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## Appeal Decision

Site visit made on 24 January 2023

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3<sup>RD</sup> FEBRUARY 2023

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**Appeal Ref: APP/R5510/X/21/3276603**

**9 Stirling Road, Hayes, Middlesex UB3 3AQ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr N S Brar against the decision of the Council of the London Borough of Hillingdon.
  - The application ref 58893/APP/2020/2737, dated 28 August 2020, was refused by notice dated 9 December 2020.
  - 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 described on the application form as *"outbuilding used as two bedroom bungalow"*.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. Whether an LDC should be issued is strictly a matter of fact and law. The expediency of taking enforcement action in respect of an unauthorised development is a matter for the Council to consider.

### Main Issue

3. The main issue in the appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the appellant has been able to show that, on the balance of probability, the use as a separate, self-contained dwelling began more than four years prior to the date of the application and has been continuous thereafter.

### Reasons

4. The appeal property contains a detached single storey building. The building is located towards the end of the rear garden of an enlarged semi-detached two storey dwelling (No 9). The interior of the building is laid out to provide a living/kitchen/dining area, a bathroom and two bedrooms. Access to the building is obtained via a private pedestrian path running from the street to the side of No 9.
5. An LDC is sought on the basis that at the application date, it was too late to take enforcement action in respect of the use of the building as a separate, self-contained dwelling. At s171B(2), the Act provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Any

four-year period is relevant, not just that which immediately preceded the date of the application. The effect of s191(2) of the Act is that the use of the building as a separate, self-contained dwelling would be lawful if no enforcement action can be taken because the time for taking such action has expired.

6. The burden is on the appellant to show that the use as a separate, self-contained dwelling is immune from enforcement action and consequently, lawful, the relevant test of the evidence being on the balance of probability. This is qualified by the National Planning Practice Guidance (PPG) 'Lawful Development Certificates', which advises that where a Council has no evidence itself, nor any from others, to contradict or otherwise make an 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 in order to justify the grant of a certificate on the balance of probability<sup>1</sup>.
7. Documents supplied in support of the application include copies of two fixed-term Assured Shorthold Tenancy Agreements (ASTs) relating to an 'annex' at the rear of No 9 and concerning the period between 14 March 2012 and 14 March 2016. In both ASTs the same individual is named as the tenant. The ASTs were accompanied by a copy of a Council Tax bill dated 14 July 2020 referring to the 'annexe' at No 9, showing its rating as a dwelling in Band A effective from 15 March 2012, together with a letter dated 16 August 2020 from the Valuation Office (VO) altering the property valuation list by placing No 9 in Band E for Council Tax purposes effective from 15 March 2012.
8. Also supplied were copies of an electrical installation condition report dated 18 May 2017 in which the electrical system in what is described as the 'rear annex' is estimated as being 15 years old, together with gas safety certificates for the 'rear flat' at No 9, the earliest of which is dated July 2014 and the latest dated July 2017. Furthermore, in items of correspondence supplied current and former local residents refer to having seen tenants walk to the 'flat/outhouse' and of being fully aware of its having been let out for 'at least over ten years'. One of the letters, signed by ten individuals, is undated. Two other letters are each signed by a single individual and are both dated May 2018. In one of these letters, reference is made to meeting the 'tenant who has lived at the back' almost daily for the preceding ten years whilst they used the pedestrian path leading to the building. Similar observations to those set out above are made in the other letter. Any additional information that supported previous LDC applications made in respect of the building was not supplied and therefore is not before me.
9. The Council did not advance any evidence of its own which might have cast doubt on the appellant's claim. However, the appellant's evidence is by no means persuasive in respect of the continuous use of the building as a separate, self-contained dwelling for the required period. The ASTs supplied do not necessarily show the use of the building as a separate self-contained dwelling, let alone that it was used as such throughout the length of the tenancies. Entering into a tenancy agreement also does not automatically correspond with occupation. There are all sorts of reasons why a tenant might not take up occupation until well after their tenancy agreement commenced

<sup>1</sup> Paragraph: 006 Reference ID: 17c-006-20140306.

and why they might cease occupation some time before their tenancy ended. No copies of other ASTs, which might have assisted in showing a pattern of the building having been in continuous residential occupation extending throughout the required period, were supplied.

10. Moreover, although the building provides the facilities for independent day-to-day living that does not necessarily mean that its use is physically and functionally separate from the dwelling at No 9. In this regard, it is noteworthy that some of the documents supplied, including the ASTs and the Council Tax bill, describe the building as an 'annexe'. No explanation for the use of this description in the relevant documentation was offered by the applicant. Also, the building is not fenced off or otherwise enclosed separately from the rear garden of No 9. The above could all imply some form of subordination in the use of the building to the use of No 9 as a dwelling. Consequently, it is possible that rather than being used as a separate, self-contained dwelling the building could have functioned as ancillary accommodation during the required period, with the occupier sharing their living activity in company with the household occupying No 9.
11. The occupier was made liable for ten years' back-dated Council Tax in respect of the building, following the alteration to the valuation list made in 2020. However, this has limited evidential value compared to, for example, the making of regular Council Tax payments by the occupier of the building throughout the required period. Additionally, that the building was made liable for Council Tax does not necessarily correspond to its use as a separate self-contained dwelling. Council Tax is a matter dealt with by different legislation. A detached building used as ancillary accommodation and occupied by, for example, a dependent relative, might be rated separately for Council Tax but could still form part of the main dwelling for planning purposes. Neither does the presence of electric and gas supplies necessarily assist the appellant's claim, as such services could equally be present if the building had been in use as ancillary accommodation.
12. No further documentary evidence extending over the required period, for example copies of bills for any separate utilities provided to the building, was supplied in support of the application. As a result, the documentary evidence supplied by the appellant does not greatly assist their claim and can only be afforded limited weight. The local residents' observations might well point towards the building having been occupied residentially for some time. Even so, none of the residents offered an explanation as to how or why they might have been aware that the building was being let separately, as opposed to it being occupied by someone closely associated with the household occupying No 9, such as a family member. It was therefore unclear as to whether the incidences of occupation of the building observed by residents represented other than a use of the building as ancillary accommodation, or whether any use as a separate dwelling was continuous for the required period. As a result, the residents' observations also provide limited support for the appellant's claim.
13. According to the appellant, at the time of the application the occupier remained the individual named in the ASTs and the building had never been vacated. However, no witness testimony from the appellant and the occupier, offering a detailed account of events at the property over the required period, was forthcoming. The absence of direct, first-hand evidence from such individuals

is somewhat surprising given the circumstances set out by the appellant. The appellant and the current occupier of the building, together with any previous occupiers if relevant, are highly likely to have an intimate knowledge of the use that has been carried on. For example, their attesting to the continuous use of the building as a separate self-contained dwelling throughout the required period, perhaps alongside further supporting contemporaneous documentation-i.e., separate utility bills-might have added considerable weight to the appellant's claim, provided their evidence was otherwise sufficiently clear, precise and unambiguous.

14. Taking all of the above matters into account, the appellant has failed to discharge the burden on them to show that, on the balance of probability, the use of the building as a separate, self-contained dwelling began and was then continuous for a period of more than four years before the date of the application. The available evidence is not sufficiently clear, precise and unambiguous in that regard. As a result, the use applied for cannot be certified as being lawful for planning purposes.

### **Conclusion**

15. 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 use of the outbuilding as a two-bedroom bungalow 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.

*Stephen Hawkins*

INSPECTOR