

APPEAL STATEMENT FOR

Existing use as a flat (Application for a Certificate of Lawful Development for an Existing Use)

20 CENTRAL AVENUE, HAYES MIDDLESEX, UB3 2BX

COUNCIL REFERENCE :- 58347/APP/2023/2568

APPELLANT:- Mr Jinderpal Hayer

INTRODUCTION:-

The local authority has refused an application for a lawful development certificate for a flat attached to the existing house at 20 Central Avenue.

The appellant has provided sufficient information to confirm that the flat has been in continuous use for at least the last 4 years as a self-contained dwelling.

PLANNING HISTORY:-

The appellant had previously applied for the same application in 2017 which was refused, ref 58347/APP/2017/135, copy of the officer's report is enclosed. Previous to this there was a planning enforcement case opened in 2016, ref ENF/1008/16 that resulted in no further action as the council knew the dwelling was in existence for more than 4 years.

The appellant applied for the lawful use in 2017 following the enforcement inquiry as he was advised to do so but the application was refused in 2017. Subsequently the appellant has continued to rent out the property and paid the council tax. There have not been any further enforcement cases opened on this property as the council's enforcement team are of the opinion that the dwelling is lawful.

This application is made 6 years after the last application with supporting information to confirm that the use has continued on the balance of probability.

APPLICATION-

A lawful development certificate was submitted to regulate the use into a self contained dwelling. This application was refused by the planning office due to the fact in her opinion there was insufficient information provided to grant the lawful certificate.

The appellant has provided council tax records, tenancy agreements, gas certificates, insurance details and an affidavit to give enough evidence that on the balance of probability, without any contrary evidence, that the use is now lawful.

The office's report, which is enclosed, refers to the council's legal opinion which is as follows:

In conclusion, the evidence provided is not sufficiently precise and unambiguous to demonstrate that the property has been in continuous and uninterrupted use (as a flat) for at least a period of four years prior to the date of this application. I would therefore suggest as set out above, that you satisfy yourself in respect of lodger agreements, and request bank statements evidencing receipt of rent. It is my view that the certificate should only be granted if you are satisfied that there is no contrary evidence.

As stated above the council solicitor requested that the planning officer should ask for bank statement to show evidence of rent received but this was not requested by the planning officer. The legal advice give by the borough solicitor goes on to say if there is no evidence to the contrary the certificate should be granted. Clearly there is no other evidence to contradict what the appellant has submitted, so the certificate should have been granted, but it was refused without any evidence to the contrary.

In addition, the appellant had submitted a similar application six years previously which was also refused but the use continued uninterrupted and without any intervention from the planning enforcement section. This is further evidence that the use has been established for some time and on the balance of probability the certificate should have been granted.

The council have dismissed the affidavit provided and ignored the fact the council tax has been paid continuously for the past 12 years on the property. There is sufficient information provided with the gas and electrical certificates that also show two separate properties have been in use for the last 4 years at least.

CONCLUSION:-

Based on the information to hand with the previous planning history and the information presented by the appellant, the use of the property as a self-contained flat has occurred on the balance of probability. There is no other evidence to the contrary.

Therefore we request that the lawful development certificate should be granted and this appeal allowed

LIST OF INFORMATION

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LIST OF INFORMATION SENT WITH APPLICATION:-

- Electrical Installation Condition Report dated 10.05.2022, 14.05.2019,
- Landlord/Homeowner Gas Safety Record dated 24.02.2022, 20.02.2020, 27.02.2021, 18.02.2019
- Court Summons for Non-Payment of Council Tax dated 17.08.2011
- Affidavit of the Applicant dated 14.07.2023
- Correspondence from Centremark Properties Limited dated 22.02.2022 enclosing letters from Uxbridge College of 27.02.2012, 16.05.2012, 21.03.2013, 27.03.2013, 6.09.2013, William Morris Sixth Form of 21.02.2012, Kingston College of 24.10.2013
- Correspondence from Hillingdon Council dated 22.11.2013 ·Council Tax Bill for 2011/2012 ·Council Tax payment receipts of 10.5.13, 10.09.2013 and 5.10.2013
- Insurance documents to include correspondence from Gresham Underwriting Limited enclosing policies for 2019-2020, 2020/21, 2021/22, Insurance Choice enclosing policies for 2022/23, and 2023/22024
- Lodger Agreements dated 01.09.21 (term of 12 months), 1.03.2021 (term of 6 months), 25.10.2019 (term of 24 months), and 1.08.2018 (term of 18 months)
- . Location Plan
- . Existing Floorplans

LIST OF ADDITIONAL INFORMATION NOT SENT WITH APPLICATION:-

Officer's report from application 58347/APP/2017/135

APPLICATION FOR COST

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The appellant would also like to apply for costs on this appeal as the council has acted unreasonable in dealing with the whole matter as follows:-

1. Application was submitted on 1st September 2023 and determined on 22nd January 2024 which is more than 20 weeks for an application that should have been determined on 27th October 2023 within the normal 8 week period.
2. The planning officer did not request bank statements as suggested by the borough solicitor. This could have been requested as the council had missed the due date by some considerable time and the option was not given to the appellant to put this information forward.
3. The council have the records of the previous application in 2017 and the enforcement case of 2016 which resulted in no further action.