



Appeal Decisions

by D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 6 September 2024

Appeal A: APP/F5540/X/24/3338118

Flat 1 – Frank’s, Bradleys Fish Factory, Central Way, North Feltham Trading Estate, Feltham, Middlesex TW14 0XQ

- 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 F Bradley of F R Bradley (Feltham) Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00229/BD(F1F)/LAW1, dated 14 February 2023, was refused by notice dated 8 August 2023.
 - 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 “use of premises as use falling within Class C3(a)¹”.
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Appeal B: APP/F5540/X/24/3338120

Flat 1, Bradleys Fish Factory, Central Way, North Feltham Trading Estate, Feltham, Middlesex TW14 0XQ

- 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 F Bradley of F R Bradley (Feltham) Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00229/BD(F1)/LAW, dated 14 February 2023, was refused by notice dated 8 August 2023.
 - 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 “use of premises as use falling within Class C4 – ground floor flat”.
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Appeal C: APP/F5540/X/24/3338122

Flat 2, Bradleys Business Centre, Central Way, North Feltham Trading Estate, Feltham, Middlesex TW14 0XQ

- 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 F Bradley of F R Bradley (Feltham) Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00229/BD(F2)/LAW1, dated 14 February 2023, was refused by notice dated 8 August 2023.
 - 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 “use of premises as use falling within Class C4 – first floor flat”.
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¹ This relates to Schedule 1 of the Town and Country Planning (Use Classes) Order 1987 (the Use Classes Order).

Decisions for Appeals A, B and C

1. The appeals are dismissed.

Preliminary Matters

2. I consider that these appeals can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts² have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
4. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of these cases. For the avoidance of doubt, the planning merits of the development are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 Act as amended (the 1990 Act).
5. I have taken the description of the use for which the LDCs were sought, and their addresses, from the respective application forms. I note that the Council has modified the description of the existing uses as set out in each of the decision notices. For Flat 1 – Frank's (Appeal A), the modified wording is "Certificate of Lawfulness for the existing use of part of the ground floor factory as a self-contained studio flat"; for Flat 1 (Appeal B) the modified wording is "Certificate of Lawfulness for the existing use of part of the ground floor as a four bedroom self-contained flat"; and for Flat 2 (Appeal C) the modified wording is "Certificate of Lawfulness for the existing use of part of the first floor as a four bedroom self-contained flat".
6. In respect of Appeal A, the modified wording has no effect on the use sought since the meaning would be the same. However, the applications relevant to Appeals B and C sought confirmation that the C4 uses described were lawful on the date of the applications. A Class C4 use would be a small house in multiple occupation (HMO). A building or part of a building is used as an HMO under Section 254(1) of the Housing Act 2004, and for the purposes of Class C4, if it meets 'the standard test'. This refers to the requirement that the living accommodation is occupied by persons who do not form a single household, and two or more of the households share one or more basic amenities such as toilet, washing or cooking facilities.
7. It is set out in the evidence that Flats 1 and 2 both comprise four bedrooms, which have been occupied by up to six people not forming a single household and sharing basic facilities. That being the case the relevant Use Class would be C4, as sought.

² *Gabbitts v SSE & Newham LBC* [1985] JPL 630.

8. For Flat 1 – Franks, the evidence is that the unit was occupied solely by the appellant until it was let to a single tenant. The unit contains sleeping / living accommodation, a bathroom and a kitchen. On this basis the unit would not meet the definition of an HMO and would be a self-contained flat, or a single dwellinghouse within Use Class C3(a) as sought.
9. I have, therefore, considered the appeals based on the uses described above, that is, Flat 1 – Franks as a self-contained flat, and Flats 1 and 2 as four bedroom HMOs.
10. Section 191 of the 1990 Act provides that uses are lawful if no enforcement action may be taken in respect of them because the time for enforcement action has expired. The relevant timescales are set out in Section 171B of the 1990 Act. Section 171B(2) applies where there has been a breach of planning control consisting in the change of use of any building, or part of a building, to use as a single dwellinghouse. At the date the applications were made, this provided that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. This timescale applies to Appeal A.
11. Section 171B(2) does not apply in cases where there has been a change of use to an HMO because this would not be change of use to a single dwellinghouse. In such cases, Section 171B(3) applies and the relevant immunity period would be 10 years. This timescale applies to Appeals B and C. I have determined the appeals accordingly.

Main Issues

12. For Appeal A, I must decide whether the appellant has shown, on the balance of probabilities, that the material change of use to a use falling within Class C3(a) took place four or more years prior to the date of the application and continued after the date of change without significant interruption such that it would be too late for the Council to take enforcement action.
13. For Appeals B and C, I must decide whether the appellant has shown, on the balance of probabilities, that the material change of use to a use falling within Class C4 took place 10 or more years prior to the date of the application and continued after the date of change without significant interruption such that it would be too late for the Council to take enforcement action.
14. The main issue in each case is whether the Council's refusal to grant an LDC was well-founded.

Reasons

Evidence

15. The appellant has provided two 'Statements of Truth', which are signed and dated 14 February 2023 and 2 February 2024. In summary, these documents state that Mr Frank James Bradley is the sole director and shareholder of F R Bradley (Feltham) Ltd, which is a fish processing business. He bought the 30,000 sq ft premises at Central Way in 2004 and altered the accommodation according to business needs and to meet the relevant standards for food preparation. The works included the provision of a ground floor flat for Mr Bradley, which is known as Flat 1- Franks or the studio flat. This included a bathroom and kitchen.

16. Mr Bradley occupied the flat from 2005 until 2016 during the week and occasionally at weekends. This was due to the nature of the industry, which required working long hours, and to ensure that operations were overseen particularly during the transition to the larger site at Central Way. The flat was not Mr Bradley's main residence. From around 2016 the flat was rented out. It is currently occupied by a tenant, Marlene Camargo da Costa who has lived there since October 2021 and works in the adjoining café.
17. Flat 1 or 'the downstairs flat' comprises bedrooms, a bathroom and a kitchen. It was created in 2012 and has been occupied since then by various tenants who worked in the factory or the café. One of the longer standing employees, Tomasz Kawczynski, carried out the building works and he also managed the flat until 2017. This involved finding tenants and collecting the rent. It is stated that Marcin Zsamber was one of the first people to occupy the downstairs flat. A copy of a contract of employment between Marcin Zsamber and F R Bradley (Feltham) Ltd dated 28 August 2012 has been provided.
18. The appellant says that, at present, the rooms in Flat 1 are occupied as follows: Room 1, Bruna Corneiro Gomes Da Silva and Larissa Moreira Albino Da Silva, since January 2021; Room 2, Lucjan Janusz Zarabsky, since September 2017; Room 3, Duarte Pereira Ferreira, since December 2022; Room 4 Tomasz Ryszard Pareki, since August 2017.
19. The appellant goes on to explain that Flat 2 or 'the upstairs flat' was formerly offices that were altered to provide living accommodation. This was a relatively minor job as the offices simply became bedrooms and a kitchen and bathroom were already in place. One of the rooms was occupied by Tomasz Kawczynski, from February 2013 to August 2017, and the other bedrooms were also let out. Tomasz Ryszard Parecki moved into one of the rooms in August 2017 and then to the downstairs Flat 1. The other rooms have been let to different tenants. The rent collection is now managed by Anita Wlodarczyk. The present occupiers are Anita Wlodarczyk and Jakub Madraszek who have been in occupation since 2018 and 2017 respectively.
20. There is a supporting Statement of Truth from Anita Wlodarczyk, dated 20 January 2024, which says she has lived at the first floor flat since 2018 and pays rent. It is confirmed that there are other people living in the flats. There is another Statement of Truth from Jakub Madraszek, dated 20 January 2024, which states he has lived in the upstairs flat at the Fish Factory from July 2017. He says he has paid weekly rent and states that there were other people living at the flats throughout the period of his occupation.
21. The appellant explains that the use of the premises for residential purposes is well-known, and all safety requirements have been adhered to. The names of other tenants have been provided, as collected from post which has been delivered to the premises.
22. In addition to the above, there is a corroborating Statement of Truth from Tomasz Kawczynski signed and dated 9 February 2023. He worked at Bradleys Fish Factory from 2006 until 2017, where he also assisted with odd jobs and building repairs. In around 2012 it is explained that Mr Kawczynski suggested converting part of the former kitchen on the ground floor into bedrooms for workers. He then carried out and completed the works to create four bedrooms with a shared kitchen, bathroom and shower room.

23. The flat was occupied by four people shortly after works were completed. Marcin Zsamber was one of the first occupants who moved in when he started work at the factory. Mr Kawczynski dealt with tenants and collected the rent. There were no formal tenancy agreements.
24. It is explained that works then commenced on the upstairs flat, which were relatively minor. The resulting flat comprised bedrooms and a bathroom with shower and a kitchenette. This was occupied by Mr Kawczynski and his partner from 3 February 2013 until August 2017. His room was then occupied by Tomasz Parecki, who states that he shared the occupation of the flat with a number of other people who paid rent. Mr Kawczynski says that the ground floor flat was occupied throughout the period that he lived there, as was Flat 1 – Franks.
25. Floor plans of the premises have been provided, which show the position of each flat within the building and the layout of the rooms within each unit.
26. An updated Statement of Truth from Marlene Camargo da Costa signed and dated 9 January 2024 has been submitted. This states she lives in the studio flat at the factory and previously occupied the ground floor flat from March 2019. It is set out that there have been other people living in the flats while she has been resident. Ms da Costa pays rent which includes utilities bills. To support her statement, a car insurance policy schedule addressed to Marlene Costa at Bradleys Fish Factory, dated 14 July 2020 is provided.
27. The appellant has provided evidence to corroborate his version of events. There is a Council Tax demand notice, dated April 2012/13, addressed to Tomasz Kawczynski at Bradleys Business Centre, and a letter dated 4 April 2014 stating that Tomasz Kawczynski and Joanna Kolebuk have lived at North Feltham Trading Estate since February 2013. A letter of confirmation of registration with a GP practice, addressed to Tomasz Kawczynski at Bradleys Business Centre, is provided along with a DVLA document but the copy is unreadable.
28. The evidence also includes a letter from the bank to Jakub Madraszek at Bradleys Business Centre with a statement showing transactions from November 2020. Further letters to Jakub Madraszek at Bradleys Fish Factory concerning a European Health Insurance Card, dated 14 December 2019 and confirmation of GP registration dated 2019 have been provided.
29. Ms Anita Wlodarczyk has submitted copies of P60s, addressed to her at Bradleys Fish Factory which are dated 2019, 2020 and 2022. There are also payslips or other employment related documents addressed to Ms Wlodarczyk at Bradleys Fish Factory dated July 2018, February 2019, May 2020 and April 2021. A GP registration letter and letter concerning a European Health Insurance Card, addressed to Anita Wlodarczyk at Bradleys Fish Factory are submitted, dated 2019 and 14 December 2019 respectively. In addition, there is a letter from the home office to Ms Wlodarczyk addressed to Bradleys Fish Centre, dated 21 February 2020.
30. There are several other Statements of Truth from the following people who say they live or have lived at Bradleys Fish Factory, pay rent and the other flats were occupied throughout their occupancy:
 - Larissa Moreira Albino da Silva signed and dated 21 January 2024 who has lived in Room 1 of the ground floor flat since January 2021;

- Lucjan Janusz Zarabski, dated 21 January 2024, who has lived in Room 2 of the ground floor flat since 12 September 2017;
- Joanna Podlowska, dated 30 November 2023, states she lived in the first floor flat at the Fish Factory from February 2013.
- Duarte Ferreira, dated 21 January 2024, states he has lived in Room 3 of the ground floor flat since December 2022.
- Tomasz Parecki, dated 27 January 2024, states he lives in the ground floor flat, and previously occupied the upstairs flat since August 2017.
- Michal Kosmulski, dated 2 December 2023, states he lived at the Fish Factory from 1 September 2012 until 30 October 2021.
- Anna Zawada, dated 2 December 2023, states that she lived at the Fish Factory from 1 September 2012 until 30 October 2021.
- Bruna Corneiro Gomes Viana states that they have lived in room 1 of the ground floor flat since January 2021.

Analysis

31. The factory building is a large industrial unit located within a trading estate. Parts of the ground floor and the first floor have been altered to provide living accommodation. In the first instance, I must consider whether the creation of the units within the building amounted to a material change of use. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
32. The starting point is to establish the planning unit. The planning unit is the unit of occupation, unless a smaller area can be identified which is physically separate and distinct and occupied for different and unrelated purposes.
33. Flats 1 and 2 were created to form two self-contained units of accommodation, in 2012 and 2013 respectively, which it is said have been occupied for residential purposes. Some of the occupants have worked in the factory but I do not consider this is sufficient to imply a functional connection. I am satisfied, therefore, that Flats 1 and 2 (Appeals B and C) form separate planning units. A residential use is significantly different in character from the wider use of the factory building and I consider that a material change of use has occurred.
34. Flat 1 – Franks (Appeal A) is different due to the nature of the occupation. The appellant stayed in the flat, mainly during the week, to oversee the business operations. It was not his main residence, and the flat was used solely in connection with the factory. I consider this to be a significant functional link, which would mean that a separate planning unit had not been created. The use of the flat at this time would have been incidental to the primary industrial use of the land.
35. However, this changed when the flat was occupied by a tenant. It was the tenant's sole place of residence, and they were unconnected with the activities within the factory. This would mean that the flat became a separate planning unit with a residential use, which would be significantly different in character

from how it was occupied previously. On this basis, I consider the material change of use of Flat 1 – Franks would have occurred in or around 2016 when the appellant says it was first let.

36. Turning now to the evidence of occupation, as noted above, the burden of proof is on the appellant, and I must consider whether that evidence is sufficiently precise and unambiguous to show continuous use for the relevant immunity periods.
37. A number of statements of truth have been submitted. However, these are not Statutory Declarations, which are formal statements made under the provisions of the Statutory Declarations Act 1835, so cannot be considered as sworn evidence to which sanctions would apply. This reduces the weight that I can attach to these statements.
38. The evidence in relation to Flat 1 – Franks (Appeal A) is very limited. It seems that the flat was occupied by tenants from 2016 when the appellant stopped using it in connection with the wider use of the factory. However, there is very little information on who those people were, the dates of occupation and whether there were any vacant periods. Even if I were to treat the witness statements of the appellant and Ms da Costa, who says she lived in the flat from October 2021, as sworn evidence, this would not be a sufficient period of time to show immunity from enforcement action. Overall, the evidence in support of Appeal A is imprecise and ambiguous.
39. Turning to Flat 1 (Appeal B) and Flat 2 (Appeal C), the evidence is patchy and there are significant gaps throughout the relevant 10-year periods where there is no information on who was occupying the rooms within each of the units. I accept that the flats were managed on an informal basis, which worked for the appellant and apparently for the people who lived there. Unfortunately, this makes it very difficult for the appellant to provide sufficient evidence to support the applications for lawfulness. Ultimately, the evidence in support of Appeals B and C is also imprecise and ambiguous.
40. The evidence shows that named people were living in various parts of the Fish Factory at certain dates and it suggests it was their sole place of residence. However, the totality of the witness statements, and the contemporaneous formal documents, is not sufficient to discharge the burden of proof. Crucially, there are significant gaps in occupancy across all the units. During any void periods the Council would have been unable to take enforcement action against each breach of planning control. The evidence submitted does not support a finding of lawfulness, therefore.

Conclusions

41. On Appeal A, I find that the appellant has not shown, on the balance of probabilities, that the material change of use to a use falling within Class C3(a) took place four or more years prior to the date of the application and continued after the date of change without significant interruption such that it would be too late for the Council to take enforcement action.
42. On Appeals B and C, I find that the appellant has not shown, on the balance of probabilities, that the material change of use to a use falling within Class C4 took place 10 or more years prior to the date of the application and continued

after the date of change without significant interruption such that it would be too late for the Council to take enforcement action.

43. For the reasons given above, I conclude that the Council's refusal to grant LDCs in each case was well-founded and the appeals should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D Moore

Inspector