



Appeal Decision

Site visit made on 29 June 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Appeal Ref: APP/F5540/X/22/3297152

Flat Ground Floor, 8 Grantham Road, Chiswick, London, W4 2RS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Waqaas against the decision of the Council of the London Borough of Hounslow.
 - The application ref: 00499/8(GF)/LAW1, dated 24 January 2022, was refused by notice dated 4 April 2022.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is use of the Flat Ground Floor/8a as a self-contained 2 bedroom flat.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's refusal to issue a LDC was well-founded. That turns on whether a material change of use of the ground floor of the appeal property to use as a separate self-contained dwelling has occurred and whether any such use has taken place on a continuous basis so as to be immune from enforcement action.

Reasons

3. Section 191 of the Act states that if a person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application to the local planning authority for a LDC.
4. In a LDC appeal, the onus of proof is firmly upon the appellant to make their case on the balance of probabilities and the appellant's own evidence does not need to be corroborated by independent evidence. If the council has no evidence of its own to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
5. The appellant needs to demonstrate that, on the balance of probabilities, the ground floor of the property had been used as a self-contained flat for a continuous period of 4 years ending on or before the date of the application without any significant break in occupation.
6. The appellant sets out that the ground floor flat has been in use as a self-contained dwelling since June 2002 with the ground floor being occupied by the same person from that date until his death in May 2019. A statutory

declaration explains that the upper floor was occupied by Mr Johnstone from February 2017, however, there is insufficient substantive evidence before me to demonstrate that the property was being used as two self-contained flats prior to February 2017.

7. Moreover, the submitted statutory declaration covering the occupation of the upper floor of the property for the period of February 2017 until 11 July 2021 explains that Mr Johnstone was 'placed at the first floor self-contained flat as a care taker of the former owner. It goes on to say that he was *'offered the accommodation on a service arrangement to take care of the owner's household duties as housekeeper and to maintain the two self-contained flats, communal areas, organise pest control, any plumbing issues and regular routine property small wear and tear on a regular basis'*. However, even if it were to be the case that, at that time, the property was arranged such that the two flats included all the facilities required for day-to-day private existence, there is little information contained within the declaration, or provided within other evidence accompanying this appeal which suggest that the ground floor flat was used as an independent and separate residence.
8. Given the reference to undertaking 'household duties as housekeeper', it is not clear to me whether the occupants of the property lived independently from each other or whether there was any shared and communal use of parts of the property for instance, whether meals were prepared and taken together or separately or whether there was any shared use of amenities, such as the bathroom, toilet, washing machine or garden. The generalised reference to 'communal areas' adds further uncertainty. To my mind, the evidence stated within the declaration is vague and imprecise and it fails to show that the ground floor flat was used as a self-contained dwelling that was separate and distinct from the other accommodation being provided within the appeal property.
9. A statutory declaration has been submitted from the former plumber who was employed by the former owner of the property. He states he visited the property between 2017 and March 2021. Whilst reference is made to there being two self-contained flats, there is little information to clarify how the property was observed to have been used by the occupants during that time. Despite his reference to 'regularly' visiting the property, it is not clear to me how often and for how long he would visit, particularly given that the former housekeeper states he would maintain the two self-contained flats and any plumbing issues and routine property wear and tear. There are clear contradictions between the evidence which have not been adequately explained and the declaration provides little additional information to clarify how the property was being used by the occupants.
10. Although the former housekeeper remained in occupation at the property after the passing of the former owner and until July 2021 when ownership of the property was transferred to the appellant, there is little information regarding how the ground floor was used as a self-contained flat during this period. There is little explanation to explain how the ground floor flat was being used by executors during this period, with contradictory references to *'visiting regularly'* and *'living within the ground floor flat'*.
11. A further statutory declaration dated 28 June 2022 from the current occupant of the ground floor flat has been provided. It confirms their occupation since

the 4 May 2021 under the terms of a Service Occupancy Agreement (SOA) of the same date. The SOA has also been submitted together with several payslips covering the period June 2021 to December 2021. The provisions of the SOA create a licence to occupy the property, which is defined as 'Flat Ground Floor/8A' and to use the contents while the employee is engaged under the terms of an employment contract. The author of the declaration sets out that there are two self-contained flats however, he does not specify that his use of the property is solely confined to the ground floor flat nor does he set out that he lives independently of the upper floor. In this respect, his evidence is vague. However, even if I were minded to accept that the evidence of his period of occupation was sufficiently precise and unambiguous to show the use of the ground floor flat as a self-contained dwelling, this would only account for the period May 2021 to 24 January 2022 (the date of the application) and it would fall short of the relevant four year period. It has not been demonstrated that any other period could be added, and thereby achieve four years of continuous use.

12. Although I note that the property was registered as two dwellings for council tax purposes in 1993, the significance of each floor being liable for council tax payments provides little evidence to explain the actual residential use of the appeal property over time, particularly during the period of occupation by the former owner and housekeeper.
13. A number of utility bills have been provided in support of the appeal however, these are limited in number and they provide a patchy picture of supply of electricity and gas which is mainly restricted to a short period of time from November 2020 to April 2021. Two gas bills dated 3 February 2021 and 3 March 2021 are addressed to 'The Occupier, First Floor' and 'The Occupier, Ground Floor' respectively. These bills cover short periods of usage from 25 Nov 2020 to 3 Feb 2021 and 20 January 2021 to 3 March 2021. Other letters provided in respect of the gas supply are for informative purposes and advise of changes to tariffs and request meter readings. For electric, I have been provided with two bills dated 29 April 2021 and 5 May 2021 for 'lower floor' and '8A' Grantham Road. These are both stated to cover the period 8 April to 23 April 2021. Other letters from the electric company are for informative purposes. Again, these provide only sparse evidence regarding the usage and supply of electricity.
14. I observed two gas utility boxes on the exterior of the property at the time of my visit. The meter serving the ground floor of the appeal property is stated to have been installed in October 2018 and accords with details written on the front of the utility box. No detail is given as part of this appeal regarding the installation of the other gas unit, however similar details are recorded on its front and these suggest it was installed on the same date. Even so, the availability of more than a single supply of gas and electric to the appeal property does not account for the manner in which the property was being used by its various occupants over the relevant timeframe nor does it aid in resolving the ambiguity with the evidence referred to above.
15. Similarly, the availability of gas safety records, energy performance certificates and building regulations compliance certificates for gas and electrical installations provide little information as to the actual residential use of the ground floor as a separate and distinct dwelling from that of the upper floor.

16. My attention has also been drawn to refuse collection evidence. Whilst an email dated 24 May 2022 confirms that wheelie bins were rolled out in 2016, this appears to be a generalised comment rather than being solely applicable to the ground floor flat. It does not point to there being individual waste arrangements for each floor of the property over the entire relevant period. Furthermore, whilst it provides certainty in terms of which type of bin each flat is entitled to, it does not show that those types of refuse collections were in existence separately for the upper floor save for at the date of the inquiry being made, namely May 2022. I note that the Council's refuse 'collection day finder' records two address options for the appeal property, however, this is a snapshot in time at the date of the inquiry being made. Importantly, it does not confer any evidence in terms of how the property has been used.
17. To my mind, the appellant's evidence is not sufficiently precise and unambiguous to show that it is more likely than not that the alleged use of the appeal property for a continuous four year period as a self-contained flat had occurred prior to the date of the application.

Other Matters

18. Reference has been made to similar cases decided by other local London authorities, however, limited information has been provided and moreover, I am required to determine this appeal based upon the evidence that is before me.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of use of the Flat Ground Floor/8a as a self-contained 2-bedroom flat was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

E Brownless

INSPECTOR