



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/23/3319138

Flat 3, 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/LAW3, dated 22 September 2022, was refused by notice dated 11 November 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 described as 'existing lawful use for the first floor flat no.3, self-contained one bed flat'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site location is described as 'First Floor Flat 3, Self Contained One Bed Flat, 4 Roseville Avenue, Hounslow, TW3 3TD. I shall describe the site location as 'Flat 3' 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 first floor of the building, to use as a single dwellinghouse began on or before the 22 September 2018 and continued without significant interruption for at least 4 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.
12. The appellant has provided a floor plan dated 1 February 2022 which shows the layout of the first floor of the property to contain a kitchen, reception, bedroom, bathroom and a toilet.

13. Notwithstanding that the submitted plan purports to show the layout of a kitchen area including a four-ring hob, sink and drainer and a bathroom containing a bath, sink and separate 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. In addition, no evidence has been submitted to show who occupied the first floor flat nor any specific dates provided to confirm which periods they occupied the property. Whilst the application form is ticked 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.
15. Similarly, there is no evidence that explains how any occupant used the first floor flat as a self-contained unit of accommodation independent of the remainder of the property through the relevant period. 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. In this instance, on the evidence before me, the appellant has provided insufficient evidence to demonstrate this.
16. Whilst the Council has not provided any evidence of its own to make the appellant's version of events less than probable, I do not find the appellant's evidence to be sufficiently precise and unambiguous to show that, on the balance of probabilities, a material change of use of part of the building, namely the first floor of the building, to use as a single dwellinghouse began on or before the 22 September 2018 and continued without significant interruption for at least 4 years thereafter. 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

17. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the use or development in respect of 'existing lawful use for the first floor flat no.3, self-contained one bed 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.