

Officer's Report

Application Number	HGY/2022/4532
Type	Lawful development: Existing use
Location	2 Coniston Road, Tottenham, London, N17 0EX
Proposal	Certificate of Lawfulness for the existing use of a storage container on the land and its use for storage purposes.
Case Officer	Daniel Kwasi
Valid Date	23/12/2022
Applicant	Priority Home Ltd
Agent	Giuseppe Nicastro

RECOMMENDATION

Approve

RECOMMENDATION

GRANT CERTIFICATE

PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application is for a certificate of lawfulness for the existing use of a storage container on the land at the rear garden and its use for storage purposes.

The subject site is a two storey end-of terrace dwellinghouse with a rear garden on the corner of Coniston Road and Grange Road. The storage container is in the northwest corner of the rear garden. In regard to the surrounding area, west of the site is residential and east of the site is industrial/commercial. The Tottenham Hotspur Football stadium is to the southwest via Grange Road and Northumberland Park.

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2021/2661 – Certificate of lawfulness for the existing use of 5 self-contained flats and 2 non-self contained units – Approved with conditions on 21/10/2021

HGY/2014/2234 – Certificate of lawfulness for use of property as HMO (house in multiple occupation) – Withdrawn

HGY/2009/0586 – Erection of two storey side extension, single storey rear extension, erection of rear dormer window and insertion of 2 x velux windows to front roofslope – Refused on 27/05/2009

CONSULTATION RESPONSE

No one was consulted regarding the application.

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.

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 ten 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 ten 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 the planning merits are not relevant to this submission. Rather the applicant seeks to prove by the submission of evidence that the metal container has been in place as a container and used for storage purposes for continuous use for a period in excess of 10 years and is therefore immune from enforcement action.

Section 191 of the Act indicates that the burden of proof lies with the applicant, but the relevant test is 'the balance of probability'. Local Planning Authorities (LPAs) are advised that unless the applicant's evidence is imprecise or ambiguous, or the LPA has evidence of its own which contradicts or undermines the applicant's version of events), a certificate should be issued.

The applicant must prove that the use referred to in the application was lawful for planning purposes on the date of the application. The application form accompanying this application asserts that the use and/or activity of the container for storage purposes commenced on 01-09-2012.

In this case, a Certificate is sought on the grounds that the Container that is in the Existing Site Plan was placed on the land as a container and used for storage purposes and has been in use as storage container for a continuous period of 10 or more years.

Information provided by Applicant

The application is accompanied by the following evidence:

Evidence to Support – submitted with the application

1. Planning Statement

This document is the Statement that sets out to describe the Property, Metal Container at 2 Coniston Road Tottenham London N17 0EX, and to submit evidence to demonstrate that the container located at the Property and its use or storage purposes has been so for a continuous period in excess of ten years without it being in breach of any enforcement notice or the object of abandonment or other use in the interim.

2. Appendix A - Statutory Declaration of Mr Varsani

This document that was sworn before POSADA & CO Solicitors and Notaries, which is a legal declaration, states that the line 37 of the Ledger Summary on page 6 shows the supply from Unit in the sum of £950 plus VAT of £166.25 in total amounting £1,116.25.

3. Appendix B - Statutory Declaration of Mr Jupp

This document that was sworn before NEEDHAM POULIER Solicitors Ltd, which is a legal declaration, states that the occupant of Flat F, 2 Coniston, has been living there continuously since

16th August 2012 and that they have had an unobstructed view of the Container through their kitchen window since the first day they moved in. It also states that they have an unobstructed view of the Container when doors are open and that they can see a rack to one side for placing building items, and machinery such as Kangos, compressors, transformers, concrete mixers and others on the floor of the Container. It also states that bricks, blocks and concrete slabs were deposited on the garden area surrounding the Container. It also states that a skip was very often present in the area in front of the Container, and that it would stay there for months on end and then disappear to be replaced with a different skip.

4. Appendix C - AST to Mr Jupp

The document is tenancy agreement between the Landlord and Tenant of Flat F, 2 Coniston Road dated 16th August 2012 that was signed by the Landlord and Tenant on 16th August 2012 at 11:55.

5. Appendix D - Deeds to 2 Coniston Road

The document is the Title Register that states that the Freehold land shown edged with red on the plan of the Title filed at the Registry and being 2 Coniston Road, London (N17 0EX), and that the Registered Owners, Sean Doherty and Sheila Doherty, have been so since 11/04/2008.

6. Appendix E - Statutory Declaration of Mr Doherty

This document that was sworn before NEEDHAM POULIER Solicitors Ltd, which is a legal declaration, states that they have been joint owner of the house and garden land since March 2008. It also states that there are copies of their VAT statement for the purchase of the Container, a letter from Barclays bank confirming the payment for the Container. It also states that the Container was put into immediate use for the storage of tools and material used for my company's buildings works. It also states that a skip is hired and placed in front of the Container in which building materials are thrown in for disposal. It also states that on a daily basis, any number of Company's sub-contractors go to the Property to collect from or deliver to the Container or the immediately adjoining open ground any of the aforementioned items, and that this has been done continuously and openly for a period of in excess of ten years.

7. Appendix F - Assets Register

This document is an Assets Register that states that the item, Container, that was supplied by Unit Hire Ltd, was registered on 23/07/2008 and detailed as £950 + VAT equalling £1,116 'with metal shroud welded on'.

8. Appendix G - VAT Statement dated 30 September 2008

This document is a VAT Statement by S Doherty Ltd detailing the cost of the Unit Hire Ltd at £1,116.25 on 25/07/2008. The balance carried forward on 30/09/2008 was £0.00 after £1,116.25 was paid on 30/09/2008.

9. Appendix H - Copy Letter from Barclays Bank dated 12 August 2022

This document is letter to one of the joint owner of S Doherty Limited from Barclays Bank UK PLC, which states that they confirm that a payment was made to Unit Hire LTD for 1116.25 GBP on 25/07/2008. It also states that the payment was made via Debit Card therefore we are unable to confirm any crediting account details.

10. Appendix I - PINS DL no. 3232214

This document is an Appeal Decision (PINS Ref: APP/U1240/X/19/3232214) that was dismissed on 05 August 2020, for the certificate of lawful existing use or development application ref 3/18/1859/CLE 'Siting of a container and shed to house equipment, tools and materials used for woodland and land maintenance and laying of a crushed concrete area adjacent to the containers'. Overall, the Planning Inspectorate dismissed the appeal stating paragraph 10 that "the Council's refusal in part to grant a certificate of lawful use or development in respect of the container was well-founded and that the appeal should fail" based on the fact that the original application failed the ten years rules under S171B (3). However, they did state in paragraph 8 that "the container is clearly just that. It is an oblong structure with a rigid metal frame and insulated walls of the sort that generally provides a refrigerated storage facility, as the appellant says. He also acknowledges that it was delivered and positioned on the site by specialist equipment and not constructed on the site. It is not attached to the ground by any foundations or any services such as water, drainage or electricity. It could be lifted up and removed from the site by similar specialist equipment".

Google Earth Images – aerial pictures starting from July 2012, of different successive dates to the most recent one of October 2022 – submitted with the application

11. Schedule A - Pic 01 - Google Earth Capture of July 2012

The information submitted shows a Google Street View image of the garden with the red metal container in view from Grange Road dated July 2012. After checking this image via Google Street View, the evidence provided matches.

12. Schedule A - Pic 02 - Google Earth Capture July 2014

The information submitted shows a Google Street View image of the garden with the red metal container in view from Grange Road dated July 2014. After checking this image via Google Street View, the evidence provided matches.

13. Schedule A- Pic 03 - Google Earth Capture April 2016

The information submitted shows a Google Street View image of the garden with the red metal container in view from Grange Road dated April 2016. After checking this image via Google Street View, the evidence provided matches.

14. Schedule A - Pic 04 - Google Earth Capture Mar 2019

The information submitted shows a Google Street View image of the garden with the red metal container in view from Grange Road dated March 2019. After checking this image via Google Street View, the evidence provided matches.

15. Schedule A - Pic 05 - Google Earth Capture Mar 2022

The information submitted shows a Google Street View image of the garden with the red metal container in view from Grange Road dated March 2022. After checking this image via Google Street View, the evidence provided matches.

16. Schedule A - Pic 06 - Google Earth Capture of Oct 2022

The information submitted shows a Google Earth captured image of the garden with the red metal container in view from Grange Road in October 2022. After checking this image via Google Earth image, the evidence provided matches. It also appears to show a skip next to the container.

Other photographic evidence showing the contents of the container and items of building material lately dispersed around the container – submitted with the application

17. Schedule B - Area Adjoining the Container - Pic 02

18. Schedule B - Area adjoining the Container -Pic 01

The information submitted shows two images of the garden area next to the Container having different items laid out on the garden area including blocks, concrete slabs, and bags of sand.

19. Schedule B - Pic of Container Contents 01

20. Schedule B - Pic of Container Contents 02

21. Schedule B - Pic of Container Contents 03

22. Schedule B - Pic of Container Contents 04

The information submitted shows four images of the contents of the Container being viewed because the door has been open. The images show multiple shelves and different building materials.

SUMMARY AND CONCLUSION

There is corroborative evidence submitted that suggest that the Property, Metal Container at 2 Coniston Road Tottenham London N17 0EX, has been in place as a container and in use for storage purposes for 10 years or more and has become immune from enforcement action and is therefore lawful.

RECOMMENDATION

GRANT CERTIFICATE