



NORTON
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LTD

Lawful Development Certificate (Proposed Development)

Garden Flat, 1 Wolseley Road, London N8 8RR

Ancillary Use of Residential C3 Dwelling

On behalf of Dr Selma Gokcen

Prepared by Ben Norton LLB (Hons)

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01 Introduction

Norton Taylor Nunn Ltd has been retained to provide Town Planning advice to the applicant regarding the Lawful Use of her residential property.

This document accompanies an application for a Lawful Development Certificate (Proposed Development) under Section 192 Town and Country Planning Act 1990. Following discussions with the Local Planning Authority (the Council), this application is to confirm that music tuition offered in the home of the applicant constitutes an ancillary residential use, and does NOT constitute a change of use from the lawful residential use.

02 Site and Proposals

The application site, Garden Flat, 1 Wolseley Road, London N8 8RR, constitutes a residential dwelling with the lawful use C3 residential, in accordance with the Use Classes Order.

The applicant is an accomplished musician and teaches music at the Guildhall School of Music and Drama. She also provides private tuition in her own home, including catch-up lessons for her Guildhall School pupils.

The applicant seeks confirmation from the Council that the use of her residential flat for music lessons is an ancillary use to her residential use (i.e., no change of use will occur) within the following guidelines:

- 8 hours a week teaching, with minor variations depending on time of year (at no point more than 10 hours a week), but an average of 8 hours a week over the year, between the hours of Monday – Friday 8am – 7pm, Saturdays 2pm – 5pm, not at all on Sundays and Bank Holidays.
- No more than 4 hours of teaching in any one day.
- No more than 2 pupils attending the property at any one time.

Dr Gokcen intends to keep a log of all music tuition from home, which can be inspected by the Council should complaints be received of any music tuition occurring outside of the scope agreed, and which shall be compliant with the General Data Protection Regulations.

03 Planning History

HGY/2004/1922 – Erection of single storey extension – Granted (13/01/2005)

HGY/2008/1110 – Partial demolition of existing extension, erection of single storey rear extension, first floor bay extension and minor internal alterations to provide an en-suite bathroom – Granted (16/07/2008)

HGY/2022/0706 – Proposed outbuilding/garden office including soft landscaping improvements to existing area of soft landscaping and minor increase to fence height on the boundary with No 3 Wolseley Road – Granted (22/04/2022)

04 Planning Framework

Development is described by Section 55(1) Town and Country Planning Act 1990 as being:

“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

Section 55(2)(d) of the Act provides that:

“the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such”.

Section 191(2) of the Act provides that:

“For the purposes of this Act uses and operations are lawful at any time if—

- a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.”

Section 192 of the Act provides that:

“If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”

Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application and how it must be submitted.

It is averred that the proposals do not constitute development; as a result, the framework is legislative, rather than one of planning policy.

For reference, were the proposals to constitute development, they would of course be subject to the Development Plan adopted for Haringey, per Section 70(2) of the Act and Section 38(6) Planning and Compulsory Purchase Act 2004.

05 Evidence of Lawfulness

It is averred that the proposed music tuition does not constitute development; it is therefore an ancillary residential use, per Section 55(2)(d) Town and Country Planning Act 1990.

Dr Gokcen uses her residential accommodation to take regular music lessons from home, for private students. This LDC is sought to demonstrate that this remains ancillary to her continuing residential use and that no change of use has occurred. A change of use is a matter of fact and degree.

It is not unusual for music tuition to take place in the residential homes of music tutors. Indeed, the vast majority of all private music tuition takes place in private residential homes. In many ways, this is no different to any other person working from home; indeed, over the recent pandemic, the number of planning officers working from home (for instance) has increased significantly, and nobody has suggested that this constitutes a change of use.

In an appeal decision in Kent¹, an Inspector determined that the use of a swimming pool for private swimming lessons for around 20-22.5 hours a week, accommodating around 90 students, did constitute a change of use from residential use. However, this would be a use that is significantly and demonstrably of a different quantum to Dr Gokcen's use.

The key test for whether or not working from home constitutes a change of use is whether the overall character of the dwelling will change as a result of the business. In this case, the home remains used mainly as a private residence, there will not be a marked rise in traffic or people calling, the activity – playing the piano and cello – are far from unusual in residential areas, and the music tuition will not disturb neighbours at unreasonable hours or create any other form of nuisance.

The same test applies, whether the business carried on from home is music tuition, hairdressing, childminding, using a room as a personal office or even repairing cars in an outbuilding; is it still mainly a home, or has it (as a matter of fact and degree) become a business premises.

¹ APP/T2215/C/18/3208371

It is very clear that Dr Gokcen's home remains mainly a residential premises. None of the proposed music tuition will give rise to a change of use, as it remains very much an ancillary use. This application seeks only to confirm that this proposed activity does not create a change of use.

As a matter of fact and degree, the proposals do not constitute a change of use; there is no departure from residential use and the character of the residential premises has not changed. It will remain a residential dwelling, with an incidental ancillary use.

06 Conclusions

For the reasons set out above, the proposals do not constitute development in accordance with the Town and Country Planning Act 1990. There are therefore no reasons the Certificate of Lawful Use for Proposed Development should not be granted in accordance with Section 192 of the Act.