

Officer's Report

Application Number	HGY/2022/4555
Type	Lawful development: Existing use
Location	36 Devonshire Hill Lane, Tottenham, London, N17 7NG
Proposal	Certificate of Lawfulness for the existing use of the rear outbuilding as a separate self-contained residential dwelling (C3 Use Class).
Case Officer	Laina Levassor
Valid Date	29/12/2022
Applicant	Mr IBI EKINEH
Agent	Ibi Ekineh

RECOMMENDATION

Refuse

DEVELOPMENT & LOCATION DETAILS

This application relates to the outbuilding sited in the rear garden of 36 Devonshire Hill Lane, referred to as 'Flat 6'. This is an application for a Certificate of Lawfulness for the existing use of the outbuilding as a separate self-contained dwelling.

RELEVANT PLANNING & ENFORCEMENT HISTORY

HGY/2022/3082: Certificate of Lawfulness for the existing use of the rear outbuilding as residential (C3 single family dwelling) - Refuse

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 outbuilding as a residential unit has been in place in excess of 4 years and that this use has been continuous and is therefore 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 December 2018.

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

The application form provided at submission states that residential use commenced 30/03/2015, with no interruption in use.

At the time of assessment, no additional information had been provided or presented as evidence in support of the alleged use. For this reason, a certificate cannot be issued.

SUMMARY & CONCLUSION

The applicant has not provided evidence that, on the balance of probability, demonstrates the outbuilding has been in use a self-contained dwelling within the C3 Use Class for the relevant 4-year period as required and therefore the use is not considered lawful.