



Appeal Decision

No site visit

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 06 September 2023

Appeal Ref: APP/H5960/X/22/3309301

47 Freshwater Road, LONDON, SW17 9TH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Munawar Ahmad against the decision of London Borough of Wandsworth.
 - The application ref 2022/2008, dated 13 May 2022, was refused by notice dated 31 August 2022.
 - The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is two flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A site visit was not necessary. The current use of two flats is not disputed, just the history of that use, so a visit was unnecessary.

Reasons

3. The appellant notes the property has been split into two distinct self-contained flats which have been in continual residential use since June 2016. There is evidence relating to that occupancy in the form of tenancy agreements, Council tax records, letter from tenants, tenancy deposit scheme and tv licences. There is no disagreement that there are two flats now, or that there were two flats prior to enforcement action in 2019. It is the continuation of the use from 2016 to the present that is in question.
4. In 2015 the Council commenced enforcement action against the two flats at the property, and later some development at the property. The appellant says the enforcement action was more concerned with unauthorised structures. He says that no officer actually visited the property internally, and that no de-conversion works took place.
5. In August 2015 the Council required a kitchen to be removed as well as internal walls. A visit in January 2018 showed further additions without planning permission. A further requirement for removal of a shed and extension was issued. The officers followed this up with further inspections and were satisfied that the property was now a single dwelling. The enforcement case closure report ended with *'it is now confirmed that the property is back to one dwellinghouse, and unauthorised additions and*

outbuilding works have been rectified. This does not indicate that the Council was only concerned with the unauthorised additions.

6. A householder planning application was made in 2020 which showed the property as a single dwelling. Another application for planning permission in 2021 stated on the application form the current use as a single dwellinghouse, which was also shown on the drawing as existing.
7. The appellant says this was a misunderstanding of the planning permission process. I do not accept this. If a form asks the current use of a property, it does not need planning knowledge to answer. Either it was a single dwellinghouse or two flats, that is not specialist knowledge. The drawing of the existing would also show what is there now.
8. Whilst the appellant has other evidence, some of that is ambiguous in the sense that there were not two tenancy agreements around 2019 – 2020. The appellant says there was only one agreement as the upper floor was being renovated in accordance with an approval and only the ground floor was occupied. The length of that non occupation is not identified, and it does not suggest a separate use at the time.
9. It is my conclusion, on the balance of probability, that the property reverted to a single dwellinghouse in 2019, breaking any continuation of occupancy and restarting the time clock. This is because it is quite clear the Council was fully aware of the two flats as well as unauthorised additions and both are important matters. During the visits to ensure the situation was regularised it is highly unlikely that the two aspects would not be checked. This is also fully supported by the later planning applications made by the appellant.
10. So, while there is some evidence relating to the occupancy of two flats it is clear on the balance of probability that this was interrupted in 2019/20 and 4 years continuous use has not been demonstrated.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of two flats 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.

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INSPECTOR