

Our Ref: 22334/CJ/am
Your Ref: PP-11529410
Email: cjones@firstplan.co.uk
Date: 21 September 2022

London Borough of Haringey Council
Planning, Regeneration & Economy
Level 6, River Park House
225 High Road
Wood Green
N22 8HQ

Dear Sir / Madam,

**LAWFUL DEVELOPMENT CERTIFICATE FOR AN EXISTING USE OR DEVELOPMENT
DUKES AVENUE PRACTICE, 1 DUKES AVENUE, MUSWELL HILL, LONDON, N10 2PS**

This Lawful Development Certificate application is submitted on behalf of Milegate Limited, pursuant to Section 191 of the Town and Country Planning Act 1990. The proposal seeks to establish the lawfulness of the existing premises within Class E for the entire building and land at the former Dukes Avenue Practice, 1 Dukes Avenue, Muswell Hill N10 2PS.

Accordingly, the application has been submitted via the Planning Portal (Ref: PP-11529410) with the following documents:

- Completed Application Forms;
- Completed CIL Form 1;
- This Covering Letter (encompassing the Applicant's Statement of Case demonstrating the lawfulness of the existing use, entailing a description of the application site, details of the existing use, justification as to why this is lawful and the date of the application);
- Site Location Plan (drawing no. 5056_KW_PL_DR_01-01);
- Block Plan (drawing no. 5056_KW_PL_DR_01-02);
- Existing Site Plan (drawing no. 5056_KW_PL_DR_02-01); and
- Existing Floor Plans.

The evidence to support this Lawful Development Certificate is enclosed within the appendices to this letter as follows:

- Appendix 1 – Operative Permissions for the site
- Appendix 2 – Copy of the Town and Country Planning (Use Classes) Regulations 2020
- Appendix 3 – Practice History
- Appendix 4 – Practice Leaflet and Booklet
- Appendix 5 – Extracts of Valuation Office Agency Records
- Appendix 6 – Letter regarding relocation of Muswell Hill Practice
- Appendix 7 – VOA Entry 1
- Appendix 8 – VOA Entry 2

The requisite fee of £234, plus the £32.20 admin fee, has been paid online. The documents submitted are in accordance with the Council's validation requirements for certificate of lawfulness applications.

Application Site Description

The application site comprises a semi-detached two storey building with a converted attic space, situated on the northern side of Duke's Avenue. It was most recently in use as a GP medical surgery named the "Muswell Hill Practice" since 1982. The building is a converted Edwardian house, which has been extended to the rear and side at ground floor level. The site extends to circa. 0.1 ha and is situated within the London Borough of Haringey.

The site is accessed from Duke's Avenue to the south, with steps up to the main entrance and 1.no off-road parking space. To the northeast, the building is semi-detached with a residential property at no. 3 Dukes Avenue. To the southwest is a detached residential property at no. 1a Dukes Avenue. To the rear (northwest) of the site is a former workshop which has recently undergone conversion to form five flats. Directly opposite (southeast) is the Muswell Hill Baptist Church which contains the Rainbow Pre-School. Approximately 50m to the southwest of the site is Muswell Hill Broadway, which hosts a mixture of uses including estate agents, pharmacy, hairdressers and restaurants, amongst others.

The building has been vacant since August 2022, when the GP Surgery made a planned move to a larger premises in 2022. The site and its immediate context are demonstrated in the aerial image at Figures 1 and 2.



Figure 1. Aerial View of Site

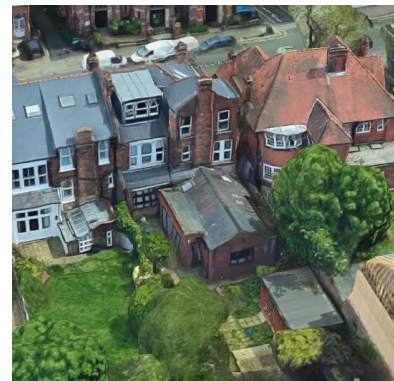


Figure 2. Streetview (March 2022) and view of rear of the site

Planning History Summary

The building's longstanding use is as a General Practitioners Medical Surgery (Class E(e)), providing medical services, principally to visiting members of the public. This was known as the Duke's Avenue Practice until circa 2016 when it was renamed Muswell Hill Practice.

The planning history is assessed later within this letter and set out in Table 1.

Reference number	Description of Development	Decision
OLD/1982/0323 HGY/25296	Change of use of ground floor to a doctors' surgery.	Granted 6 Apr 1982
OLD/1982/0324 HGY/25755	Change of use from residential to doctors' surgery with retention of part as residential, including extension to rear.	Granted 12 Aug 1982
OLD/1986/0301 HGY/32660	Erection of single storey side extension to be used as reception room.	Granted 25 Jul 1986
HGY/1992/0263 HGY/44807	Single storey side extension and provision of ramped access to doctors surgery.	Refused 04 Aug 1992 Granted at appeal 19 Jan 1993
HGY/2004/1217	Erection of single storey extension to provide one additional consulting room to doctor's surgery.	Granted 15 Sept 2004
HGY/2009/1507	Erection of rear dormer window and insertion of two rooflights to both front and side roofslopes.	Granted 15 Oct 2009

Table 1. Summary of Planning History

Copies of the consents granted April 1982 (ref. HGY/25296 which first granted the Change of Use) and August 1982 (ref. HGY/25755 granting the change of use with a revised floor plan and considered to be the operative consent) are provided at Appendix 1.

Appendix 1

This application seeks to demonstrate that all three floors of the building and land have been used solely for medical practice for a continuous period of over ten years. Accordingly, the lawful use of the building, including the second floor, is entirely within Class E.

In addition, it seeks to confirm that two conditions relating to the operative consent have been breached for a period of over 10 years and are therefore no longer enforceable.

Condition 4 of permission ref: HGY/25755 dated 12 August 1982, states that:

"4. That this permission shall not enure for the benefit of the land but shall be personal to Dr. C. Smith and Dr. Margaret Safranek and such other medical practitioner as may

be agreed by the Council in writing and upon their ceasing to use the land its use shall revert to residential.

Reason: The proposed use involves the loss of housing accommodation contrary to the policy contained in the operative Development Plan and permission is granted in the personal circumstances of the applicant only whose use will provide for the social needs of local residents."

It is considered that Condition 4 of permission ref: HGY/25755 is no longer enforceable as both Dr Smith and Dr Safranek have not practiced from the site for over ten years leading up August 2022.

Condition 5 of this permission states:

"5. The proposed use shall not be undertaken except within the ground floor of the premises and the front two rooms of the first floor (as shown within the submitted drawing SF6A) and that the first floor flat be maintained and used for residential accommodation only in connection with the doctors surgery for use by a message taker unless the prior approval of the Local Planning Authority has been obtained in writing.

Reason: To avoid undue loss of housing accommodation."

It is considered that Condition 4 of permission ref: HGY/25755 is no longer enforceable as the building has been used solely for medical practice with no on-site residential accommodation for a continuous period of over ten years.

Evidence demonstrating the above is provided within this letter.

Legislative Background and Requirements

Lawful Development Certificates

This application is made under Section 191 of the Town and Country Planning Act 1990 (the "Act"). Section 191 affords individuals the opportunity to apply to the Local Planning Authority to obtain a decision on whether: *"an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes"*.

The Government guidance states that if the Local Planning Authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate.

The statutory framework covering *"lawfulness"* for lawful development certificates is set out in Section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

Section 171B (3) of the Act sets out the relevant period after which enforcement action cannot be taken: *"In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach"*. This time period relates to both changes of use and breaches of conditions.

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the "DMPO") specifies the contents of an application and how it must be submitted. It sets out that an application needs to describe precisely what is being applied for and the land to which the application relates. This application has been prepared to satisfy the requirements of the DMPO.

It states that the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. 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 relevant legislation further affirms that there is no statutory requirement to consult third parties including parish councils or neighbours; indeed, views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application. A Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this application process.

Planning Assessment

The Applicant considers the Use Class of the existing building and land to be within Class E of the Town and Country Planning (Use Classes) Order 1987, as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("2020 Amendment").

The 2020 Amendment is enclosed at Appendix 2. Schedule 2, Part A Commercial, Business and Service outlines Class E as follows:

Class E. Commercial, Business and Service

Use, or part use, for all or any of the following purposes—

- a) for the display or retail sale of goods, other than hot food, principally to visiting members of the public,*
- b) for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,*
- c) for the provision of the following kinds of services principally to visiting members of the public—*
 - i. financial services,*
 - ii. professional services (other than health or medical services), or*
 - iii. any other services which it is appropriate to provide in a commercial, business or service locality*
- d) for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public,*
- e) for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,***
- f) for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,*
- g) for—*
 - i. an office to carry out any operational or administrative functions,*
 - ii. the research and development of products or processes, or*
 - iii. any industrial process,*

being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

Appendix 2

The application building and land (shown on the submitted plans) began to be occupied by the GP Medical Practice in 1982, as Duke's Avenue Practice run by Drs. Smith and Safranek. It subsequently became the Muswell Hill Practice, ahead of its planned move to a more suitable premises in 2022 at 54 Muswell Hill. The building has been vacant since August 2022.

The facility provided general practitioner (GP) services to over 15,000 people within the N10 area. The practice history is summarised at Appendix 3. Furthermore, the practice leaflet outlining the medical services provided at the site is provided at Appendix 4.

Appendix 3

Appendix 4

It is therefore clear that the use of the building has been *"for the provision of medical or health services, principally to visiting members of the public"* for nearly 40 years. This use falls clearly within Class E(e) of the Use Classes Order and the Class E use of the building and land is lawful.

This application is supported by further extensive evidence to demonstrate that the lawful use of the building and its land falls within Class E of the Use Classes Order, and that Conditions 4 and 5 of the operative consent are not enforceable.

The evidence is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability, as required by Section 191 of The Act. The evidence includes the following.

Existing Floorplans and Photographs

The application is supported by existing floor plans by KWA and a series of existing photographs at Figure 3, which demonstrate the layout of the medical practice. This includes a reception and patient waiting room at ground floor level and a series of consultation and staff rooms across the remainder of the building.

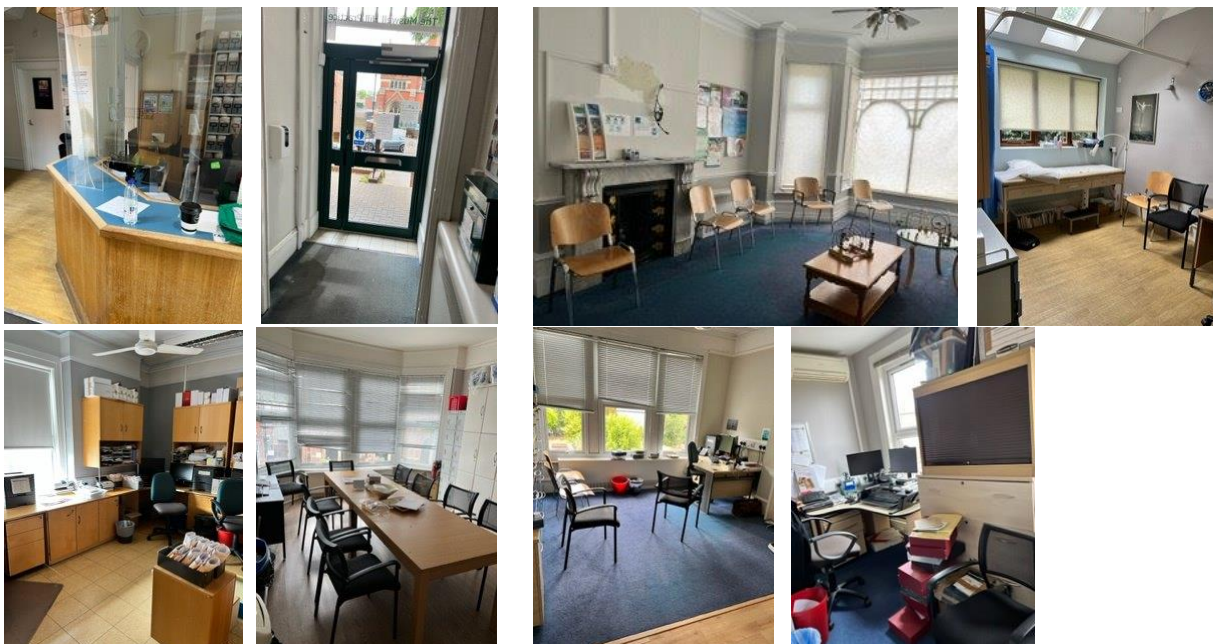


Figure 3. Existing Photographs

General Medical Council Records

As highlighted earlier in the letter, Condition 4 of permission ref: HGY/25755 dated 12 August 1982, states that:

***“4. That this permission shall not enure for the benefit of the land but shall be personal to Dr. C. Smith and Dr. Margaret Safranek and such other medical practitioner as may be agreed by the Council in writing and upon their ceasing to use the land its use shall revert to residential.*”**

Enclosed at Appendices 5 and 6 respectively are the General Medical Council’s records for both Charles William Lauder Smith (GMC reference no: 0731508) and Margaret Mary Schoeld Safranek (GMC reference no: 2650108) who founded the practice in 1982.

Appendix 5

Appendix 6

These records confirm that Dr Smith ceased practicing on 1 January 2009 and that Dr Safranek ceased practicing on 28 October 2008. Accordingly, both individuals that the operative permission was limited to ceased practicing at the site for at least a 10-year period, while the facility has continued to operate under those GP Partners listed at Appendix 2 and in breach of this Condition.

Section 171B of the Town and Country Planning Act 1990 confirms that no enforcement action may be taken against a use or breach of condition after the end of the period of 10 years. Thus, any use or breach that has occurred for 10 years will be immune from enforcement action and would comprise the building’s lawful use. Thus, Condition 4 has been breached for a continuous period of at least 10 years and is therefore no longer enforceable.

Confirmation is therefore sought that use of the site is not limited to any specific individuals.

2009 Plans

As highlighted earlier in the letter, Condition 5 of permission ref: HGY/25755 dated 12 August 1982, states that:

“5. The proposed use shall not be undertaken except within the ground floor of the premises and the front two rooms of the first floor (as shown within the submitted drawing SF6A) and that the first floor flat be maintained and used for residential accommodation only in connection with the doctors surgery for use by a message taker unless the prior approval of the Local Planning Authority has been obtained in writing.”

It is understood that the facility has been used solely for medical purposes for well in excess of 10 years, which is evidenced by the existing/proposed drawings within the 2009 permission (ref: HGY/2009/1507). This demonstrates that the ground, first and second floors were used solely for medical use and that no residential accommodation was at the site.

These drawings, together with the accompanying Design & Access Statement and application forms, demonstrate that the works would create a staff room and shower room only. Accordingly, these further demonstrate that the remainder of the first and second floors were used entirely for medical purposes and that there was no residential accommodation at these levels. Extracts of these are provided at Figure 4.



Figure 4. Extract from 2009 Drawings

This evidence demonstrates that the building has been used entirely as a GP medical surgery since at least 2009. The use as described in the submission and demonstrated on the submitted drawings falls within Class E(e) for *“provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner”* at all floors.

Furthermore, this demonstrates over 10 years within this use and configuration. Accordingly, the Class E use of the entire building is considered to be lawful and Condition 5 of permission ref: HGY/25755 is no longer enforceable.

Valuation Office Agency Records

The application is further supported by the Valuation Office Agency (VOA) entries for the property, which includes the building’s rateable value between 1 April 2010 and 29 May 2017. This is enclosed at Appendix 7.

Appendix 7

Furthermore, for completeness, a copy of the building’s existing VOA entry (from 1 April 2017 to present) is provided at Appendix 8.

Appendix 8

Both entries demonstrate that the building is described as being “surgery and premises”. Furthermore, the area schedules demonstrate that both the first and second floors were included within this entry. The floor areas referenced have not changed since 2010.

No Council tax records for any residential accommodation at the site are available from the last 10 years.

These entries further demonstrate the sole Class E medical use of the building for over a 10 year period leading up to it becoming vacant in August 2022.

This further demonstrates the existing and lawful use of the building falls within Class E and Condition 5 of permission ref: HGY/25755 is no longer enforceable.

Conclusions

This application is made under Section 191 of the Town and Country Planning Act 1990 and seeks a Lawful Development Certificate confirming that the lawful use of the Dukes Avenue Practice, 1 Dukes Avenue, Muswell Hill, N10 2PS (building and land) is within Class E of the Town and Country Planning (Use Classes) Order 1987, as amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 ("2020 Amendment").

It is considered, following confirmation of the Class E use of the building and that Conditions 4 and 5 of permission ref: HGY/25755 are not enforceable, that the building can be used within any Class E use. This CLEUD seek to confirm this position.

This submission has demonstrated that the entire premises, including the first and second floor, as a medical facility, for in excess of 10 years. This is evidenced by the submitted background information, plans from 2009 and the VOA records. It is further readily apparent from floor plans, photographs and the site's interior (should the Council seek to undertake an inspection) that the existing arrangement has been in place for in excess of 10 years. This has demonstrated that Condition 5 is no longer enforceable.

The submitting evidence further demonstrates that Dr's Smith and Safranek have not practiced at the site for at least 10 years and therefore, Condition 4 is no longer enforceable.

In the light of the above, this application is supported by extensive evidence to demonstrate that the lawful use of the building and its land falls within Class E of the Use Classes Order and that these restrictive conditions are not enforceable. The evidence submitted is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability, as required by Section 191 of The Act.

The submission is therefore consistent with the requirements of Section 191 of The Act and we respectfully request that the Lawful Development Certificate is granted at the earliest opportunity.

Yours faithfully



CHRIS JONES
Director

Enc.