



Appeal Decision

Site visit made on 10 August 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/Q5300/X/19/3241306

50 Harrow Drive, Edmonton, Enfield N9 9EW

- 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 M Ilyas against the decision of the Council of the London Borough of Enfield.
 - The application Ref 19/01777/CEU, dated 3 May 2019, was refused by notice dated 22 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 the conversion of property into 2 x self contained, one bedroom units.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is well-founded.

Reasons

3. The appeal property is split into two, one-bedroom flats; one on the ground floor and one on the first floor. Access to the flats is via a communal hallway with a lockable door leading into the ground-floor flat and another leading to the stairs serving the first-floor flat. The hallway contains electricity and gas meters; one of each for each of the flats.
4. The appellant has submitted a sworn statement from the existing tenant of flat 50b, Mr Adil Rajabally. Mr Rajabally states that he has continuously lived in Flat 50b since May 2013 and there have been two separate flats since then. He also confirms that when he moved into the property it had already been converted into two self-contained flats, with each having its own separate entrance, bathroom and kitchen. However, he states that he cannot recall how many bedrooms the flats have (presumably he means "had" instead of "have"). This seems rather unusual. If he has occupied flat 50b since 2013 then one would expect him to know how many bedrooms the flat has had since that time.
5. He also states that both flats have been let continuously over the years with various tenants moving in and out. Although it predates Mr Rajabally's tenancy, the copy of the 2009 Tenancy Agreement for Mr B.H. Lollmahamod for flat 50a

suggests that the property was likely split into at least two properties at that time in 2009.

6. However, the copy of the Notice Requiring Possession served on Mr Zahir Aboulhasan and Mrs S Zaaïm, tenants of 50 Harrow Drive, dated 30 January 2016 states "I give you notice that I require possession of the dwelling-house known as 50 Harrow Drive...". The address being referred to as "50 Harrow Drive" suggests that the property was occupied as a single dwelling. If it was occupied as two separate flats then it seems to me that the Notice would have referred to the individual flat that the landlord sought the tenants to be evicted from, eg Flat 50a or Flat 50b, and not the overall dwelling.
7. This is supported by the Council's Electoral Registration team, which confirms that from 2009 the property has been on the register as one dwelling. Furthermore, the Council's Tax Officer confirms that the Council tax records for the first-floor flat only go back to 1 April 2018, prior to which it was classed as a house in multiple occupation (HMO).
8. The letters from British Gas, dated December 2016, and Legal & General, dated 5 October 2016, are both addressed to "50 Harrow Drive". This raises further ambiguity over whether the property was in use as a single property or two separate self-contained flats.
9. The copies of EON statements dated from 2009 to 2019 are addressed to 50b Harrow Drive. However, they only indicate that gas was consumed at 50b Harrow Drive during this period. It does not indicate how the flat was occupied, in single occupancy or part of the multiple occupancy of the overall property. There is no statement for 50a.
10. I note that the Council Officer's report states that "sufficient information has been provided in relation to the upper floor flat". However, it is not clear what specific evidence this has been based on. As the evidence raises ambiguity over the use of the overall property I do not concur with the Council in this regard.
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 50 Harrow Drive to two self-contained, one bedroom flats 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