
Appeal Decision

Site visit made on 16 November 2021

by P N Jarratt BA DipTP MRTPI

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

Decision date: 1 December 2021

Appeal Ref: APP/F5540/X/20/3263789

15 Clifton Road, Isleworth, TW7 4HL

- 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 Julian Pointon against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00283/15/LAW1, dated 26 August 2020, was refused by notice dated 20 October 2020.
 - 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 continued use as four self-contained residential units.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An application for costs has been made by the Council against the appellant. This application is the subject of a separate decision.
3. I carried out an unaccompanied site visit and was able to view the appeal property from the public highway. I did not consider it necessary to carry out an internal inspection as this case is dependent on evidence relating to the past use of the property.
4. For the avoidance of doubt the planning merits of an existing use are not relevant and they are therefore not an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended, which relates to an application for an LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

The site and relevant planning history

6. The appeal property is a detached dwelling on three floors converted into four flats located on a corner plot at Clifton Road and Villiers Road.

7. In 2010 permission was granted to convert the dwelling into 2 two bedroom flats (00283/15/P3). Following approval, the appellant states that the property was converted into 3 flats.
8. In February 2015 permission was granted for the erection of a single storey rear extension to the ground floor flat (00283/15/P5). Following this approval the appellant states that this extension has been used as a self-contained unit.

Reasons

9. To achieve lawfulness it is necessary for the appellant to demonstrate on the balance of probability that the use of the property as four self-contained flats commenced and continued uninterrupted for a period of at least four years prior to the date of the LDC application. The relevant date is therefore on or before 26 August 2016. The burden of proof rests entirely with the appellant.
10. The appellant states that since 2 February 2015, the building has been subdivided and used as 4 self-contained flats having on the ground floor a three bedroom flat (Flat 1) and a studio flat (Garden Flat); on the first floor a two bedroom flat (Flat 2); and on the second floor a one bedroom flat (Flat 3).
11. The appellant maintains that as Flat 1 and Flat 2 have the benefit of planning permission, the evidence submitted in the appeal relates to Flat 3 and the Garden Flat.
12. The appellant has submitted a sworn Affidavit, dated 29 July 2020, which indicates the various dates of conversions together with floor plans.
13. Various tenancy agreements relating to the Garden Flat and Flat 3, Council Tax payments for Flat 3, and other documents, were submitted with the original application. However, the Council considered that the evidence was insufficient to show on the balance of probabilities that the use of the property as four flats was lawful.
14. Further evidence has been submitted as part of this appeal and has been re-structured chronologically to make the evidence more understandable.
15. A shorthold tenancy agreement (STA) dated 4 June 2016 in respect of the occupation of the Garden Flat shows that it was in the names of Messrs Menesi, Toth and Mozes. The appellant acknowledges that there was a dating error in the STA for the Garden Flat which wrongly indicates that the letting was from 6 June 2015 instead of from 4 June 2016. The appellant states that two of the tenants occupied Flat 1 and it is explained that all three were included in the STA as they all contributed to the deposit. This appears to be an unusual situation. As the appellant has not submitted details of the tenancy history of Flats 1 and 2, there is doubt over the tenancy of Flat 1. It could well have been the case that the three tenants shown on the STA dated 4 June 2016 occupied the garden flat as an extension to Flat 1, as permitted under 00283/15/P5, and not as a self-contained flat. On this basis, there is no unambiguous evidence to show that the Garden Flat was self-contained until Mr Luca occupied the flat in November 2017, although I note that he signed the STA on 27 June 2017.
16. There was also a short break between 1 March 2019 to 15 May 2019 at the time that the sitting tenant, Mr Luca, was evicted. However, I do not consider this latter period of non-occupation interrupted the continuity of use.

17. In respect of Flat 3, STAs and court papers submitted with the appeal indicate that that Flat 3 has been rented out to various tenants from 20 September 2008.
18. The Council draws attention to a final certificate issued on 23 September 2019 for the single storey extension which states "the work does not concern a new dwelling". The appellant assumes this to be a Building Regulations Certificate whereby the building surveyor does not assess what the use of the extension would be. Furthermore, it is stated that no certificate was issued when the extension was finished but this was chased up as a statutory document at a later date. Whilst I note that the surveyor's drawing of the Garden Flat is dated 23 September 2015 (Appendix 3 of the appellant's statement), this is a date which post-dates the planning permission.
19. Case law¹ indicates that an appellant's evidence should not be rejected simply because it is not corroborated. If the evidence is sufficiently precise and unambiguous, it should be accepted. However, in view of the uncertainty over the tenancies of the Garden Flat and Flat 1 there is ambiguity over the commencement of the independent self-contained use of the Garden Flat. This can only be shown with a degree of certainty to be from November 2017 which is less than four years prior to the application. Although I attach significant weight to the appellant's Affidavit, this is not as substantial as the weight that would be attached to a Statutory Declaration made under the Statutory Declarations Act 1835. The weight attached to the Affidavit is outweighed by the ambiguity over the tenancies.
20. The appellant has not demonstrated on the balance of probability that the appeal property has been used as four self-contained flats for four years or more prior to the application for the LDC and is not therefore immune from prosecution by virtue of s171B.

Conclusion

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the continued use of the property as four self-contained residential units 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.

P N Jarratt

Inspector

¹ Gabbittas v SSE and Newham LBC [1985] JPL 925

