

Officer's Report

Application Number	HGY/2022/2761
Type	Lawful development: Existing use
Location	Surgery, 1, Dukes Avenue, London, N10 2PS
Proposal	Certificate of lawfulness for the existing use of the whole building within the E Use Class and to confirm that the use of the building has been in breach of conditions 4 and 5 of permission ref: HGY/25755 (OLD/1982/0323) for a period of over 10 years and that these conditions are therefore no longer enforceable.
Case Officer	Sabelle Adjagboni
Valid Date	21/09/2022
Applicant	Milegate Limited
Agent	Mr Chris Jones

RECOMMENDATION

Approve

PROPOSED DEVELOPMENT AND LOCATION DETAILS

This is an application for a Certificate of Lawfulness for the existing use of 1 Dukes Avenue as a Practice Surgery under the use Class E. The property is in the Muswell Hill conservation area but does not have a listed status.

The applicant seeks to confirm that the lawful use of the whole building to be within the E Use Class and to confirm that the use of the building has been in breach of conditions 4 and 5 of permission ref: HGY/25755 (OLD/1982/0323) for a period of over 10 years and that these conditions are therefore now no longer enforceable.

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2009/1507: Erection of rear dormer window and insertion of two rooflights to both front and side roof slopes. Granted on 15/10/2009.

HGY/2004/1217: Erection of single storey extension to provide one additional consulting room to doctor's surgery. Granted on 15/09/2004.

HGY/1992/0263 or HGY/44807: Single storey side extension and provision of ramped access to doctors' surgery. Refused on 04/08/1992; Granted at appeal on 19/01/1993.

OLD/1986/0301 or HGY/32660: Erection of single storey side extension to be used as reception room. Granted on 25/07/1986.

OLD/1982/0324 or HGY/25755: Change of use from residential to doctors' surgery with retention of part as residential, including extension to rear. Granted on 12/08/1982.

OLD/1982/0323 or HGY/25296: Change of use of ground floor to a doctors' surgery. Granted on 6/04/1982.

CONSULTATION RESPONSE

No consultation was required.

LOCAL REPRESENTATIONS

No local representations have been sought.

RELEVANT LEGISLATION AND GUIDANCE

The application has been made under section 191 of the Town and Country Planning Act 1990 (as amended).

Section 191 of the 1990 Act provides for anyone to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

By virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.

Development or other activity on land is lawful for planning purposes if it is within one of the following categories and does not involve a failure to comply with a condition or limitation subject to which planning permission has been granted:

- (1) it is not within the definition of "development" in section 55(1) and (1A) of the 1990 Act. (This might be because it is so insignificant that it can be disregarded (a "de minimis" operation, use or activity); or because it involves a change of use which is not, as a matter of fact and degree, materially different, for planning purposes, from a previous lawful use of land.); or
- (2) it is specifically excluded from the definition of development by section 55(2) (for example, a use of land for the purpose of "agriculture"); or
- (3) it is within the definition of "development" in section 55, but is exempted from the need for planning permission by the provisions of section 57; or
- (4) it benefits from an extant grant of planning permission under Part III of the 1990 Act (or the equivalent Parts of preceding Acts); or
- (5) it benefits from a general planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418), or by a simplified planning zone or enterprise zone scheme; or
- (6) it benefits from deemed planning permission, whether under section 90 or by virtue of compliance with the requirements of an effective enforcement notice; or
- (7) it took place before 1 July 1948 (the "appointed day" Country Planning Act 1947); or
- (8) it is development by or on behalf of the Crown; or
- (9) the time for taking enforcement action has expired.

"Taking enforcement action" is defined in section 171A of the 1990 Act. It is the issue of an enforcement notice or the service of a breach of condition notice. The section also defines a "breach of planning control" (against which it is possible to take enforcement action) as the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.

Section 171B of the 1990 Act specifies the time-limits for taking enforcement action which are as follows:

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) 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.
- (4) The preceding subsections do not prevent—
 - (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

ANALYSIS/ASSESSMENT OF THE APPLICATION

This is not a planning application, and the planning merits are not relevant to this submission. Rather the applicant seeks to prove by the submission of evidence that the building operation has been in place for a period in excess of 10 years and the use of the building operation has been in continuous use for a period in excess of 10 years and is therefore immune from enforcement action.

The relevant test of the evidence is "the balance of probability" 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.

The applicant must prove that the use referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 21/09/2022.

Information Provided

Information provided	Officer's comments
Planning Statement	This was a detailed description of the application, including site photos and an explanation of each supporting document.
Appendix 1 – Operative Permissions for the site	This is comprised of the planning permission HGY/25755 received in 1982 to change the use of the site from residential to doctor's surgery with retention of part as residential, including extension to rear. That permission had 5 conditions, 2 of which the current application seeks to demonstrate a breach for over 10 years which is no longer enforceable. The conditions were as follows: <i>4. That this permission shall not ensure 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.</i> <i>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.</i>

	<i>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 doctor's surgery for use by a message taker unless the prior approval of the Local Planning Authority has been obtained in writing.</i> <i>Reason: To avoid undue loss of housing accommodation.</i> The current application therefore seeks to demonstrate that for a continuous period of over 10 years, the named Doctors in condition 4 have not practiced at the Surgery, and that contrary to condition 5, the building has been used solely as a medical practice with no on-site residential accommodation.
Appendix 2 – Copy of the Town and Country Planning (Use Classes) Regulations 2020	Appendix 2 is made of a copy of the Town and Country Planning (Use Classes) Regulations 2020 on which the applicants seek to demonstrate the sole class E use of the building. Following the legislation extract is an explanatory note which argues that according to The Use Classes Order, the classes for the purposes of section 55(2)(f) of the Town and Country Planning Act (TCPA) 1990, stipulate that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class. The TCPA 1990, is therefore an update of the TCPA 1971 and 1987 on which the original planning permission adhered to. The TCPA 1990's Use Class E amends previous use classes which were specified in the old Schedules to the Use Classes Order as Class A1(Shops), Class A2 (Financial and professional services), Class A3 (Restaurants and cafes) and Class B1(Business). Therefore, in accordance with the current TCPA 1990 in use, the building is in class use E.
Appendix 3 – Practice History	This is a summary of the Muswell Hill Practice (formerly Dukes Avenue Practice)'s history from its creation in 1982 by Dr Margaret Safranek and Dr Bill Smith, to its expansion to a more suitable premises in 2022 at 54 Muswell Hill. The application's building has been vacant since August 2022.
Appendix 4 – Practice Leaflet and Booklet	The practice leaflet and booklet give more information about the Surgery including its staff, services, and hours of work. It

	has a clear list of the Doctor partners and the doctors' list on which the founding Doctors' names do not appear.
Appendix 5 & 6 – General Medical Council's records	These show the General Medical Council's records for both founders Charles William Lauder Smith (GMC reference no: 0731508) and Margaret Mary Schoeld Safranek (GMC reference no: 2650108). The records confirm that Dr Smith ceased practicing on 1 January 2009 and Dr Safranek ceased practicing on 28 October 2008. Accordingly, both individuals that condition 4 of original permission was limited to have not practiced at the site for over 10 years, whilst the facility continued to operate under the listed GP Partners in the practice leaflet and booklet. Therefore, there has been a clear breach of condition 4 for over 10 years.
Appendix 7 & 8 – VOA Entry 1 & 2	The Valuation Office Agency (VOA) entry for the property in appendix 7, includes the building's rateable value between 1 April 2010 and 29 May 2017. The first and second floor are included within the valuation and the whole building is described as "surgery and premises". The VOA entry for the property in appendix 8 includes a copy of the building's existing valuation from 1 April 2017 to present. The first and second floor are also included within the valuation and the whole building is described as "surgery and premises". Thus, this demonstrates that condition 5 has been breached for over 10 years.
Plans	The plans provided as evidence are the existing/proposed drawings within the 2009 planning permission with reference no. HGY/2009/1507. They demonstrate that the ground, first and second floors were used solely for medical use and no residential accommodation can be seen at the site. Hence, this further demonstrates that condition 5 has been breached for over 10 years.

In addition to the evidence provided, no Council tax records for any residential accommodation at the site are available for the past 10 years.

Therefore, all the evidence provided sufficiently proves that 1 Dukes Avenue has been operating solely as a medical practice and condition 4 and 5 of the original planning permission have been in breach for over 10 years and are no longer enforceable.

SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that 1 Dukes Avenue has been a Medical Practice for a period of over 10 years and that it has been in breach of conditions 4 and 5 of planning permission reference OLD/1982/0323 (HGY/25755) for a period of over 10 years and has become immune from enforcement action and therefore the existing use and the continuing breach of these conditions is lawful.

RECOMMENDATION

GRANT CERTIFICATE