

Officer's Report

Application Number	HGY/2022/3821
Type	Lawful development: Existing use
Location	56, Park View Road, Tottenham, London, N17 9AX
Proposal	The subdivision of house into two self-contained flats.
Case Officer	Zara Seelig
Valid Date	27/10/2022
Applicant	Forde
Agent	Mr - Stern

RECOMMENDATION

Approve

RECOMMENDATION

GRANT CERTIFICATE

PROPOSED DEVELOPMENT AND LOCATION DETAILS

The proposal is for the existing use of the side extension previously approved at no. 56 Park View Road as a separate self-contained studio flat. The site is located at the end of a terrace at the corner of Park View Road and Mafeking Road, in the east of the Borough. The site is not in any conservation area, nor is it a listed building.

Relevant Planning and Enforcement history Planning Application History

HGY/2004/0892 - Erection of a 2 storey side extension. – Refused permission

HGY/2004/1788 - Erection of a single storey side extension. – Granted permission

CONSULTATION RESPONSE

The following were consulted regarding the application:

No consultees

The following responses were received :

No Responses were received for this application

LOCAL REPRESENTATIONS

The following were consulted:

No letters were sent for this application

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 use of the side extension at 56 Park View Road as a separate self-contained studio flat 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 of the side extension of 56 and 69A Park View Road as a separate self contained studio flat referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 27/03/2018

Information Provided:

- Bank statements showing rent payments from 06 October 2016 to August 2022
- Statement showing total net income on the property from 30/09/2013 to 24/08/2022
- Plumbing works invoice for the studio flat dated 22/07/2016
- Heating and plumbing invoice for 'Park View Studio' dated 22/02/2019
- Fence invoice for 'Studio Flat' dated 10/04/2017

- Tenancy Agreement dated 27/03/2018
- Tenancy Agreement dated 30/09/2018
- Tenancy Agreement dated 27/09/2019
- Tenancy Agreement dated 28/09/2020
- Tenancy Agreement dated 01/05/2021
- Tenancy Agreement dated 28/04/2022
- Statutory Declaration dated 25/08/2022 from Mr Nigel Forde and Abdul Rob, the directors of 'People Like Us Ltd' who own the property
- Statutory Declaration of the current tenant dated 08/09/2022
- Plan no's EX-E001, EX-E002, EX-E003, EX-P001, EX-P002, EX-P003, EX-PR001, EX-S001, EX-L001, PEX-E001, PEX-E002, PEX-E003, PEX-P001, PEX-P002, PEX-P003, PEX-PR001, PEX-S001, PEX-L001

The required date for this application, which the proposed existing use would be immune from enforcement action, is 27/10/2018. Council Tax were contacted to establish their record of the separate unit, of which they have no knowledge. In this instance, google images show the fence separating the two units as shown on plan no. PEX-001 is in situ from as far back as August 2016. This, combined with the evidence provided (Tenancy Agreements, statutory declarations and bank statements covering more than 4 years use), is sufficient to show the use is now immune from enforcement action and is considered to be lawful.

9. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that the single storey side extension at 56 Park View Road has been in use as a studio flat separate to the main dwelling for a period of 4 years and has become immune from enforcement action and is therefore lawful.

10. RECOMMENDATION

GRANT CERTIFICATE