

Officer's Report

Application Number	HGY/2022/4323
Type	Lawful development: Proposed use
Location	84 Station Road N22 7SY
Proposal	Certificate of Lawfulness: Use of single detached garage to be constructed at the rear of 84 Station Road (granted Ref HGY/2003/0420) by persons other than the occupants of the three flats at 84 Station Road.
Case Officer	Michelle Meskell
Valid Date	27/01/2023
Applicant	Mr Theo Theodosiou
Agent	Theo Theodosiou

RECOMMENDATION

Refuse

PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows.

HGY/2022/2244- Certificate of lawfulness for the confirmation that the approved HGY/2003/0420 (Conversion to form 1 x 2 bed and 2 x 1 bed self contained flats and construction of single garage in rear garden) subsists as works began before April 2008
Decision - Approved 31/10/2022

HGY/2021/1284 - Erection of a detached 1 bedroom, 2 person dwelling house over two floors, including the formation of a basement/lower ground floor level; associated external amenity space, boundary walls, cycle parking and refuse storage - Decision – Refuse 01/7/2021

HGY/2003/0420 - Conversion to form 1 x 2 bed and 2 x 1 bed self contained flats and construction of single garage in rear garden - Decision – Approve 24/4/2003

REPRESENTATIONS

No representations have been received.

RELEVANT PLANNING LEGISLATION

Town and Country Planning Act 1990

Sections 191 and 192 of the 1990 Act provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, 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; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

EVALUATION

This is an application for a certificate of lawfulness to establish if the use of single detached garage which benefits from consent to be constructed at the rear of No 84 Station Road (granted Ref HGY/2003/0420), can be used by persons other than the occupants of the three flats at 84 Station Road.

It is argued in the covering letter that given the absence of a condition in the historic planning consent, regarding who can use the garage and the absence of any detail labelling its use in the approved plans, there is no formal restriction in terms of who can use the garage with it to open to the used by other parties.

While the LPA accept there was no restriction imposed in terms of its use, the structure as consented is within curtilage of this site consented to be divided into 3 flats, within the red line plan. As such while such a structure is not expressly allocated to a specific unit in the building converted, such a structure should be for purpose incidental to the enjoyment to one or more of the units allowed as per the planning consent.

It is pointed out that by virtue of s55(2)(d) of the 1990 Act the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse shall not be taken to involve development on the land.

The use of such a garage by other users, i.e. for commercial purposes, would not be incidental and rather would be a material change of use, by forming another/ separate planning unit on this site, which would be independent from the main building and the 3 flats contained with it. Specifically, the use of such a garage could result in a pattern of activity and intensity of use not conducive to protecting neighbouring amenity.

RECOMMENDATION

Refuse the requested Certificate of Lawfulness under section 191 of Town and Country Planning Act 1990.

Refusal Reasons:

The use of the single detached garage to be constructed at the rear of 84 Station Road (granted Ref HGY/2003/0420) is for a curtilage structure to be used for purposes incidental to the enjoyment of the three flats at 84 Station Road, with its use by persons other than by such occupants constituting development for the purposes of Section 55 of the Town and Country Planning Act 1990, as such meaning planning permission is required and that a lawful certificate cannot be issued.