

Officer's Report

Application Number	HGY/2022/4022
Type	Lawful development: Existing use
Location	152-154, Olinda Road, Tottenham, London, N16 6TP
Proposal	Lawful Development Certificate for the existing place of worship (Use Class D1) at ground floor level and 3x self-contained flats (Use Class C3) at first floor level at 152-154 Olinda Road, London, N16 6TP
Case Officer	Laina Levassor
Valid Date	07/11/2022
Applicant	Masjid-ul-Uthmaan
Agent	Mr Abu Bakr Akhoon

RECOMMENDATION

Approve

DEVELOPMENT & LOCATION DETAILS

This application relates to 152-154 Olinda Road. This is an application for a Certificate of Lawfulness for the existing mixed use of the ground floor as a Place of Worship (Use Class D1) and 3 x self-contained flats (Use Class C3) at first floor level.

RELEVANT PLANNING & ENFORCEMENT HISTORY

HGY/2021/0532 - Erection of single storey rear extension, internal alterations and glass dome to existing place of worship (D1 use) – Withdrawn

UNW/2021/00210 – Unauthorised conversion – Current

CONSULTATION RESPONSES

There is no statutory requirement to consult third parties on applications made under Section 191 or Section 192 of the Town and Country Planning Act 1990.

RELEVANT LEGISLATION

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 as such, planning merits are not relevant to this submission. In submitting this application, the applicant seeks to prove by the submission of evidence, that the use of the building as a mixed use D1/C3, has been in place in excess of 10 years and that this use has been continuous, making it immune from enforcement action.

The applicant must prove that the use referred to in this application were lawful for planning purposes on the date of this application. In this instance the relevant period commences November 2012.

The evidence provided upon submission of this application and officer assessment is as follows:

The application form provided at submission states that use of the ground floor as D1 commenced more than 10 years ago and residential use of the first floor commenced more than 4 years ago. The commencement date is given as 01/07/2000 and it is stated there was no interruption in use.

Existing Plans: MU/SU 100 & MU/SU 101

Ground floor plans show that the buildings (152 & 154) have been amalgamated towards the rear however maintained individual front accesses. GF left (152) contains two 'classrooms', GF right (154) contains a 'classroom', 'staff kitchen' and 'wc'. Where amalgamated the rear of the property features an Ablution with access to a WC and Utility area.

First floor plans show that this floor has also been amalgamated with a shared hallway/stairwell allowing access to each of the units. FF left (152) contains 'Flat 3' – a 1xbedroom unit with separated living room, kitchen and bathroom. FF right (154) contains 'Flat 1' – a 1xbedroom unit with separated kitchen and bathroom and 'Flat 2' – a 1xbedroom unit with separated kitchen and bathroom.

'Planning Statement' states that the flats at First Floor level were created in 2006.

Tenancy Agreements:

- Flat 1 – covers 17/06/2012 to 20/01/2014
- Flat 1 - covers 04/07/2013 to 03/01/2014
- Flat 1 – covers 20/01/2014 to 20/12/2016
- Flat 1 – covers 09/01/2017 to 09/01/2018
- Flat 1 - covers 01/10/2018 to 01/10/2019
- Flat 1 – covers 25/11/2022 to 25/11/2024

- Flat 2 – covers 01/09/2012 to 01/03/2013
- Flat 2 – covers 01/11/2013 to 10/09/2014
- Flat 2 – covers 20/09/2014 to 20/09/2015
- Flat 2 – covers 25/11/2022 to 25/11/2024

- Flat 3 – covers 07/07/2006 to 06/07/2008
- Flat 3 – covers 18/10/2010 to 18/04/2011
- Flat 3 – covers 18/04/2014 to 17/10/2014
- Flat 3 – covers 28/10/2014 to 28/04/2015
- Flat 3 – covers 15/06/2015 to 04/11/2015
- Flat 3 – covers 23/11/2015 to 20/06/2018
- Flat 3 – covers 03/10/2018 to 03/04/2019
- Flat 3 – covers 22/04/2019 to 22/10/2019
- Flat 3 – covers 15/08/2020 to 15/02/2021
- Flat 3 – covers 08/03/2021 to 08/09/2021
- Flat 3 – covers 25/10/2021 to 25/04/2022
- Flat 3 – covers 25/11/2022 to 25/11/2023

Statutory Declarations:

- Signed by tenant of Flat 1 – states tenant has occupied flat since January 2017.
- Signed by attendee of Mosque – states Mosque was opened in 2000 and signee has attended since.
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- Signed by tenant – states tenancy lasted between October 2010 to October 2014 and that property was in use as three self-contained flats at time of occupation.
- Signed by tenant – states tenancy has been ongoing since September 2014 and has been in use as three self-contained flats throughout occupation.
- Signed by tenant – states tenancy lasted between November 2015 to September 2018 and that property was in use as three self-contained flats at time of occupation.
- Signed by tenant – states tenancy has been ongoing since January 2017 and has been in use as three self-contained flats throughout occupation.
- Signed by property manager – states management commenced September 2010 and has been continuous let out since September 2010 to present as three self-contained flats.

Other Evidence:

Several utility bills were provided dated between 2002 and 2021 however none of these refer to separated residential units. Some of these are addressed to 'South Tottenham Muslim Community Association' however this does not explicitly confirm use.

Insurance documents dated 23/07/2013-14 which refers to business as 'religious buildings'.

Charity registration details for South Tottenham Muslim Community Association which states registration date as 13/08/2002 and address as 152 Olinda Road.

Council Tax:

- Council Tax bill for 2002/2003 for 152 – does not refer to separated units
- Council Tax bill for 2004/2005 for 152 – does not refer to separated units
- Council Tax bill for 2013/2014 for 154 – does not refer to separated units
- Council Tax bill for 2013/2014 for 152 – does not refer to separated units
- Council Tax bill for 2021/2022 for Flat 1 152-154
- Council Tax bill for 2021/2022 for Flat 2 152-154
- Council Tax bill for 2021/2022 for Flat 3 152-154
- Council Tax bill for 2022/2023 for Flat 1 152-154
- Council Tax bill for 2022/2023 for Flat 2 152-154
- Council Tax bill for 2022/2023 for Flat 3 152-154

The applicant has provided sufficient information to show that the mixed-use has been in place throughout the relevant 10-year period and therefore a certificate can be issued.