



Appeal Decision

Site visit made on 8 November 2024

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

an Inspector appointed by the Secretary of State

Decision date: 17 December 2024

Appeal Ref: APP/F5540/X/23/3319136

Flat 1, 4 Roseville Avenue, Hounslow, TW3 3TD

- 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 Miss Mannat Chawla of Delta Wise Ltd against the decision of the Council of the London Borough of Hounslow.
 - The application ref: 00961/4/LAW1, dated 22 September 2022, was refused by notice dated 11 November 2022.
 - The application was made under section 191(1)(a) of the Act as amended.
 - The use for which a certificate of lawful use or development is sought is described as 'existing lawful use for the Studio Flat no.1 Ground Floor to the left, 4 Roseville Avenue, Hounslow, TW3 3TD as a self-contained flat'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site location is given as 'Studio Flat 1 – Ground Floor, Self Contained Studio Flat 1 Ground Floor, 4 Roseville Avenue, Hounslow, TW3 3TD.' I shall describe the site location as 'Flat 1' in the banner heading above.
3. The appeal is brought in the name of Miss L Chawla whereas the applicant is stated on the application form to be Miss Mannat Chawla. Despite the difference between the stated names, the application form is ticked to state that the agent is acting on behalf of the applicant. The details of the agent recorded on the application form are stated to be Miss L Mannat Chawla, and in this instance, given that no issue has been raised with regards to the discrepancy between the names provided and taking into account the submitted agent details, I am satisfied that the applicant and appellant are one and the same person and they are entitled to make the appeal.
4. Whilst I attended the property to conduct a site visit and I was provided access into the hallway of the appeal building, I was precluded from gaining access into any other areas of the building. The site visit is helpful in providing an opportunity to understand the layout and likely use of the property as it exists on the date of the visit. However, as it is only a snapshot in time and my consideration of this appeal is concerned with what had occurred at the date of the LDC application, I consider it was not necessary to arrange to revisit the property. I am able to determine the appeal before me based on my limited observations of the property and the written evidence before me.

Main Issue

5. The main issue is whether the Council's decision to refuse a LDC was well-founded.

Reasons

6. Section 191(1)(a) of the Act provides 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. Section 191(2) of the Act sets out that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. It is not suggested that any enforcement notice was in existence at the time of the LDC application.
7. Section 171(B) of the Act sets out the time limits for the taking of enforcement action against a breach of planning control, after which no such action may be taken in respect of that breach. Section 171(B)(2) states that in respect of a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years where notices issued before the 25 April 2024 or 10 years where notices are issued on or after 25 April 2024 beginning with the date of the breach.
8. To succeed in this appeal, the appellant will therefore need to demonstrate, on the balance of probabilities, that a material change of use of part of the building, namely the area of the building occupied by the ground floor Studio Flat no.1, to use as a single dwellinghouse began on or before the 22 September 2018 and continued without significant interruption for at least four years thereafter.
9. Since it is the appellant's case that the use as a single dwellinghouse began on the 15 June 2016, which is more than four years before the date of the LDC application, I shall therefore consider whether any four year period has been established, on the balance of probabilities, and not limit my consideration solely to the four year period immediately predating the application.
10. In a LDC appeal, the onus of proof is firmly upon the appellant to make their case on the balance of probabilities and the applicant's own evidence does not need to be corroborated by independent evidence. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. Issues concerning the planning merits of the appeal do not fall to be considered.
11. To determine the date of a change of use of a building (or part of a building) to a dwellinghouse, regard should be had to two factors, neither of which is decisive: when the building provided viable facilities required for day-to-day private domestic existence; and when the use actually commenced. In *Impey v Secretary of State for the Environment* (1980) 47 P & CR 157, it was held that change of use to residential development can take place before the premises are used in the ordinary and accepted sense of the word. How much earlier there can be a change of use will be a question of fact and degree.

12. The appellant has provided a floor plan dated 19 August 2021 which shows a layout that purports to be a ground floor studio flat. It shows an area labelled as 'studio', a kitchen and a shower room.
13. Notwithstanding that the submitted plan shows the accommodation to be laid out to include a kitchen area comprised of a four-ring hob, sink and drainer and a shower room containing a shower, sink and toilet, there is little detailed evidence to explain when the physical works were undertaken to alter the layout of the property, nor has any evidence been provided to explain what facilities were installed nor dates of any installation. It has therefore not been shown when the accommodation contained all of the facilities necessary to enable day to day living.
14. A tenancy agreement (TA) dated 1 April 2017 has been provided. The TA is produced in full and is stated to relate to '4 Roseville Avenue Downstairs Flat 1' and purports to be signed by the tenant, albeit their signature is redacted on the copy I have been provided with. Whilst the TA grants a one-year fixed term of occupation to the tenant, a TA simply shows that those tenants had the right to occupy the premises, not that they did.
15. While the TA points towards the accommodation being a self-contained dwelling at that point, it does not show how the property has been occupied or whether there was a break in occupation. Although the appellant has ticked the application form to confirm that there has been no interruption of the existing use, it has not been explained to me what the appellant regards an uninterrupted use to be. In any event, the alleged period of tenancy falls far short of the requisite four-year period and no other evidence of occupancy has been provided.
16. A bank statement has been submitted. However, it is heavily redacted and therefore it is not possible to draw any conclusion from its content. Whilst I note that the Council's Officer Report refers to photographs having been submitted with the application, these have not been reproduced as part of this appeal. In my experience, photographs provide a snapshot in time and are unlikely to have shown continuous use.
17. Although I have not been provided with any council tax records, the Council states that the entire property is banded as a 'single family house' (Band D) for council tax purposes. This point has not been contested by the appellant and no evidence to the contrary has been submitted to show that the Council's assertions are incorrect. Whilst not determinative, given that the property is singularly banded for council tax purposes, this undermines the use of part of the ground floor of the property as an independent self-contained unit of accommodation.
18. Accordingly, I find that the appellant's evidence is not sufficiently precise and unambiguous to show that, on the balance of probabilities, the ground floor Studio Flat no.1 has been used for at least a four-year period without significant interruption, as an independent and separate self-contained unit of residential accommodation. To be immune from enforcement action under s.171B(2) of the Act, the continuous use of the flat as a self-contained residential unit must be affirmatively established over a four-year period. The

burden of proof¹ is firmly on the appellant, however, in this instance, I consider that the appellant has not discharged that burden of proof.

Conclusion

19. For the reasons given above I conclude that, the Council's refusal to grant a certificate of lawful use or development in respect of 'existing lawful use for the Studio Flat no.1 Ground Floor to the left, 4 Roseville Avenue, Hounslow, TW3 3TD as a self-contained flat' was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

E Brownless

INSPECTOR

¹ The standard of proof is the civil standard, which is the 'balance of probabilities' or whether something is more likely than not.