



Town and Country Planning Act 1990
Section 78 Planning Appeal

London Borough of Hillingdon Appeal Statement

Appeal By:

Mr Gurprit Kaur

Proposal:

The retention of an outbuilding as an independent unit of accommodation/flat (Application for a Certificate of Lawful Development for an Existing Development)

Appeal Site:

92 Porters Way, West Drayton, UB7 9AD

Our Ref: 69971/APP/2024/1050

Your Ref: 69971/APP/2024/1050

1. Introduction

This appeal statement is submitted by the London Borough of Hillingdon, as the Local Planning Authority (LPA), in respect of the refusal of the certificate of lawfulness at 92 Porters Way, West Drayton for the following:

*The retention of an outbuilding as an independent unit of accommodation/flat
(Application for a Certificate of Lawful Development for a Existing
Development)*

The LPA refused planning permission on 5th July 2024 for the following reason (as stated on the decision notice):

(1) The existing development does not constitute Lawful Development under Section 191 of Town and Country Planning Act 1990, as amended by Section 10 of the Planning and Compensation Act 1991 as the Applicant has not demonstrated that, on the balance of probabilities, the use has existed and been continuous for at least a period of four years, prior to the date of this application.

The LPA's case is set out in the Planning Officer's delegated report, which should be read in conjunction with this statement. A copy of the delegated report is provided at Appendix 1.

The application relates to the use of an outbuilding within the rear garden of 92 Porters Way which the applicant alleges has been in continuous use as a residential flat separate to the use of the main dwelling for over 4 years since November 2014. The application is dated 23.04.24, and the relevant 4-year period for consideration is from towards the end of April 2020.

This statement will not repeat the delegated report and will focus on addressing matters raised in the Appellant's statement of case.

The main points raised within the appellant's statement of case are:

1. That the principle of providing an additional dwelling on the site and the planning benefits of this justify issuing a certificate for lawful development to allow the outbuilding to be used as an independent dwelling.
2. that the appellant has provided adequate evidence to demonstrate that the outbuilding has been used as a self-contained flat for at least 4 consecutive years without interruption, contrary to the Councils view that this has not been evidenced. Further commentary on these matters is set out below.

2. LPA Comments on Appellant's Statement of Case

Within Paragraphs 5.9 to 5.11 of the appellants statement of case the appellant sets out that the provision of an additional unit of living accommodation on the site should be afforded material weight, citing specifically specific Paragraphs of the NPPF 2023 (now superseded although replicated within the NPPF 2024) and the London Plan 2021. Despite the assertion that the paragraphs, which aim to promote the effective use of land, particularly to deliver additional homes should be afforded weight, this is conclusively not the case. Whilst the policies cited may be of material relevance to a planning application, consideration of the deemed planning benefits of the use and compliance with planning policy is not a relevant when considering an application to certify a lawful use. On this basis the Council would offer no further comments on these paragraphs other than to reaffirm that this is not a material matter which can be afforded any weight.

Turning to the appellants core arguments relating to the reason for refusal, the appellant refers in the SOC to the NPPG which provides guidance in Paragraph 006 which states that:

In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The appellant contends that as the Council has no evidence itself, nor any from others, to contradict or otherwise make the appellants version of events less than probable permission should not have been refused. The NPPG however clearly states within the same paragraph that this is only the case if the applicant's evidence alone is sufficiently *precise and unambiguous to justify the grant of a certificate on the balance of probability*. The Council strongly dispute that the evidence provided is precise and unambiguous.

The supporting evidence provided to justify that the outbuilding has been in continuous use as a flat for a continuous period of 4 years is as follows:

- Google Earth imagery dated June 2015 showing the position of the outbuilding.
- Photographs of two invoices dated 13/10/2014 and 16/10/2014 which include the purchase of domestic fittings, building materials and paint.
- Photographs of the interior and exterior of the outbuilding.
- Statutory declarations provided by the appellant and an adjoining neighbour which states that the property has had an outbuilding with a kitchen and shower built since November 2014.

The Google Earth imagery provided merely demonstrates that the outbuilding has been constructed and does not provide any evidence relating to the use of the outbuilding.

The submitted invoices are addressed to the appellant at 92 Porters Way. Whilst the invoices appear relevant as the receipts relate to the purchase of building materials and internal domestic fittings, the purchase of these products is not conclusively tied to the outbuilding and in any event cannot be considered substantial evidence as to how the building was used over a given period of time.

The submitted photographs show the interior of the building; however, the photos are not dated so it cannot be substantiated when the photographs were taken. Furthermore, the

photographs do not demonstrate continuous occupation over a four-year period and would only demonstrate that the building was in a residential use at the specific time that the photographs were taken.

Whilst statutory declarations are commonly submitted in support of applications for lawful development and provide some basis for evidencing lawful use, these alone are not conclusive evidence to certify the use of a building/development. Furthermore, the statutory declarations are provided by the appellant and a neighbour, rather than an occupant of the outbuilding and merely state that the outbuilding had a kitchen and shower rather than stating how the building was specifically used and by whom.

Typically, the independent use of a building as a dwelling can be substantiated through a combination of means which may include but is not limited to statutory declarations from occupiers of the building; evidence of letting/marketing for residential use; utility bills; and dates of rental payment received. Evidence to this effect has not been provided.

The final sections of the appellants statement of case (5.21 to 5.27) appears to contradict the information set out in the appellants planning statement submitted under the original planning application and differs from the description of development. The planning statement refers to the outbuilding as being used as an 'independent unit' and 'self-contained residential flat'. The planning statement also states that:

'The application site is located to the south side of Porters Way. The part relevant to this application is the rear outbuilding at the end of the garden. The host property is a residential dwelling and is not relevant to this application'

Read at face value, the statement indicates that the applicant is seeking to certify that the building has been used as an independent dwelling separate to the main house. Officers agreed a description of development with the appellants at the time that the application was determined, which is as follows:

The retention of an outbuilding as an independent unit of accommodation/flat (Application for a Certificate of Lawful Development for a Existing Development)

In contrast to this, the appellant suggests in Section 5.27 of the SOC that the building is 'ancillary' and then describes the use as a 'self-contained dwelling (annexe)'. The described uses set out in the conclusion are inherently contradictory as a dwelling suggests a separate unit of accommodation to the main house, whilst an annexe suggests that the building is ancillary living accommodation to the main house. The appellant is therefore ambiguous as to the use they are seeking to lawfully certify and evidence. A certificate of lawful use cannot therefore be granted as the evidence, and application is insufficiently precise and unambiguous.

4. Conclusion

- 4.1 The appellants statement of case does not set out any conclusive additional evidence to counter the Councils reason for refusing to grant a certificate of lawful existing development. Moreover, the latter sections of the SOC add a distinct lack of clarity as to the precise lawful use of the outbuilding that the applicants are seeking

to certify under this application. For the reasons set out above, the planning authority respectfully request this appeal be dismissed.

Appendices

Appendix 1 – Planning Officer’s Delegated Report