

# Officer's Report

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|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Application Number</b> | <b>HGY/2022/4516</b>                                                                                                                                                                                          |
| <b>Type</b>               | <b>Lawful development: Existing use</b>                                                                                                                                                                       |
| <b>Location</b>           | 13 Cornwall Avenue, Wood Green, London, N22 7DA                                                                                                                                                               |
| <b>Proposal</b>           | Certificate of lawfulness for the existing use of the property as two separate self-contained flats comprising a 1-bedroom ground-floor flat with access to the rear garden and a 1-bedroom first-floor flat. |
| <b>Case Officer</b>       | Sabelle Adjagboni                                                                                                                                                                                             |
| <b>Valid Date</b>         | 22/12/2022                                                                                                                                                                                                    |
| <b>Applicant</b>          | Mr Freddie Osei                                                                                                                                                                                               |
| <b>Agent</b>              | Mr Shiraz Uddin                                                                                                                                                                                               |

## **RECOMMENDATION**

**Approve**

## **PLANNING & ENFORCEMENT HISTORY**

The planning and enforcement history in relation to this site is as follows:

HGY/2022/2216 | Certificate of Lawfulness: Proposed loft conversion with rear dormer | Granted.

HGY/2022/0901 | Erection of single storey extension which extends beyond the rear wall of the original house by 6m, for which the maximum height would be 3.15m and for which the height of the eaves would be 3m | Granted.

## **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).

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 13 Cornwall Avenue as two self-contained flats commenced on 01/04/2017.

The application is accompanied by the following evidence:

- **Plans**

#### Officer comments:

Plans provided show that the ground floor and first floor are two independent, self-contained dwellings. They share the same main entrance but are separated by a door at the bottom of the staircase.

- **Builder's construction invoice for the two flats**

#### Officer comments:

An invoice from Albakos Building Contractors dated 01/06/2015, show billing for various works to be carried out within to the property to make the ground floor and first floor independent. Works include a kitchen, bathroom, bedroom and living room on the first floor, a similar set on the ground floor, and the creation of two separate doorways to each flat. In addition, some electrical and plumbing work are also included.

- **Tenancy agreements**

#### Officer comments:

Such evidence includes two separate sets of tenancy agreements for two different individuals. The first set is for Jay Dube, tenant of the first floor flat, and covers time periods from 27/03/2017 to 26/03/2018, and 27/03/2022 to 26/03/2024.

The second set is for Sylvester Dash, tenant of the ground floor flat, and covers time periods from 27/03/2017 to 26/03/2018, and 27/03/2022 to 26/03/2024.

Although no tenancy agreement for the years 2018 to 2022 were provided, the tenancy agreements provided for 2017-2018 and 2022-2024 suggest that the flats have been in continual occupation by the same people since 2017.

- **Council Tax**

#### Officer comments:

Although no council tax bill was provided, the bank statements and tenancy agreements show that payments of £30 towards council tax were agreed and made by each tenant directly to the landlord in addition to the £700 rent.

Officers have conducted internal checks and can confirm the property has been registered as a single dwelling since C Tax records began in 1993, but has been removed from the C Tax list W.E.F October 2022, presumably because of major works. Officers can also confirm that council tax for the property have been paid and are up to date.

- **Bank Statements**

Officer comments:

The landlord's bank statements provided show that money was paid into his account towards the rent and council tax for flat A and flat B separately for periods covering 2017, 2018 and 2022.

- **Site photographs**

Officer comments:

Recent site photographs showing that the site has not been subject to any external renovations that require planning permission.

- **BT Bill for first floor flat**

Officer comments:

The historic bill from the broadband provider is dated 16/03/2018 and is addressed to the first floor flat tenant.

- **EDF Gas bill**

Officer comments:

The evidence shows a historic 2018 gas bill for the ground floor flat.

- **Gas Safety Certificate by East End Heatings**

Officer comments:

The document dated 04/03/2019 shows that a gas line and central heating safety check was carried out for the first floor flat.

- **Cadent Gas Pipe Installation documents**

Officer comments:

Two documents showing quotes and agreement of schedule for works relating to the addition of a service pipe line and gas meter to the first floor flat. The applicant has stated that this was only done for the first floor flat as the ground floor had the original line. Both documents are dated 03/11/2017.

- **Gas pipe installation photographs**

Officer comments:

Some photographs showing the protected area of the gas pipe installation work are provided. These photographs are not dated, however, the applicant states that they date from 2017, matching the date of the Cadent gas pipe installation documents.

- **Building Control Certificate**

Officer comments:

A certificate from Capital and Counties Building Control Services Ltd, a private inspector, dated 21/03/2015, shows that the completed conversion of the property to two flats was compliant with legal requirements.

- **Homes for Haringey letter**

Officer comments:

A letter dated 20/11/2017 from Homes for Haringey, relating to the ground floor flat, states that the flat is a qualifying accommodation for an assured shorthold tenancy as it is of suitable standard. The applicant explains that the letter was issued to a tenant under Homeless Unit who was offered the ground floor flat following a successful inspection of the flat's condition by Homes for Haringey, however, this tenant decided on a different property. Although the letter was not addressed to any of the current tenants; it does constitute evidence that the property was a flat in 2017.

## **CONCLUSION**

The evidence presented to substantiate the statement of case is considered comprehensive in nature. On the balance of probability therefore it is considered that the evidence submitted by the applicant precisely and unambiguously demonstrates that the use of 13 Cornwall Avenue has been used as two flats for a continuous period of four years before the date of this application.

## **RECOMMENDATION**

Grant 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 satisfied that, on the balance of probabilities the use of 13 Cornwall Avenue 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 lawful.

## **Informatives:**

- **INFORMATIVES:**

This certificate hereby approved is granted in relation to the use of the original property/ original floorspace as 2 self contained flats, and does not pertain to the extensions as allowed under application references HGY/2022/09/01 & HGY/2022/1216. The implementation of such extensions would require planning permission and cannot be implemented under 'permitted development' as this property does not benefit from permitted development rights.

