



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/22/3297138

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 Mohammad Waqaas against the decision of the Council of the London Borough of Hounslow.
 - The application ref: 00499/8/LAW3, dated 9 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 First floor as a self-contained 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 first floor flat 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 first 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. It is the appellant's case that the first floor of the appeal property has been in continual use as a self-contained dwelling since 4 October 2011. At the time of the application, the appellant was residing within the upper floor of the

property within the First Floor Flat which is also known as Flat 8b. A statutory declaration of the appellant confirms the same and sets out that his occupation commenced in August 2021. However, given the appellant's ownership of the entire property at 8 Grantham Road, little clarification has been provided to set out whether his occupation of the property is solely confined to the upper floor such that the upper floor flat is used as an independent and separate residence from that of the lower floor of the property.

7. Furthermore, a statutory declaration provided by the previous occupier of the upper floor flat sets out that he occupied the upper floor of the property for the period of February 2017 until 11 July 2021. However, it goes on to explain that he was *'placed at the first floor self-contained flat as a care taker'* of the former owner who resided at the ground floor flat. It goes on to say that he was *'offered the accommodation on a service arrangement to take care of the former 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'*.
8. In light of the evidence, even if it were to be the case that, at that time between February 2017 and 11 July 2021, the property was arranged in a manner that the upper floor of the property had all the facilities required for day-to-day private existence, the information fails to explain how the occupant was actually using the appeal premises as an independent and separate residence. 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 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 within the property, 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 upper 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 at 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. Whilst the former housekeeper is stated to have remained at the property until July 2021, after the passing of the former owner and when ownership of the property was transferred to the appellant, there is little information regarding how the entire property was used for residential purposes during this period and whether the first floor was in use as a separate self-contained flat.

11. 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.
12. Whilst a number of utility bills have been provided in support, 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.
13. I observed two gas utility boxes on the exterior of the property at the time of my visit. The meter serving the first 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.
14. 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 first floor as a separate and distinct dwelling from that of the ground floor.
15. 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 first 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 enquiry 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 enquiry being made. Importantly, it does not confer any evidence in terms of how the property has been used over a relevant period.
16. 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

17. Reference has been made to similar cases for LDCs at Ravensbourne Road, however, little information has been provided in respect of these. In any event, I am required to determine this appeal based upon the evidence that is before me.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of use of the Flat First floor as a self-contained 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