

# Officer's Report

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|---------------------------|------------------------------------------------------------------------------------|
| <b>Application Number</b> | <b>HGY/2022/4050</b>                                                               |
| <b>Type</b>               | <b>Lawful development: Existing use</b>                                            |
| <b>Location</b>           | 211, Lyndhurst Road, Wood Green, London, N22 5AY                                   |
| <b>Proposal</b>           | Certificate of lawfulness for the existing conversion into 2 self-contained flats. |
| <b>Case Officer</b>       | Mercy Oruwari                                                                      |
| <b>Valid Date</b>         | 09/11/2022                                                                         |
| <b>Applicant</b>          | Ms Maria Chritodoulou                                                              |
| <b>Agent</b>              | Mr John Ioannou                                                                    |

## **RECOMMENDATION**

### **Approve**

#### **1. RECOMMENDATION**

GRANT CERTIFICATE

#### **2. PROPOSED DEVELOPMENT AND LOCATION DETAILS**

Certificate of lawfulness for the existing conversion into 2 self-contained flats.

The subject site is a two storey mid-terrace property, however there is a gap/passage between the host building and No 213.

The subject site is a two storey mid terrace property converted into 2x1 bed flats (Ground floor/First floor) with the ground floor having access to the rear garden. The property backs onto a row of garages which sit on the border of Enfield. The site is not located within any conservation area and does not fall within the curtilage of a listed building.

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

- HGY/2022/0553 – Erection of single storey rear extension. Granted

#### **4. CONSULTATION RESPONSE**

4.1 No-one was consulted regarding the application.

#### **6. RELEVANT LEGISLATION AND GUIDANCE**

6.1 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.

6.2 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.

6.3 In this instance, where a change of use of a building to self-contained flats has been carried out, the unlawful use must be maintained continuously throughout the 4-year period while immunity from enforcement action is being accrued. The rationale that underpins the immunity period is that at any time throughout the 4 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.

6.4 However, if there were times during the 4-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 4 years.

6.5 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 4-year rule to establish that the development can be considered lawful.

## **7. ANALYSIS/ASSESSMENT OF THE APPLICATION**

7.1 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 2 self-contained flats has been in use for a continuous period of at least four years before the date of submitting this application.

7.2 The documents submitted by the applicant in support of the applicant’s case are as follows:

### **Council Tax Records:**

The information on the VOA website supports the submitted Council Tax evidence showing that both flats have been registered with separate council tax accounts since 1996.

The internal checks of Haringey’s Council Tax records also show that the flats have had independent accounts since 1996.

### **Utility Letters:**

Various utility correspondences addressed to the ground floor flat was submitted. This verifies that the flats were and have been independent of each other.

### **Existing Floorplans:**

The plans submitted demonstrate that the property is divided into 2 self-contained flats.

7.4 There is corroborative evidence submitted that suggest that 211 Lyndhurst Road N22 has been used as 2 self-contained flats for more than 4 years and has become immune from enforcement action, and is therefore lawful.

## **8. RECOMMENDATION**

GRANT CERTIFICATE