

Officer's Report

Application Number	HGY/2022/2656
Type	Lawful development: Existing use
Location	High Bank House, 38, Hornsey Lane Gardens, London, N6 5PD
Proposal	Certificate of Lawfulness: Regularisation of unauthorised works, including changes to the approved works under planning permission ref: HGY/2015/0170.
Case Officer	Mark Chan
Valid Date	12/10/2022
Applicant	Caderlurst Ltd
Agent	Ms Lara Carneiro

RECOMMENDATION

Approve

1. RECOMMENDATION

GRANT CERTIFICATE

2. PROPOSED DEVELOPMENT AND LOCATION DETAILS

The proposed development is regularisation of unauthorised works, including changes to the approved works under planning permission ref: HGY/2015/0170.

3. Relevant Planning and Enforcement history Planning Application History

HGY/2010/2032 – Demolition of rear extension and erection of single storey rear extension. Approve with Conditions - 22 December 2010

HGY/2015/0170 – Conversion of property into a single family dwelling and construction of extension to side of property to create double frontage. Replacement of open driveway with garage and basement area. Approve with Conditions - 16 March 2015

HGY/2017/0754 – Variation of condition 2 (plans and specifications) attached to planning permission HGY/2015/0170 to permit the new drawing numbers with the revision iteration to be included in the condition. Refuse - 3 May 2017

4. 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.

5. 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 unauthorised works, including the changes to the approved works under permission ref: HGY/2015/0170 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 unauthorised works, including the changes to the approved works under permission ref: HGY/2015/0170 at High Bank House, 38, Hornsey Lane Gardens, London, N6 5PD referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 19/08/2018.

Submitted Evidence



Information provided	Date and method of verification	Officer's comments
Proposed Drawings approved under permission ref: HGY/2015/0170 Drawing Nos: 14_117_01; 14_117_200 Rev B; 14_117_201 Rev B; 14_117_202 Rev B; 14_117_203 Rev B; 14_117_204 Rev B; 14_117_205 Rev B; 14_117_206 Rev B	March 2015	These drawings demonstrate the proposal that was approved in 2015. In that application, the construction of a side extension to create double frontage and replacement of the open driveway with a garage and basement area was approved.
Building Control Final Certificate	26/10/2017	This certificate relates to the following work: Three Storey Side Extension, Basement Storey, Single Storey Side Extension & Internal Alterations at 38 Hornsey Lane Gardens, London, N6 5PD. This certificate confirms the works described above been completed and inspected. It is noted that the description of works confirmed in the certificate is different from what was approved under permission ref: HGY/2015/0170.
Insurance Period Certificate	26/10/2017 – 26/10/2027	This certificate confirms site has been insured as residential property since 26/10/2017. This supports the application as it is a period prior to the required date.
Valuation and Final Invoice by Herts Builders Ltd	07/11/2017	This invoice demonstrates that significant amount of construction works were carried out at the site on or before 07/11/2017. This

		match up with the timeline of the planning permission and other submitted evidence.
Tenancy Agreement	03/10/2018 – 02/10/2019	The tenancy agreement shows occupation of the site between 2018 and 2019. This shows that all the construction works on site has been completed by 2018.
Council Tax valuation	18/09/2018	Valuation submitted shows that the site has been categorised as Band D since 18/09/2018. This is within one month of the relevant date of 19/08/2018 and supports the application.
Marketing external and internal photographs	October 2018	The photographs shows that the construction works on site was completed in accordance with the submitted existing drawings. The content tabs of the image files confirm the photographs are dated October 2018.
Existing Drawings Drawing Nos: 100-SITE LOCATION PLAN; 100.1-SITE BLOCK PLAN; 101-EXISTING BASEMENT PLAN; 102-EXISTING GROUND FLOOR PLAN; 103-EXISTING FIRST AND SECOND FLOOR PLAN; 110-EXISTING FRONT AND REAR ELEVATIONS; 111-EXISTING EAST AND WEST ELEVATIONS	11/08/2022	These drawings demonstrate the current state of the property on site which the Applicant is seeking to regularise through this Application. The existing property has been further extended and altered and is vastly different from what was approved under permission ref: HGY/2015/0170. Compared with the scheme approved under permission ref: HGY/2015/0170, the existing property: 1. The footprint of the basement has been altered and extended northward by approximately 8m.

		2. The ground floor level of the property is largely identical to what was approved with only minor internal and garden alterations. 3. The size of the first and roof level is <u>similar to</u> what was approved. A front balcony with railings has been added on the first floor as well as minor alterations to windows on east and south elevations. The loft space on the roof level is larger than approved and the rear and side dormer windows have both been enlarged. 4. Low brickwork boundary wall and metal railings have been installed to the front boundary. 5. Solar PV panels have been installed to the east and rear roof slope.
Pre-Existing Drawings Drawing Nos: 14_117_01; 14_117_100; 14_117_102; 14_117_103; 14_117_104; 14_117_105	October 2014	These drawings demonstrate the state of the property on site before any construction works were carried out.

6. SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability that the unauthorised works, including changes to the approved works under planning permission ref: HGY/2015/0170 at High Bank House, 38, Hornsey Lane Gardens, London, N6 5PD has been in place for a period in excess of 4 years and has become immune from enforcement action and is thereby lawful.

7. RECOMMENDATION

GRANT CERTIFICATE

Registered No. HGY/2022/2656