



Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 11 February 2021

Appeal Ref: APP/R5510/X/3238487
84 Cowley Mill Road, Uxbridge UB8 2QD

- 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 Emdadur Rahman against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref: 869/APP/2019/89, dated 21 January 2019, was refused by notice dated 18 March 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 was: C3- dwellinghouses. Residential use as 3 No Studio Flats.
 - **Costs Application**
An application for a full award of costs has been made by Emdadur Rahman against the Council of the London Borough of Hillingdon. This is the subject of a separate decision.
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Decision

1. The appeal is allowed and a Lawful Development Certificate is issued.

Matters of clarification and background information

2. Following the Council conceding its case it has been agreed by the parties that the appeal can be dealt with on the basis of written representations and without the need for a site visit. I am satisfied that, in dealing with it in this manner, no injustice will be caused.
3. The heading above gives the description of the LDC as sought in parts 4 and 5 of the application form. The Council's decision notice also refers to '*Residential use as 3 No studio flats*'. The appeal form refers to '*3 studio flats, now First Floor Flat 84A (front), First Floor Flat 84A (rear), Ground Floor Flat 84B*'. The submitted plans indicate two studio flats at first floor (front and rear) and one to the rear of the ground floor behind an Estate Agent's office or shop.
4. There is clearly an 'office' or 'shop' on the ground floor at the front. I consider, therefore, that the description should be the one outlined on the appeal form and by adding the word 'rear' for the ground floor flat as follows: '*Ground Floor Flat 84B (rear)*'. It is on this basis that I have dealt with the appeal.
5. The application, the subject of this appeal, follows five previous applications dating back to December 2014, all relating to LDC applications for the residential use of the 3 studio flats as separate dwellinghouses. These were all refused, including two which had been appealed. The appeals (APP/R5510/X/16/3142533 and APP/R5510/X/17/3180363) were dismissed in June 2016 and April 2018.

6. Clearly, in relation to those applications/appeals, neither the Council nor the appointed Inspectors considered that sufficient precise and unambiguous evidence had been submitted to demonstrate that, on the balance of probability, the use of the property as 3 separate Studio Flats had been continuous (my underlining) for at least a period of four years, prior to the date of the various LDC applications.

7. At the application stage in this appeal the appellant submitted the evidence set out in the submissions and numbered 'i' to 'xvi' inclusive. Again the Council considered that the evidence was not sufficiently precise or unambiguous to demonstrate a continuous 4 year period of use of the 3 studio flats. I requested a full copy of the submitted application documents and there was some dispute about what had actually been submitted.

8. The appellant indicated that the documents submitted to me by the Council was not the complete list of application documents and submitted additional documents. However, the Council could not find these later documents in its Planning Register. Despite this, in reaching my conclusions, I have taken into account all of the documents submitted by both parties in response to my requests and I am satisfied that I have all of the information I need in order to reach my decision.

9. In addition to the above items numbered 'i' to 'xvi', when the appeal was submitted the appellant included additional evidence, which had not been submitted at the application stage. This was in the form of two detailed affidavits. I refer to these as the 'appeal affidavits'. One was made by the appellant Mr Emdadur Rahman and was dated 23 September 2019 and the second by Mr Tony Khanzadeh (Stoke Properties) which was dated 16 September 2019.

10. Having eventually seen the 'appeal affidavits' the Council considered that, combined with the application submissions, there was now sufficient evidence to demonstrate, on the balance of probability, that a continuous 4 year period of use of the 3 studio flats had occurred. On the basis of the combined evidence it therefore conceded its case and accepted that a LDC should be issued. Although the appellant was invited to withdraw the appeal, it was requested that it proceeded and the that the costs application be dealt with accordingly.

11. Before the Council conceded its case the appeal procedure was to have been by Public Inquiry. The appellant's initial choice of procedure had been written representations. The decision for the use of the Inquiry procedure had been based on the Planning Inspectorate's procedural guidance. This was because, at that stage, it seemed that there might be a need to take evidence on oath and for cross examination of the parties' witnesses.

12. Despite the Council's concession I must now consider whether or not, on the basis of all of the evidence (application and appeal documents), the use of the 3 studio flats was lawful on the date of the LDC application. Thus, in reaching my decision, I have taken into account all of the initial evidence submitted with the application; all of the submissions in response to my requests; all of the appeal submissions and, in particular, the two 'appeal affidavits'.

13. This course of action accords with the court's findings in the case of *'Cottrell v SSE and Tonbridge and Malling BC [1982] JPL 443'*. In that case it was held that consideration of just the application evidence denied the purpose of the LDC procedure which is aimed the decision-maker arriving at an objective decision (on the balance of probability) based upon the best facts and evidence available. Clearly the best facts and evidence available include the corroborating evidence as detailed in the 'appeal affidavits'.

Reasons

14. Having considered all of the evidence, I agree with the Council that the appellant has demonstrated on the balance of probability that, on the date of the LDC application, the 3 studio flats had been in separate and continuous use as dwellinghouses for a minimum of 4 years preceding the date of the application.

15. I also agree with the Council that the sworn 'appeal affidavits' carry significant weight in applying for this Certificate of Lawful Development. As indicated by the Council the affidavit of Mr Emdadur Rahman, dated 23 September 2019, incorporates and reinforces all the initial evidence. On behalf of the appellant it is acknowledged that the decision of the LPA '*may have been due to the manner of presentation of the documents*'. It was then stated that the appellant's appeal affidavit was being made '*in order to correct this anomaly*' and was being made under oath.

16. This affidavit was far more detailed than the appellant's application affidavit and in conjunction with the application evidence clearly set out in detail the length of occupation of the 3 studio flats, as well as their continuous use for the relevant period. This evidence of unbroken continuous occupation was corroborated by the affidavit made by Mr Tony Khanzadeh (Stoke Properties), signed under oath, 7 days in advance of the appellant's affidavit. This provided details of lettings, tenancies and tenancy agreements over the relevant period.

17. The Council had refused the application on the basis of the initial evidence. This evidence had included submissions not provided for the five previous applications, two of which were dismissed on appeal. Nevertheless the Council, advised by its legal team, still did not consider that the evidence showed that the use of the 3 studio flats had been continuous (my underlining) for the relevant 4 year period.

18. Having seen all of the application documents (as well as those submitted in response to my requests), it is clear to me that the property was unlawfully split into three flats and that in 2011 separate Council Tax accounts had been set up for each flat. The evidence also showed that the appellant's bank accounts had had various rent payments credited back to December 2014. These related to the 3 flats; 84A front; 84A rear and 84B, as well as the ground floor shop. The names on the tenancy agreements, some dating back to 2011, matched those responsible for paying Council Taxes, as well as those referenced on the bank statements.

19. However, despite the abundance of this initial evidence, there were gaps within each category of the evidence, whereby the question of continuity of use of each of the flats for the relevant 4 year period could be questioned. For example the Council Tax records indicate that between 28 June 2014 and 25 May 2015 there was no one registered at the First Floor Rear flat. Secondly the Bank statements from January 2015 to December 2015 sometimes only refer to two of the flats and the shop, or to one of the flats and the shop (for example March and April and May and June 2015 respectively). Thus, for the year 2015 the statements suggest that there were incomplete payments relating to the use of the 3 studio flats.

20. With regard to the submitted tenancy agreements there was no complete record to show that all three flats had been continuously occupied for the relevant 4 year period. Flat 84B has the most comprehensive record of tenancies from 2011 to the date of the LDC application. Flat 84A Rear also has examples of tenancies dating back to 2012. For Flat 84A Front there were fewer agreements

submitted and certainly not a full set showing separate continuous occupancy of that flat for a minimum of four years before the application date.

21. The overall situation must be assessed on the basis of whether or not there could have been any period during the relevant 4 years when all three studio flats were not continuously and separately occupied. Clearly some periods of non-occupancy (due to tenancy changes and/or decorating etc) would be classed as being 'de minimis'. However, in this case there was a significant gap in the Council Tax evidence; there were questions relating to bank statements and rent payments for flats and the tenancy agreements did not fully indicate that all three flats had been separately and continuously occupied for the full relevant 4 year period.

22. The Council, advised by its legal department therefore concluded that insufficient precise and unambiguous evidence had been submitted to demonstrate that the three flats were lawful on the date of the LDC application. It was only when the more detailed 'appeal affidavits' were submitted at the appeal stage that it became evident that the three flats had in fact been occupied separately and continuously for a minimum of 4 years prior to the application.

23. In my view the Council was entitled to reach that conclusion on the basis of the submitted application documents. The onus was on the applicant/appellant to submit sufficient evidence in the first instance. The Council and the previous Inspectors had concluded that insufficient evidence had been submitted in all five of the previous applications.

24. It is also clear that, although the evidence in this case was significantly more substantial, it still lacked the precise and unambiguous detail which was eventually provided by the combination of the application evidence and the two detailed 'appeal affidavits'. I agree with the Council that, if these 'appeal affidavits' had been submitted with the initial application a lawful development certificate would have been justified.

25. As indicated above I consider that the combined evidence justifies the issuing of a certificate and this is attached below.

Other Matters

26. In reaching my decision I have taken into account all of the other matters raised by the appellant and the Council. These include the full planning history; all of the initial, appeal and subsequent submissions; the submitted plans; the Council's Delegated Report, the previous appeal decisions and all of the references to relevant case law referred to by the parties. However none of these alters my reasons as set out above and nor is any other matter of such significance to change my decision.

Formal Decision

27. The appeal is allowed and a Lawful Development Certificate is attached below.

Anthony J Wharton
Inspector



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that, on 21 January 2019, the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken in respect of the development.

Signed

Anthony J Wharton
Inspector

Date: 11 February 2021

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First Schedule

C3 Use as 3 converted Studio Flats, now First Floor Flat 84A (front); First Floor Flat 84A (rear) and Ground Floor Flat 84B (rear).

Second Schedule

84 Cowley Mill Road, Uxbridge UB8 2QD

Notes:

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates only to the above property.

It certifies that the development described in the First Schedule, at the property specified in the Second Schedule, was lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the development described in the First Schedule; to the property specified in the Second Schedule and to the plans submitted with the LDC application, reference 869/APP/2019/89. The plans are dated 21/12/18 and numbered 1844/02 and 1844/03.

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.