
Appeal Decision

Site visit made on 23 March 2016

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 June 2016

Appeal Ref: APP/R5510/X/16/3142533

84 Cowley Mill Road, Uxbridge, Hillingdon UB8 2QD

- 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 Emdadur Rahman against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 869/APP/2015/3705, dated 6 October 2015, was refused by notice dated 11 December 2015.
 - 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 residential use as 3no studio units.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application submitted to the Council sought a certificate of lawful use or development for the residential use as 3no studio units. The site plan shows the whole of the site outlined in red, but the floor plans clearly show one room on the ground floor in use as an Estate Agents. In determining the application, the Council changed the description to; "Use of part of the ground floor and the first floor as 3 residential studio flats". I noted during my site visit that the room on the ground floor is used as an Estate Agents. I therefore consider that the description used by the Council is the more accurate and accordingly I shall adopt that description in determining this appeal.

Reasons

3. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. Having regard to the above, I consider that the main issue is whether, on the balance of probability, the use of the appeal property as 3 residential studio flats had been continuous for a period of at least four years on or before the date that the application was made. The burden of proof in this respect lies with the appellant.
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4. As part of the appeal documentation, the appellant has provided a sworn affidavit in which he states that the appeal premises was converted into 3 studio self-contained flats and a shop in 2008. The affidavit goes on to state that the 3 studio flats have been in constant use by tenants since that date and that the use as 3 studio flats has been continuous. The Council has not commented on this affidavit and I shall therefore afford it due weight as an uncontested sworn statement.
5. In support of his application, the appellant has submitted a copy of a letter from the Building Control Services for the London Borough of Hillingdon, dated 25 August 2010. This letter refers to a visit by a Building Control Surveyor to inspect building works undertaken to convert the property into three self-contained flats. Given that this letter is from an officer of the Council, and notwithstanding that the letter refers to self-contained flats rather than studio units, I take this letter as a reasonable indication that the property had been converted for residential use at that date.
6. The appellant has also provided a copy of an Assured Shorthold Tenancy Agreement (ASTA) dated 18 August 2009. That ASTA, which relates to the ground floor studio only, was for a period of 6 months, ending on 17 February 2010. Whilst this ASTA demonstrates that occupation of the ground floor flat took place at that time, the ASTA covers a period of only six months. Moreover, it only relates to one room in the property.
7. The bank statements provided are consistent records of rent being paid by one S Uppu dating from July 2011 until January 2012, each of which is clearly referenced as "Ref: 84 Cowley Rent". However, whilst this clearly relates to the appeal premises, it does not provide any detail about the room or rooms that this individual occupied. Moreover, these entries relate to only to a period of a few months.
8. There are also consistent entries in these bank statements of rent being received from two other individuals, namely Benikrane S and Maruf AA. Unlike the entries for S Uppu referred to above, the entries against Benikrane S and Maruf AA are shown generically as rent payments and are not directly referenced to the appeal property. These entries also relate to only a relatively short period of time. The handwritten summary of rent payments refers to all of these individuals but is not dated and cannot be independently verified.
9. The appellant has provided a letter from Charters Associates Ltd, a firm of accountants and auditors. This letter confirms that Charters Associates Ltd have represented the appellant for accountancy and taxation purposes since 2009. This letter confirms that the company included Flats 84a, 84b and 84c Cowley Mill Road as part of the appellant's portfolio. However, no further detail is provided in terms of use of the property as studio units from that date. The letter from Charters Associates Ltd is therefore not explicit in confirming that the premises were occupied as 3 residential studio flats on a continuous basis.
10. The Council have confirmed that their records show two of the flats being registered for Council Tax purposes since September 2011 and the other since May 2013. I note that these records only cover a period post September 2011 and that, in particular, one of the flats only appears to have been registered for Council Tax records for just part of that period of time. Whilst not in itself determinative, the Council tax record does not support the appellant's claim

that premises have been used for 3 residential studio flats continuously for a period of at least 4 years.

11. The documents identified above relate only to short defined periods of time. In some cases, the evidence relates to only one part of the property. Moreover, both the appellant's sworn affidavit and the letter from Charters Associates Ltd are somewhat vague in terms of the use of the property, and the Council tax record does not show continuous occupation over a period of four years. Consequently, whilst it is likely that there has been a material change of use to 3 residential studio flats before the relevant date of October 2011, the evidence falls short of demonstrating, on the balance of probability, that the use has occurred continuously for a period of at least four years such that it would have gained immunity from enforcement action and have become lawful. The evidence is not sufficiently precise or unambiguous.
12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the residential use as 3no studio units at 84 Cowley Mill Road, Uxbridge, Hillingdon UB8 2QD was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

13. The appeal is dismissed.

Paul Freer

INSPECTOR