



Town and Country Planning Act 1990
Section 78 Planning Appeal

London Borough of Hillingdon Appeal Statement

Appeal By:
Mr. N S Brar

Proposal:
Appeal against the LPA's decision to refuse to grant a Certificate of Lawfulness for:

Outbuilding used as a two-bedroom bungalow

Appeal Site:
9 Stirling Road, Hayes UB3 3AQ

Our Ref:
Your Ref:

58893/APP/2020/2737
APP/R5510/X/21/3276603

1. Introduction

- 1.1 This appeal statement is submitted by the London Borough of Hillingdon, as the Local Planning Authority (LPA), in respect of the appeal against its refusal to grant a certificate of lawfulness for an outbuilding being used as a two-bedroom bungalow.
- 1.2 The LPA refused to grant a certificate of lawfulness on 09.12.2020 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, Section 191 as amended by Section 10 of the Planning and Compensation Act 1991 as the Applicant has not demonstrated that, on the balance of probability, the use has existed and been continuous for at least a period of four years, prior to the date of this application.
- 1.3 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.
- 1.4 This statement will not repeat the delegated report and will focus on addressing matters raised in the Appellant's statement of case.

2. LPA Comments on Appellant's Statement of Case

- 2.1 The Appellant's statement of case (SoC) is that the information supplied to the Council for ref. 58893/APP/2020/2737 is sufficient to demonstrate that the outbuilding has been occupied as a two-bedroom dwelling for at least the last 8 years.
- 2.2 With Certificate of Lawful Use applications the onus of proving the lawfulness of an existing use is firmly with the applicant. In the case of *Grabbittas V Secretary of State for the Environment* (1985) it was held that the relevant test of the evidence is the balance of probability. Further to this if the Local Planning Authority have no evidence of their own to contradict the applicant's own version of events then there is no good reason to refuse the application provided the applicant evidence alone is sufficiently precise and unambiguous.
- 2.3 The Certificate sought was for the existing use of an outbuilding which has been in use as a single dwelling house. The applicant must prove that the use has been in existence continuously for at least the last four years prior to the submission of the Certificate. The date of submission being 28/08/2020, hence the four-year period should cover back to at least 28/08/2016.
- 2.4 The officer's delegated report (Appendix 1) provides an assessment of the submitted information, the gaps in the information and how the information supplied is not sufficiently precise and unambiguous to satisfy the Council that on the balance of probability the outbuilding has been used continuously as a dwelling for 4 years or more, prior to the date of the application. Therefore, this statement does not seek to replicate this assessment.

- 2.5 Nevertheless, it is noted that the Appellant's SoC states that the Valuation Office is satisfied that the outbuilding has been used as a self-contained dwelling and have backdated the Council tax payable. This is noted. However, it is worth reiterating from the Officer's delegated report, that this does not demonstrate that either the Council tax has been paid, or that the outbuilding has been continuously occupied for at least 4 years prior to the submission of the application. It is unknown what evidence the Valuation Office requires to register a historical dwelling. Regardless, this is a separate process to the determination of an application for a Certificate of Lawfulness.
- 2.6 The other matter raised in the Appellant's SoC that is not addressed within the Officer's delegated report, is the assertion that if the Council had concerns with the lawfulness of the dwelling then an Enforcement Notice would have been served. It is noted that there is a pending enforcement investigation for the subject use. This is still within four years of when the use of the outbuilding as a separate dwelling came to the attention of the Council.

3. Conclusion

- 3.1 For the reasons set out in the delegated report and this statement, while it is probable that the outbuilding has been occupied as a dwelling, the facts and evidence provided fail to meet the test of the balance of probability and remains ambiguous as to its continued occupancy during the eligible period. Therefore, on the evidence provided, the Certificate of Lawful Use as a separate residential unit was refused. The Inspector is therefore respectfully requested to dismiss the appeal.

Appendices

Appendix 1 – Planning Officer's Delegated Report