The Planning Inspectorate

Appeal Decision

Site visit made on 13 July 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2020

Appeal Ref: APP/R5510/X/20/3245447
298 Coldharbour Lane, Hayes UB3 3HJ

- 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 Aftar Singh Bal against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 44828/APP/2019/2838, dated 27 August 2019, was refused by notice dated 5 November 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 the use of outbuilding as a two bedroom flat.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of the development as set out on the application form is a "a two bedroom flat". However, "flat" suggests a structure more in the nature of separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which it is divided horizontally**.** The appeal building is a detached, single-storey structure.

3. Consequently, a more accurate description of the development that the appellant is seeking a lawful development certificate for is "a two bedroom dwelling". Accordingly, I have considered the appeal on this basis and I do not find that any party would be prejudiced as a result of me doing so.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is not well-founded.

Reasons

5. The appellant claims that the appeal building, a single storey structure, has been occupied as a two-bedroom flat for in excess of 4 years. In support of this, the appellant has made a sworn written statement confirming that the building was continuously occupied under tenancy commencing on 1 January 2015 until December 2017 by Narinder Kaur and her husband Amarjit Singh.

Furthermore, he confirms that, in addition to rent, the tenants paid a share of all bills including council tax, water, gas and electricity.

6. A further sworn written statement, made by Madan Mohan Singh, confirms that he and his wife, Rajwant Kaur, have continuously occupied the building since 1 January 2018 and pay all associated council tax, water, gas and electricity bills.

7. A copy of a council tax bill for 2019/2020, indicates that council tax is paid on the 'Annexe R/O, 298 Coldharbour Lane'. However, it would appear that the council tax has been back-dated to June 2014 as the bill indicates that a total amount of £5478.38 is due. This could be because the council tax department were only recently made aware of the property and were informed that the dwelling had been there since June 2014. It does not necessarily mean that the property has in fact been occupied as a self-contained flat since June 2014.

8. Copies of the front pages of tenancy agreements also cover this period and confirm the names of tenants as claimed in the sworn statements. Both tenancy agreements are marked for use either as "a Furnished House or Flat on an Assured Shorthold Tenancy." A flat may be regarded as a dwellinghouse for the purposes of s55(2)(d) of the 1990 Act, however the context in which the word "House" is used in tenancy agreements such as those submitted, suggests a reference to a building with one or more upper storeys. This would be so, particularly where, as here, it is juxtaposed with the word "Flat", which the appeal building is not.

9. Moreover, the address on these agreements is "298 Coldharbour Lane", not qualified in any way to refer to the outbuilding. This suggests that at the time, either the tenants occupied the main dwelling or they occupied the outbuilding as ancillary accommodation associated with the main dwelling. I note that this does not contradict what is claimed in the sworn statements, which refer to occupation of "Rear Flat, 298 Coldharbour Lane". The sworn statements do not claim that such premises were occupied as a self-contained flat. However, the outbuilding in question is clearly not a flat, which begs the question why "rear flat" was referred to in both statutory declarations, if not intended to refer to some other part of the premises known as 298 Coldharbour Lane.

10. Moreover, the tenants paid a share of all associated bills such as council tax, water, gas and electricity, which further suggests that there is, or at the very least was at the time, a functional relationship between whatever premises they did occupy and the main dwelling. I also noted that there was no distinguishable curtilage to the outbuilding that was separate to the main dwelling. The rear yard area and side access appeared to be shared areas.

11. The relevant test of the evidence is 'on the balance of probability' (i.e., that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.

12. Overall, the evidence in support of the appeal is not precise and unambiguous. I find therefore that it fails to demonstrate that, on the balance of probabilities, the material change of use of the outbuilding to a two-bedroom dwelling has occurred continuously for a four-year period prior to the date of the application.

Conclusion

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

Alexander Walker

INSPECTOR