

# Officer's Report

|                           |                                                                                         |
|---------------------------|-----------------------------------------------------------------------------------------|
| <b>Application Number</b> | <b>HGY/2022/4223</b>                                                                    |
| <b>Type</b>               | <b>Lawful development: Existing use</b>                                                 |
| <b>Location</b>           | 10 Woodstock Road, Hornsey, London, N4 3EX                                              |
| <b>Proposal</b>           | Certificate of lawfulness for the existing use of property as 3 x self contained flats. |
| <b>Case Officer</b>       | Sarah Madondo                                                                           |
| <b>Valid Date</b>         | 12/01/2023                                                                              |
| <b>Applicant</b>          | MR A ANTONIADES                                                                         |
| <b>Agent</b>              | mr NICK GEORGIOU                                                                        |

## **RECOMMENDATION**

**Approve**

### **REPORT FOR CONSIDERATION UNDER DELEGATED POWERS**

#### **APPLICATION DETAILS**

Proposal: Certificate of lawfulness for the use of 3 self-contained flats

#### **1. RECOMMENDATION**

GRANT CERTIFICATE

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

Certificate of lawfulness for the use of property as 3 x self-contained flats.

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

Planning History

HGY/2015/2231- 10 Woodstock Road N4 Reduce existing 9 bedsits to 2 x one bedroom apartments and 1 x two bedroom apartment. Internal remodelling only. Approve with Conditions

#### **4. RELEVANT ENFORCEMENT HISTORY**

Planning Enforcement History

Notice Reference A-6024 10, Woodstock Road, London, N4 3EX Enforcement Notice served - Flat Conversion - Notice compliance Date 13/08/2011

Notice Reference A-6204 10, Woodstock Road, London, N4 3EX Enforcement Notice served - Breach of condition -

#### **5. CONSULTATION RESPONSE**

5.1 The following were consulted regarding the application:

State the statutory and internal consultees consulted or state no consultees

The following responses were received :

Internal:

- 1) Building Control - no comments
- 2) Council Tax - We originally split the property into 9 studio flats back in 2012. These were then re-configured into 3 flats w.e.f 15 May 2018.

## **6. LOCAL REPRESENTATIONS**

6.1 The following were consulted:

None

## **7. 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 \*residential use\* has been in place for a period in excess of 4 years and has been in continuous use 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

### **INFORMATION SUBMITTED**

Flat 1, 10 Woodstock Road N4

1. Deposit Protection Certificate dated from 26th June 2018 to 26th Jan 2022.

Due to data protection act not able to verify the information.

Information submitted indicates that the rent was protected from 2018 to 2023 which shows that the property has been occupied by tenants during those periods and reflects 4 years.

2. Tenancy Agreement dated from 26th June to 25 March 2022.

Emailed Council Tax department on the 13/01/2023.

The Council Tax department have confirmed that the property was originally split into 9 studio flats back in 2012. Then the property was re-configured into 3 flats on 15th May 2018. This confirms that the property has been split into 3 self-contained flats for a period of 4 years.

Flat 2, 10 Woodstock Road N4

3. Deposit Protection Certificate dated from 26th June 2018 to 26th Jan 2022.

Due to data protection act not able to verify the information.

Information submitted indicates that the rent was protected from 2018 to 2023 which shows that the property has been occupied by tenants during those periods and reflects 4 years.

4. Tenancy Agreement dated from 26th June to 25 March 2022.

Emailed Council Tax department on the 13/01/2023.

The Council Tax department have confirmed that the property was originally split into 9 studio flats back in 2012. Then the property was re-configured into 3 flats on 15th May 2018. This confirms that the property has been split into 3 self-contained flats for a period of 4 years.

Flat 3, 10 Woodstock Road N4

5. My deposit Certificate dated from 29th June 2019 to 12 August 2023.

Due to data protection act not able to verify information.

Although the my deposit certificate do not show the 4 years, it is considered that on balance of probability the applicant has demonstrated that the property was tenanted as applicant has provided tenancy agreement reflecting 4 years.

6. Tenancy Agreement dated from 29th June 2018 t 21st August 2022.

Emailed Council Tax department on the 13/01/2023.

The Council Tax department have confirmed that the property was originally split into 9 studio flats back in 2012. Then the property was re-configured into 3 flats on 15th May 2018. This confirms that the property has been split into 3 self-contained flats for a period of 4 years.

7. PropertyNet Management fee Invoice dated 2nd August 2018, 14th July 2022.

Called the property management company 30th January 2023.

A management fee invoice for Flat1, 2and 3, indicates that the property was managed by a property management company from 2018 until 2022 which indicates that the property had been split into flats for 4 years.

8. Barclays Bank Statement.

Due to data protection act not able to verify the information provided.

The bank statement shows rental transactions for Flat 1, 2 & 3 since 2018 until 10/01/2023. Although not able to verify this statement, the statement looks genuine and indicates that rental payments have made into the applicants accounts since 2018. Also, the rental payments correspondence with the rent amount on the tenancy agreement. Therefore, officer's consider that this demonstrates that property has been used as 3 flats for 4 years.

9. John Davids Estate Agents management fee invoice dated 26th June 2018.

This indicates that the property had been split into flats and managed by a management company for 4 years.

#### 10. Statutory Declaration.

The document this was sworn before Commissioner of Oaths which is a legal declaration which states that the property was split into flats since 2017.

#### **Further Information**

Building Control Completion Certificate dated 15th May 2018: The Building Regulation Certificate shows that were for the conversion of property into 3 flats at 4 years ago.

#### **9. SUMMARY AND CONCLUSION**

There is corroborative evidence submitted that suggest that the 10 Woodstock Road N4 has been used as two separate self-contained flats for more than 4 years and has become immune from enforcement action and is therefore lawful.

#### **10. RECOMMENDATION**

GRANT CERTIFICATE