The Planning Inspectorate

Appeal Decision

Site visit made on 15 August 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2023

Appeal Ref: APP/F5540/X/22/3312426
41 Denbigh Road, Hounslow TW3 4DU

- 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 Mangtoo Johal against the decision of the Council of the London Borough of Hounslow.
- The application Ref 00344/41/LAW3, dated 21 February 2022, was refused by notice dated 13 April 2022.
- 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 "existing use of property as three self-contained flats."

Decision

1. The appeal is dismissed insofar as it relates to the ground floor rear and first floor flats. The appeal is allowed insofar as it relates to the ground floor front studio flat and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Procedural Matter

2. I have taken the description of development from that given on the Council's decision letter which I consider to be accurate.

Reasons

3. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force (s191(2)). I have not been told that there was any extant enforcement notice relating to the property at the time of this application.

4. In order to succeed on this ground, in accordance with Section 171B(2) of the Act, it is necessary to demonstrate, on the balance of probability, the use of the building for 3 flats has continued for a period of four years or more prior to the date of the application, therefore since at least 21 February 2018; so as to be immune from enforcement. Responsibility for demonstrating the aforementioned continuity of use rests with the appellant.

5. The appellant has provided various items of evidence in support of the application. These include tenancy agreements in relation to the ground floor front studio flat at various dates between April 2014 and March 2022; in

relation to the ground floor rear flat at various dates between February 2014 and February 2022 and in relation to the first floor flat, at various dates between September 2013 and February 2021.

6. A sworn affidavit, dated 18 December 2020, has been provided by a previous tenant of the ground floor front studio flat, who claims to have resided there without interruption since 30 January 2015.

7. In addition the following documents have been provided:

- A building notice, dated November 2013, relating to a kitchen / dining extension at the appeal property.
- Various gas safety and electrical installation certification for the property.
- A pest control record, dated August 2016, and invoice, dated January 2017, relating to the first floor flat.

8. From my visit it was evident that each of the residential units were equipped with the necessary facilities for private, independent day to day living. It seems to me that each are capable of being used as self-contained flats.

Ground floor front studio flat conclusion

9. The tenancy agreement records that relate to this unit do not account for certain durations over the period of time between the earliest and most recent records. Notably only a single, initial 6-month agreement, dated January 2015, is provided covering the period up to December 2020.

10. However, the sworn declaration provided by the relevant tenant, in the form of an affidavit, claims uninterrupted tenancy at the property between January 2015 and December 2020. This document appears to me to be sufficiently precise and unambiguous. Given that any person who lies about the information contained in an affidavit could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I give this significant weight. The aforementioned tenancy agreement, and subsequent agreement signed in December 2020, along with gas safety check records for this unit, dated March 2018 and July 2019 and an electrical installation condition report dated June 2019 serve to corroborate this account, therefore adding further weight.

11. From this evidence, and having regard to case law cited by the Council[1], I consider it more likely than not, that the ground floor front studio flat was equipped with viable facilities for private day to day living by January 2015 and that the use continued thereafter over the requisite 4-year period. In reaching this conclusion I am mindful that any 4-year period of continuous use prior to the application date would be sufficient to accrue lawfulness.

Ground floor rear flat conclusion

12. The tenancy agreements supplied cover only part of the period spanning February 2014 to February 2022, and not a continuous period of 4 years therein. The appellant indicates that tenancies continued beyond the periods

[1] Impey v SSE & Lake District SPB [1981] JPL 363

specified in the documents, however little substantive evidence is provided to support this claim. Furthermore, I am not satisfied that these documents in themselves demonstrate continuous use of the flat. Similarly, gas safety certificates, dated March 2018 and July 2019, relating to the flat only indicate its use as such at those fixed points in time. The electrical installation certification does not specifically identify the flat or demonstrate its continuous use. The Council tax bill, dated 7 July 2022, which sets out charges going back to April 2014, is retrospective and shows a significant outstanding amount owed. Furthermore it does not indicate when any transfers paid in respect of the flat were made, and is not therefore evidence of actual continuous use.

13. I have not been provided with evidence, such as sworn declaration(s) and / or regular payments of rent and / or utility bills, that might corroborate the unit having been in continuous use over the requisite immunity period.

14. Therefore, from the evidence before me I am not persuaded, on the balance of probability, that the ground floor rear flat has been in continuous use over the requisite 4-year period.

First floor flat conclusion

15. The tenancy agreement records that relate to this unit do not account for certain durations over the period of time between the earliest and most recent records, and not a continuous period of 4 years therein. The appellant indicates that tenancies continued beyond the periods specified in the documents, however little substantive evidence is provided to support this claim. Furthermore, I am not satisfied that these documents in themselves demonstrate continuous use of the flat.

16. I have had regard to the electrical and gas certification records provided in relation to this property, also to the pest control and invoice records. However these documents only indicate the flat being in use at certain fixed points in time and do not materially alter my finding regarding continuous use. The Council tax bill dated 1 September 2022, which sets out charges going back to April 2014, is retrospective and shows a significant outstanding amount owed. Furthermore it does not indicate when any transfers paid in respect of the flat were made, and is not therefore evidence of actual continuous use.

17. I have not been provided with evidence, such as sworn declaration(s) and / or regular payments of rent and / or utility bills, that might corroborate the unit having been in continuous use over the requisite immunity period.

18. Therefore from the evidence before me I am not persuaded, on the balance of probability, that the first floor flat has been in continuous use over the requisite 4-year period.

Overall Conclusion

19. S.191(4) allows the local planning authority to modify the terms of the application, giving a certificate in somewhat different terms so as to accord with the facts and evidence, rather than an outright refusal. The Secretary of State or Inspector can exercise the same power in s.191(4), on appeal, as the local planning authority has on the application.

20. Therefore, for the reasons given above, and having considered all of the documentation provided by the appellant, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "existing use of property as three self-contained flats" at 41 Denbigh Road, Hounslow TW3 4DU was well-founded insofar as it relates to the ground floor rear and first floor flats only.

21. However, insofar as it relates to the ground floor front studio flat, I conclude that the Council's refusal to grant a certificate of lawful use or development was not well-founded. The appeal succeeds to that extent. I will exercise, accordingly, the powers transferred to me under section 195(2) of the 1990 Act as amended, and grant a certificate relating to that part.

R Merrett

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 21 February 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and identified on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has shown, on the balance of probability, that the part of 41 Denbigh Road, Hounslow, known as the ground floor front studio flat, was used as a self-contained residential flat in January 2015 and was used continuously and without significant interruption for the same use for at least four years thereafter.

Signed

R Merrett

Inspector

Date 04 September 2023
Reference: APP/F5540/X/22/3312426

First Schedule

Ground floor front studio flat

Second Schedule

41 Denbigh Road, Hounslow TW3 4DU

NOTES

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

It certifies that the use described in the First Schedule taking place on the land 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 04 September 2023

by R Merrett Bsc(Hons) DipTP MRTPI

Land at: 41 Denbigh Road, Hounslow TW3 4DU

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Scale: Not to Scale