



Appeal Decision

by C Sherratt DipURP MRTPI

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

Decision date: 09 December 2020

Appeal Ref: APP/M5450/X/19/3242376
73 Peel Road, Wealdstone, Harrow HA3 7QX

- 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 Brendan Langan against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/2939/19, dated 1 July 2019, was refused by notice dated 3 September 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 existing use of the property is residential flats with separate utilities suppliers and council taxes entries and no further change is proposed in this regard. In 2008 the property has been converted into the no.4 flats since the development has been more than 4 years and it is request to please issue the certificate of lawfulness of existing use.*"
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Procedural Matters

1. It is clear that a certificate of lawfulness is sought for the existing use of the property as 4 flats. I shall determine the appeal on this basis.
2. There is no dispute between the parties that the property was being used as four flats at the time of the application, in accordance with the layout shown on the submitted plans. As my decision will turn on the evidence relating to the use of the flat prior to the date of the application (1 July 2019), it was not necessary to visit the site.

Decision

3. The appeal is dismissed.

Main Issue

4. The main issue is whether the Council's decision not to issue a certificate is well founded.

Reasons

5. Section 191(2) provides that uses and operations are lawful at any time if – (a) no enforcement action may be taken in respect of them; and (b) they do not constitute a contravention of any requirements of any enforcement notice then in force. Both limbs must be satisfied. There is no dispute that s191(2)(b) is satisfied.

6. Planning merits are of no relevance to a determination of lawfulness. The appeal turns on whether, on the date of the application, no enforcement action may be taken in respect of the development (s191(2)(a)). The time limits are prescribed in s171B(2), four years being the relevant time limit within which the Council may take action.
7. For the appeal to succeed therefore, the onus is upon the appellant to demonstrate, on the balance of probability, that the property has been used for a continuous period of 4 years or more, prior to the date of the application, as 4 flats; the relevant date therefore being on or before 1 July 2015. In support of the appeal, the appellant has supplemented the documentation provided with the application in response to the Council's reason for refusal.
8. The application was accompanied by a sworn affidavit, signed by the appellant, as owner, which states that the property was converted into 4 flats in December 2007. Signed letters from the adjoining neighbours also claim that no. 73 has been converted to flats since December 2007. However, The Council has drawn my attention to a planning application (no P/0433/09) for the 'Conversion of dwellinghouse into two flats'. It stated that the property was a single dwelling house in 2009 and the existing floorplans (drawing no. KS/07.03) showed this to be the case. This is therefore inconsistent with the sworn affidavit and neighbour comments. It would seem unusual to submit an application for two flats if the building were already sub-divided into four. This reduces the weight that I afford to the sworn affidavit although given the sanctions for failing to tell the truth in such a document and the comparable statements from neighbours, I shall still afford it some modest weight. Nevertheless, for a change of use to become lawful through the passage of time, the use must have been occurring continuously. It would follow, that being the case, that the Council could have taken enforcement action against it throughout that time.
9. I have carefully considered all of the evidence. In particular, the tenancy agreements which commence around 2013 and 2014 for each flat, together with extracts from the Deposit Protection scheme 'My Deposit' used by the landlord. As stated by the Council, there are significant gaps between the periods to which these Assured Shorthold Tenancy Agreements initially provided relate.
10. In response, the appellant has provided additional tenancy agreements and explained that any significant gaps arose where tenants continued to occupy the various flats beyond the initial term of the agreement on a 'Statutory Periodic' basis. The appeal documentation includes a helpful 'Summary' provided by the appellant of the dates when individual tenants actually occupied each flat giving the date the tenant moved out; on occasions before the tenancy ends and in other cases, sometime after. However, these dates are unsubstantiated by any other documentary evidence. I have had regard to the additional evidence provided, in the form of extracts from the 'My Deposit' website, to confirm the status of individual tenants being recorded as 'Statutory Periodic'. This was recorded in extracts provided in respect of the continued occupation by the existing tenant in Flat 2 beyond September 2018 and for a tenant in Flat 4 after 31 July 2017. However, whilst these extracts offer confirmation that the tenant continued to occupy the flat in question beyond the period of the tenancy agreement, they do not provide details of the length of time and when these tenants actually left. I have not been provided

with extracts from the 'My deposit' scheme showing this status for others listed as continuing beyond the tenancy agreement period in the appellant's summary although again, in any event, such extracts do not assist to substantiate the appellant's recollection of when tenants actually vacated the premises.

11. I note that payment of Council Tax and the provision of utility services for four flats is demonstrated, although again this is not necessarily an indication of continued occupation.
12. To conclude, based on the evidence before me, it is considered that overall, the evidence submitted by the applicant is not sufficient to demonstrate, on the balance of probabilities, that the property has been in continuous use as four self-contained flats for a period of more than four years prior to the date of this lawful development certificate application.

C. Sherratt

Inspector