

Officer's Report

Application Number	HGY/2022/4071
Type	Lawful development: Existing use
Location	Land between Esterel and The Red House, Compton Avenue, Highgate, N6 4LH
Proposal	Certificate of lawfulness for the existing guard hut and gates at the entrance of Compton Avenue.
Case Officer	Michelle Meskell
Valid Date	10/11/2022
Applicant	Mr James Leof
Agent	Mrs Emma McBurney

RECOMMENDATION

Approve

2. PROPOSED DEVELOPMENT AND LOCATION DETAILS

This is an application for the retention of a guard hut and gates at the entrance of Compton Avenue (Certificate of Lawfulness: existing use). The Guard Hut is situated to the east of No. 2, Esterel on Compton Avenue. The land the Guard Hut sits on and part of the gates belongs to No. 2 Esterel, Compton Avenue.

3. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

None

4. 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.

5. 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 residential use as two flats has been in place for a period in excess of 4 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.

Information Provided	Date and Method of Verification
Statutory Declaration	A Statutory Declaration signed by Mr James <u>Leof</u> of Compton Avenue Management Limited dated 1 November 2022. This affidavit confirms the guard hut has been in place for more than 4 years
Council's Highgate Conservation Area Appraisal (2013)	Page 143 of the Council's Highgate Conservation Area Appraisal (2013) recognises Compton Avenue has a controlled access with a barrier at its entrance from Hampstead Lane.
Statutory Declaration Annex 2	A sample utility bill from <u>Waste Water</u> Solutions Ltd dated 1 May 2017. This relates to emptying the Guard Hut toilet.
Statutory Declaration Annex 3	News publications which feature the Guard Hut and show it has been in existence for more than 4 years. The <u>Ham&High</u> article (2016) refers to Woodley on Compton Avenue having 24 hour guarded security gates and CCTV. The Business Insider article (2016) shows a photo of the Guard Hut and gates.
Google Street View imagery	The Guard Hut and gates feature on the August 2008 Google Street View imagery.

The presented information covers a period exceeding 4 years and therefore on the balance of probability the guard hut and gates at the entrance of Compton Avenue is viewed to have become immune from enforcement action and is therefore lawful.

6. RECOMMENDATION

GRANT CERTIFICATE

Drawing number of plans: Location Plan 090_LP01_20221021 and existing block plan 090_Existing_20221021

Registered No. HGY/2022/4071