeal building and therefore would have shown it being vacant. Nevertheless, it remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. The evidence is however not precise and is unclear in respect of whether the use of the upper floors of the appeal building as a dwelling has been continuous for a relevant period.
12. Whilst I have some sympathy for the position of the appellant, this is not relevant to the determination before me, and I am not satisfied on the balance

of probabilities that he has demonstrated the use of the first and second floors of the appeal building as a dwelling for a relevant period.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

Formal Decision

14. The appeal is dismissed.

Paul T Hocking

INSPECTOR