

# Officer's Report

|                           |                                                                                                  |
|---------------------------|--------------------------------------------------------------------------------------------------|
| <b>Application Number</b> | <b>HGY/2022/4171</b>                                                                             |
| <b>Type</b>               | <b>Lawful development: Existing use</b>                                                          |
| <b>Location</b>           | 21 Clonmell Road, Tottenham, London, N17 6JY                                                     |
| <b>Proposal</b>           | 3 self contained flats<br>Flat 1 - Ground floor<br>Flat 2 - First floor<br>Flat 3 - Second floor |
| <b>Case Officer</b>       | Zara Seelig                                                                                      |
| <b>Valid Date</b>         | 18/11/2022                                                                                       |
| <b>Applicant</b>          | Tassos Efstathiou                                                                                |
| <b>Agent</b>              |                                                                                                  |

## **RECOMMENDATION**

**Approve**

## **RECOMMENDATION**

GRANT CERTIFICATE

## **PROPOSED DEVELOPMENT AND LOCATION DETAILS**

The application site is a two storey mid terrace residential building situated on the Western side of Clonmell Road. The site is not located within a conservation area, it is not a listed building and there are no TPO's on the site.

## **RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY**

HGY/2016/3302 – Lawful development certificate for a proposed single storey rear extension and dormer window – Permitted Development

## **CONSULTATION RESPONSE**

The following were consulted regarding the application:

LBH Planning Enforcement  
LBH Building Control

The following responses were received:

LBH Building Control:

Part B – Fire Safety

Requirement B1 Means of warning and escape

Inner rooms noted within the flats. No protected means of escape route provided for each flat.

Flat 3 has a floor over 4.5m above ground and does not have a protected route .

No proposals for alternative means of escape are shown.

Common parts are not 'protected' routes with no lobbies provided to protect the common parts from ingress of combustion/smoke/gases.

It is not clear what the arrangements are for smoke venting of the common staircase.

No evidence of meeting the requirements of B1 have been given.

## **LOCAL REPRESENTATIONS**

The following were consulted:

None

The received from neighbours, local groups etc in response to notification were as follows:

None

## **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. 8.

## **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 building as 3 self-contained 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. In this instance the relevant period commences on 18/11/2018.

Information Provided:

Planning Statement and Report dated 17/11/2022

Planning Documents related to HGY/2016/3302 that was confirmed to be Lawful permitted development.

Pre-existing Floor Plans as built

Existing Floor Plans

Existing Elevations

Building Control Certificate dated 26/10/2017

Building Regulations Compliance Certificate for 21 Clonmell Road to install 3 unvented hot water storage vessels dated 21/09/2017

Domestic Electrical Installation Certificate for a new installation dated 10/10/2017

Emergency Lighting Periodic Inspection and Testing Certificate dated 20/11/2017

Fire Detection and Alarm Systems Inspection and Servicing Report dated 20/11/2017

Energy Performance Certificate for Flat 1 dated 18/10/2017

Energy Performance Certificate for Flat 2 dated 18/10/2017

Energy performance Certificate for Flat 3 dated 18/10/2017

Thames Water New Service Connection Quotation stating "Conversion from house into 3 flats" dated 17/05/2017.

Invoice from UK Power Networks (Operations) Ltd for "Instl Service Upgrade 1ph to 3ph FOOTWAY" dated 16/03/2017

BT Broadband Bill for the whole building dated 03/09/2017

Building Insurance Statements stating the building as 3 separate flats dated 12/09/2017, 15/10/2018, 15/10/2019, 02/11/2020, 30/09/2021 and 12/10/2022

Tenancy Agreements for Flat 1 dated 15/11/2017, 21/11/2020 and 30/07/2021

Tenancy Agreements for Flat 2 dated 01/06/2021 and 10/09/2022

Tenancy Agreement for Flat 3 dated 01/12/2017

Deposit Protection Certificates for Flat 1 dated 15/11/2017, 15/11/2019, 03/12/2019, 21/11/2020, 30/07/2021 and 29/07/2022

Deposit Protection Certificates for Flat 2 dated 14/10/2017, 14/10/2018, 17/08/2019, 16/08/2020, 01/06/2021, 29/04/2022 and 25/10/2022

Deposit Protection Certificates for Flat 3 dated 15/11/2017 and 30/11/2019

Utility Bills for Flat 1 dated 13/06/2017, 06/08/2017, 22/11/2017, 06/03/2018, 06/06/2018, 22/09/2018, 06/06/2020 and 01/12/2020

Utility Bills for Flat 2 dated 22/04/2017, 06/06/2017, 06/08/2017, 21/11/2017, 07/12/2017, 06/03/2018, 06/06/2018, 22/08/2018, 15/08/2019, 29/04/2021, 02/05/2021, 12/05/2022 and 08/10/2022

Utility Bills for Flat 3 dated 26/06/2017, 12/08/2017, 28/08/2017, 22/11/2017, 22/12/2017, 26/12/2017, 20/01/2018, 20/02/2018, 20/03/2018, 20/04/2018, 01/05/2018, 14/05/2018, 21/05/2018, 20/06/2018, 20/07/2018, 20/08/2018, 20/09/2018, 01/11/2018, 13/05/2019, 12/08/2019, 18/09/2019, 18/10/2019, 06/11/2019, 18/11/2019, 18/12/2019, 18/01/2020, 18/02/2020, 18/03/2020, 18/04/2020, 18/05/2020, 13/11/2020, 18/12/2020, 18/01/2021, 18/02/2021, 18/03/2021, 19/04/2021, 12/05/2021, 18/05/2021, 18/06/2021, 19/07/2021, 18/08/2021, 18/09/2021, 18/10/2021, 18/11/2021, 18/12/2021, 18/01/2022, 18/02/2022, 18/03/2022, 18/04/2022, 18/05/2022, 18/06/2022, 18/07/2022, 18/08/2022, 19/09/2022 and 18/10/2022.

An ample amount of supporting information has been submitted with this application, and although Council Tax have no record of the building being used as 3 separate flats, the evidence provided proves continuous use as 3 self contained units for a period of more than 4 years.

### **SUMMARY AND CONCLUSION**

The applicant has demonstrated that on the balance of probability that the use of the building as 3 self-contained flats has been continuous for a period of more than 4 years and has become immune from enforcement action and is therefore lawful.

### **RECOMMENDATION**

GRANT CERTIFICATE