
Appeal Decision

by P N Jarratt BA DipTP MRTPI

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

Decision date: 6 December 2021

Appeal Ref: APP/F5540/X/20/3254751
396 Hanworth Road Hounslow Tw3 3SN

- 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 Link-Estates Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 01254/396/LAW1, dated 12 April 2020, was refused by notice dated 16 June 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 for an existing use of large house in multiple occupation of up to 7 households and 12 people.
-

Decision

1. The appeal is dismissed.

Procedural matters

1. 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.
2. As the appeal relates to evidence regarding the historic use of the appeal property, a site inspection was not deemed to be necessary.
3. The onus of proof rests with the appellant and the standard of proof is the 'balance of probability' and not 'beyond reasonable doubt' as wrongly indicated by the appellant with the latter being a higher standard of proof usually applying to criminal cases.

Main issue

4. I consider the main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

5. The appeal property is a two storey semi-detached dwelling in a predominantly residential area. There are some 5 self-contained flats over three floors,

- including the roof space and two rooms that do not have bathrooms but appear to share communal facilities.
6. The appellant's case is that the property has been in continuous use as a House in Multiple Occupation (HMO) for 7 households and 12 occupants since a new licence was issued on 8 February 2010. As this occurred more than 10 years prior to the application for the LDC, the use is now lawful under s171B through the passage of time. Prior to that date the use of the property was as an HMO accommodating 6 households and 7 occupants.
 7. The appellant has submitted copies of four HMO licences issued by Hounslow Borough Council's housing services (under different guises) of which L0034-07 dated 7 September 2007 licensed the property for a maximum of 6 households and 7 people; L0211-10 dated 17 September 2010 licensed the property for a maximum of 7 households and 12 people; L0388-14 licensed the property for a maximum of 7 households comprising no more than 12 people; and a license dated 10 September 2019 was granted for a maximum of 7 households comprising no more than 9 people.
 8. This documentation therefore shows that the date the property was licensed for 7 households and 12 people was less than 10 years before the date of the application for an LDC (16 June 2020) and that it has only been licenced for a maximum of 9 people since September 2019. Consequently this evidence does not show a continuous use of the property for a period of 10 years. The appellant places significant weight on the licence evidence but neither the appellant nor the Council comment on the two aspects about dates and capacity I have referred to above.
 9. The Council refers to the Council Tax records that indicate that the property was split into seven separately banded flats on 14 March 2012 and the Council has interpreted this to mean that the property was not converted earlier than 14 March 2012. As the appellant points out, there is a time lag between the Valuation Office inspection and a change in the Council Tax so I do not attach the same degree of weight on the Council's interpretation of when the changes may have taken place.
 10. The Council incorrectly states that the appellant claims the use of the property as an HMO for 7 households and 12 people, was from 7 September 2007, but this is clearly wrong as the appellant makes no such claim.
 11. A signed Statement of Truth by Mr Imtiaz Aziz of 392 Hanworth Road confirms that the property at 396 Hanworth Road has been in continuous use as an HMO for the whole of the period of the licenses from 7 September 2007. I attach moderate weight to this but a Statement of Truth does not carry as much weight as a Statutory Declaration.
 12. However, Mr Aziz's the Statement of Truth is outweighed by the flaws in the appellant's own evidence in respect of the continuity of the use as the relevant licence date is less than 10 year before the application date and that from September 2019 the property has only been licensed for up to 9 persons.
 13. The evidence presented by the appellant does not show on the balance of probability that the use has been continuous for a period of 10 years prior to the date of the application and therefore has not achieved immunity from enforcement action.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an existing use of large house in multiple occupation of up to 7 households and 12 people 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