

Officer's Report

Application Number	HGY/2022/2635
Type	Lawful development: Existing use
Location	37, Baronet Road, London, N17 0LY
Proposal	Certificate of lawfulness for the existing use of a 5 bedroom, 5 person HMO.
Case Officer	Mercy Oruwari
Valid Date	14/09/2022
Applicant	Mrs Coral Humes
Agent	Mrs Coral Humes

RECOMMENDATION

Approve

1. RECOMMENDATION

GRANT CERTIFICATE

2. PROPOSED DEVELOPMENT AND LOCATION DETAILS

Certificate of lawfulness for the existing use of a 5 bedroom, 5 person HMO.

The subject site is a two storey mid terrace property. Located on the ground floor are bedrooms 2x bedrooms, 1x toilet/shower room, the shared lounge and kitchen which leads the rear garden. There is a rear extension which accommodates the kitchen along with a partial side infill creating a small courtyard (there's no formal planning permission for this structure and it does not form part of this application. However, the structure appears to be aged). There is a side shed/room accessed from a separate door at the front, which is a feature for the properties on this road. On the upper floor there are 3x rooms with 1 having an en-suite. The other 2 have access to a separate toilet and shower room.

The site is not located within a conservation area and does not fall within the curtilage of a listed building

3. RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

- HGY/2021/2957 – Erection of a new build two storey building housing 2 x. two bedroom apartments. Refused (APP/Y5420/W/22/3294607 – Appeal Dismissed)
- HGY/2015/2105 - Erection of chalet bungalow in rear garden with entrance off Sutherland Road (Outline). Refused

4. CONSULTATION RESPONSE

4.1 No-one was consulted regarding the application however comments were received.

The following issues was raised by a local Councillor:

- There were concerns raised in regards to a family house being turned into unsuitable flats.
- Concerns regarding the property meeting the size standards set out in the Planning Guidance's and Building Regulations.
- Substandard accommodation resulting in unacceptable living conditions and overcrowding.
- Lack of amenity space and provision of cycle storage and waste facilities.
- The proposed units creating a transient community.

The Officers comments:

As this is a certificate of lawfulness for existing use, we can only consider the evidence of the use of the property over the past ten years. The certificate only relates to planning so building regulations are not considered in this application. The evidence is reviewed, investigated and verified for all Certificate of Lawfulness for existing use applications.

5. RELEVANT LEGISLATION AND GUIDANCE

5.1 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.

5.2 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.

5.3 In this instance, where a change of use of a building to a House of Multiple Occupation (HMO) has been carried out, the unlawful use must be maintained continuously throughout a 10-year period while immunity from enforcement action is being accrued. The rationale that underpins the immunity period is that at any time throughout the 10 years while the use was continuing the Council had a chance to take enforcement action. If it did not take that chance, the opportunity is lost and the use becomes lawful.

5.4 However, if there were times during the 10-year period when nothing unlawful was taking place, the Council could not have taken enforcement action. The gaps in the continuity of the use interrupt the passage of the exemption period and prevent the accrual of the 10 years.

5.5 The test of the evidence is "on the balance of probabilities" rather than the stricter criminal test of "beyond reasonable doubt". In this instance, the applicant seeks to rely on the 10-year rule to establish that the development can be considered lawful.

6. ANALYSIS/ASSESSMENT OF THE APPLICATION

6.1 The onus of proof in a LDC application is firmly on the applicant and the test of the evidence is 'on the balance of probability'. In this case, the applicant therefore has to prove, on the balance of probability the use of property as a House of Multiple Occupation (HMO) has been in use for a continuous period of at least ten years before the date of submitting this application.

6.2 The documents submitted by the applicant in support of the applicant's case are as follows:

My Deposits:

A number of My Deposit entries spanning over the past 10 years for the various rooms at various times have been submitted.

Correspondences with HMO Licensing:

Since 2019 there has been various correspondences between the applicant and the team regarding the property. The correspondences include 'Schedule of Works', The 5 year HMO License issued in March 2019 and other related letters.

Correspondence regarding surrender of tenancy:

An official surrender of the tenancy in 2010 for room 5 was submitted.

Other Items:

There has been various other items submitted such as Council Tax bills, Title Plan, gas safety records, electrical installation report, utility bills, invoice for general works, cleaning rotas etc. However these items were not relevant in supporting the evidence for the use as a HMO as they either related to the building as a whole or was addressed to the property or the owner.

Site Visit:

The site visit confirmed that the property is an established HMO with 5 bedrooms (1 with en-suite), 2x shower rooms, 2x toilets, a shared kitchen/lounge and general access to the rear garden.

Floorplans:

The plans submitted demonstrate that the property has a layout of 2x bedrooms located on the ground floor; 1x toilet/shower room; 1x communal living area and rear extension to accommodate the 1x kitchen and a back door, which leads to the infill/courtyard and shared garden. On the first floor it shows there are 3x bedrooms and 1x toilet and 1x shower room. This was also confirmed with the site visit.

7. CONCLUSION

There is corroborative evidence submitted that suggest that 37 Baronet Road N17 has been used as a 5-bedroom, 5 person HMO (C4) for more than 10 years and has become immune from enforcement action and is therefore lawful.

8. RECOMMENDATION

GRANT CERTIFICATE