

Officer's Report

Application Number	HGY/2023/0333
Type	Lawful development: Existing use
Location	245 St Anns Road, Tottenham, London, N15 5RG
Proposal	Certificate of lawfulness for use of site as two self-contained flats
Case Officer	Oskar Gregersen
Valid Date	01/02/2023
Applicant	Acorn Properties Solutions
Agent	

RECOMMENDATION

Refuse

PLANNING & ENFORCEMENT HISTORY

FCV/2020/00632 - Enforcement investigation into the unauthorised conversion of property into two flats. Investigation ongoing.

REPRESENTATIONS

Planning Practice Guidance (PPG) on Lawful Development Certificates, sets out that:

“There is no statutory requirement to consult third parties. It may, however, be reasonable for a Local Planning Authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application.” (Paragraph: 008 Reference ID: 17c-008-2014030).

In this particular case , no representations have been received.

RELEVANT PLANNING LEGISLATION

The application has been made under section 191 of the Town and Country Planning Act 1990 and relevant amendments. This is not a planning application but instead the applicant seeks confirmation that the proposed development is lawful.

Town and Country Planning Act 1990 Section 191 of the Town and Country Planning Act 1990 (as amended by section 10 of the Planning and Compensation Act 1991) states that:

“If any person wishes to ascertain whether any existing use of buildings or other land is lawful ...he may make an application for the purpose to the Local Planning Authority specifying the land and describing the use ... For the purposes of this Act uses ... are lawful at any time if –

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

If, on an application under this section, the Local Planning Authority are provided with information satisfying them of the lawfulness at the time of the application of the use, described in the

application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”

National Planning Practice Guidance (PPG)

National Planning Policy Guidance issued by the Government in relation to Lawful Development Certificates explains the process for obtaining a lawful development certificate for existing or proposed use.

In this case, the Local Planning Authority is requested to grant a certificate confirming that: “(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990” Paragraph 001 Reference ID: 17c-001-20140306.

Paragraph: 009 Reference ID: 17c-009-20140306 of the PPG indicates:

“A Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.”

As such, the impact of the proposed development on the neighbouring amenity or the character of the area cannot be taken into consideration for the purpose of this submission.

Paragraph: 006 Reference ID: 17c-006-20140306 of the PPG indicates:

“The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, 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 on the balance of probability.”

EVALUATION

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.

In this case, a Certificate is sought on the grounds that the building outlined in red on the submitted plan has been in use as two flats/maisonettes for a continuous period of 4 or more years.

Applicant’s Evidence

The application form accompanying this application asserts that:

- the use of 245 St. Ann’s Road as two self-contained flats has been in place since 01/02/2019

The application is accompanied by the following evidence:

- Tenancy agreements submitted show occupancy of Flat A from 01/15 – 07/15 and then 09/22 – Present. The Flat B occupancy shown is for 02/13 – 08/13 and 06/20 – 09/20. These documents

represent significant gaps in occupancy that would not substantiate constant use as two self-contained flats since the required period of 01/02/2019.

- Payment claim information show that payments have been claimed yearly from LBH for both flats since 2017, however this does not substantiate occupancy/use.
- Screenshots submitted of the Government council tax check website suggest that the site has been registered for two separate council tax payments since 2009, however no payment information has been submitted and the LPA reference provided on this page does not match when cross-referenced with the LBH council tax page.
- Energy Performance certificates were submitted from 2015 and 2016 for Flats A and B respectively.

The submitted documentation listed above has some discrepancies in key information that Officers would argue is necessary for an application of this type to be deemed to be lawful.

In particular, the Government council tax site shows that Flats A and B are in Council Tax Band 'B' with an LPA reference of '680301245', however when cross-referenced with the Haringey Council tax page this reference returns an error stating the account doesn't exist. Additionally, the Government council tax page shows a council tax record for 245 St. Ann's Road as a whole that has been cancelled. As no payment information has been submitted for the separate council tax accounts and the reference given doesn't appear to match when searched on the LPA site Officers feel this information cannot be used to support the claim that the site is lawfully being used as two-flats.

The evidence submitted by the applicant, for the reasons stated above, dose **NOT** demonstrate that, on the balance of probability, the use of 245 St Ann's Road as two self-contained flats has been in use for four years before the date of this LDC application.

Officers note that if additional documentation were submitted with regular council tax bills and payments paid for both flats, the use as two self-contained flats would be substantiated and the application could be considered lawful. However with the discrepancies shown in the council tax information, Officers cannot be confident that the site has been in constant use as two self-contained flats since the required date.

RECOMMENDATION

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

From the documentation and evidence provided, the Local Planning Authority is **NOT** satisfied that, on the balance of probabilities, 245 St Ann's Road has been used as two self-contained flats for a continuous period of four years before the date of this application. Therefore, the sought use is considered to be unlawful.