# Appeal Decision

Site visit made on 29 November 2021

**by Paul T Hocking BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 December 2021**

**Appeal Ref: APP/F5540/X/19/3239602**
**Flat B (Basement Flat), 173 Thornbury Road, Isleworth TW7 4QG**

- 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 B Singh against the decision of the Council of the London Borough of Hounslow.
- The application Ref 01119/173B/LAW1, dated 15 July 2019, was refused by notice dated 01 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 described as: Change of use to the basement from storage to a single dwelling-house.

## Summary of Decision

1. The appeal is dismissed.

## Procedural Matter

2. Both parties consider the appeal is suitable to be determined by the written procedure. That being so, I do not consider that injustice or prejudice to a party arises.

## Main Issue

3. The main issue is whether the Council's decision to refuse a certificate of lawfulness for the use of the basement as a dwelling is well founded.

## Reasons

4. In matters such as this the onus is on the appellant to demonstrate his case on the balance of probabilities. In order to do so, a period of 4 years, prior to the making of the appeal application on 15 July 2019, would need to be demonstrated in order to affirmatively establish a continuous independent residential use for the purposes of lawfulness.

5. The site relates to a basement flat consisting of two bedrooms, kitchen/living space and bathroom.

6. It is said that the basement of the building was used for the purposes of storage and at some point, underwent a material change of use. It is said that it has been occupied as a dwelling for over 10 years and that Council Tax (CT)

has been paid since 2005. A copy of the valuation list has then been provided which says the banding was effective from 29 August 2005.

7. A letter from an accountant, dated 23 July 2012, has been provided which states the appellant has '…been receiving rental income of £800 pcm for the property…' and has been '…declaring this income within his annual return since 2006.'

8. The appellant acknowledges that a planning application was made in October 2012 and the submitted plans should have shown residential accommodation within the basement. Rather, the plans showed the basement as a storage area. This naturally casts considerable doubt in my mind as to the appellants version of events and/or raises the question as to whether the appellant deliberately concealed an unauthorised use from the Council. Nevertheless, the appellant says that given the relevant period is four years he does not rely upon the years until 2012 as relevant evidence, but as background and explanation as to why CT has been paid since 2005. That being so, the letter from the accountant should not be relied upon either, but this is not a precise form of evidence in any event for the purposes of continuous independent residential use.

9. The appellant then provides tenancy agreements relating to three occupants which are said to demonstrate the flat was physically occupied for a period of more than 4 years. However, the period then cited, 6 June 2015 to 3 March 2019, is less than 4 years. The agreements themselves then only relate to two twelve-month periods beginning 1 March 2013 and 1 June 2015 respectively.

10. An email has also been provided relating to CT liabilities and it is said the tenancy agreements then match the CT records. However, there is very little evidence to demonstrate this on the balance of probabilities, and the email only relates to two periods between 12 May 2015 and 5 June 2015 and the period from 3 March 2019. The email itself is then dated 17 October 2019. Moreover, CT registration or other such evidence does not demonstrate on the balance of probabilities that the flat itself was continuously and physically occupied for a relevant period. Even if the CT evidence had supported a relevant period, I therefore would have afforded it very limited weight.

11. It remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. As a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate on the balance of probabilities a continuous 4 year period of use of the basement as a dwelling such that enforcement action could otherwise not have been taken.

12. The Council is also able to advance contrary evidence to which the appellant provides little meaningful explanation. However, in light of my findings, and that the appeal fails, I do not need to consider the question of deliberate concealment further for the purposes of my assessment.

## Conclusion

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

## Formal Decision

14. The appeal is dismissed.

*Paul T Hocking*

INSPECTOR