

Officer's Report

Application Number	HGY/2023/1067
Type	Lawful development: Existing use
Location	5 Montague Road, Hornsey, London, N8 9PJ
Proposal	Certificate of lawfulness for the property's existing single storey rear and infill extensions.
Case Officer	Neil McClellan
Valid Date	18/04/2023
Applicant	Miss Jenny McArdle
Agent	

RECOMMENDATION

Approve

PROPOSED DEVELOPMENT AND LOCATION DETAILS

Proposal

A certificate of lawfulness is sought for the existing single storey rear extensions located to the rear of the property. These comprise a side storey extension with a glazed sloping roof infilling the space between the property's outrigger and side boundary, and a later conservatory style extension with a clear plastic roof located on the end of the outrigger and infill extension.

Site Description

The application property is a three-storey dwelling house located in Montague Road, a cul-de-sac located off Tottenham Lane in Hornsey. The site is not in a conservation area and is not part of, or close to, any listed buildings.

Planning and Enforcement History

There is no planning or enforcement history related to this site.

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.

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 building operations have been in place for a period in excess of 4 years and are 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 building operations referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 18/04/2019.

Information Provided

- Rightmove listing from 2010 showing the extensions in the floor plans and photographs accompanying the listing.
- Statement from the previous owner of the property confirming that the extensions were in place when they purchased the property in 2010.

Assessment

The extension of the property appears to have been carried out in two parts, with the initial infilling of the space between the property's three-storey outrigger and side boundary followed by a rear conservatory style extension to the end of the outrigger. A review of the Rightmove website confirms that the 2010 listing is genuine. The floorplans and photographs accompanying the listing show that the extensions for which the certificate is being applied for were present in 2010. They have therefore been in place for a period well in excess of 4 years and are therefore immune from enforcement action.

SUMMARY AND CONCLUSION

The applicant has demonstrated that on the balance of probability the extensions shown in the submitted details to the rear of the property have been in place for a period of 4 years and have become immune from enforcement action and are therefore lawful.

RECOMMENDATION

GRANT CERTIFICATE