

## **42 Fordwych Road, London, NW2 3TG Appeal**

The Council's delegated report sets out why the application for a certificate of lawfulness has been refused. This can be summarised as follows:

Council tax discrepancy.  
The property is an HMO.  
No evidence of continuity.  
VOA rent register refers to 'non-self-contained'.  
1<sup>st</sup> floor rear flat was altered.

We respond as follows:

### **Council tax discrepancy**

Following the refusal, the case officer emailed PPM Planning information related to Council tax (see appendix 1) which states:

*As discussed during the meeting at my office in March, please see detail of the relevant Council Tax record for the property 42 Fordwych Road,*

**From 1/4/93 to 14/4/10 2 units**  
1<sup>st</sup> Floor Front  
42 Fordwych Road excl 1<sup>st</sup> floor front

**From 14/3/10 to 10/11/16 3 units**  
Flat 1<sup>st</sup> Floor Front  
ground floor & 1<sup>st</sup> floor rear  
Mais 2<sup>nd</sup> part mezzanine

**From 11/11/16 4 units**  
Ground floor  
1<sup>st</sup> floor rear  
1<sup>st</sup> Floor Front  
2<sup>nd</sup> floor ( banded 21/8/16)

As the appellant has to demonstrate at least 4 years of evidence, the first entry is irrelevant although we do not know why the Council's records show only 2 flats.

The second entry for the period March 2010 to November 2016 shows 3 dwellings. The first floor front corresponds to the evidence submitted in support of the application as does the second floor although it is unknown why this is described as part mezzanine as there is

no mezzanine and there never has been. The floorplans submitted with the application could not facilitate a mezzanine.

As previously explained to the case officer, the ground floor flat was and continues to be a self-contained flat. However, for a period of time the owner/tenant of this flat had sole access to the first floor rear room which was originally used for storage and at a later date converted into a self-contained studio.

The third entry for the period November 2016 to current confirms there are 4 flats in the property. The flat on the first floor rear was altered within the last 4 years and this is why it did not form part of the application (see below).

In light of the above, we consider the council tax records support the application/appeal rather than contradicting them.

### **The property is an HMO**

The delegated report suggests the property is an HMO. However, this is not the case.

There is no planning permission for a change of use to an HMO noting in this property such a use would be unclassified (sui generis) given the likely number of occupants. As such, in planning terms the property is not an HMO although it is acknowledged it might be considered as such under the Housing Act.

We have obtained legal advice which supports this view (see appendix 2). The advice concludes:

*.....while for purposes of planning control the Flats are deemed to be dwellinghouses falling within use class C3 while at the same time they are at the same time capable of being deemed as forming an HMO for the purposes of controls under the Housing Act 2004, in the event that they fail to meet the Building Regulations standards and the owner-occupier requirements. It follows therefore that in considering and determining any future planning application the starting point for assessing the Property's existing use is that of four residential units within the C3 use class not as an HMO.*

In light of the above, the property is not an HMO in planning terms.

### **No evidence of continuity**

The delegated report states the statutory declaration does not prove 4 years continuous use as flats. In addition, the delegated report states the ground floor flat was vacant and in a poor state of repair at the time of the case officer's site visit.

With regard to continued use, like all dwellings that are let there will be periods when they are vacant. This could be due to redecoration and finding new tenants.

In relation to the ground floor flat, at the time of the case officer's site visit (December 2018) it was indeed vacant pending redecoration. The evidence submitted along with the

Council's tax records collectively confirm the dwellings have been used as such.

In light of the above, there is sufficient evidence to demonstrate continued use for at least 4 years.

#### **VOA rent register refers to 'non-self-contained'**

The VOA rent register entries are misleading as they appear to contradict the other part of the VOA entry which describes the ground floor, first floor front and second floor as flats and not non self-contained flats. In addition, the second floor entry is odd in that there are clearly 4 rooms on this floor whereas the entry states there are just 2 rooms. The same applies to the ground floor flats in terms of discrepancy between the number of rooms listed and what actually exists and has existed for quite sometime.

The statutory declaration confirms the three flats subject to the certificate and this appeal are self-contained flats. In addition, the gas certificates specifically refer to the top floor as a flat as does the Thames Water bill and Chambers Plumbing & Heating Services invoice.

Invoices from Chambers Plumbing & Heating Services also refer to the first floor as a flat. Council tax bills for the ground floor confirm this was a flat and the first floor rear area was a 'room' in the past. In addition, electric bills refer to the ground floor as a flat.

In conclusion, we agree there are discrepancies between the VOA information. Nevertheless, when considering this along with the other evidence, on balance it is considered 3 self-contained flats have existed for at least 4 years.

#### **1<sup>st</sup> floor rear flat was altered**

We do not dispute this and that is why it did not form part of the application. In this respect, this flat was extended about 2 years ago when an existing storage cupboard was incorporated into the flat. In this respect, what is labelled as 'WC' on the submitted plans was the former storage cupboard. This change meant the flat could include a bath rather than a shower.

#### **Conclusion**

The relevant test is the 'balance of probability'. On this basis, we consider there is sufficient evidence to conclude the 3 flats have been in continuous use for at least 4 years.

#### **APPENDICES**

- 1 Email regarding council tax
- 2 Legal advice regarding HMO

Yours sincerely



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**PPM Planning Limited**

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