

Officer's Report

Application Number	HGY/2023/0410
Type	Lawful development: Existing use
Location	Garden Flat, 1 Wolseley Road, Hornsey, London, N8 8RR
Proposal	Certificate of Lawfulness to confirm that the provision of private music tuition/lessons within the outbuilding is not a change of use but is ancillary and incidental to the residential use.
Case Officer	Mercy Oruwari
Valid Date	10/02/2023
Applicant	Gokcen
Agent	Mr Conrad Cherniavsky

RECOMMENDATION

Approve

RELEVANT PLANNING AND ENFORCEMENT HISTORY

- ENF/2023/0096 – Breach of HGY/2022/3284 – material change of use to music tuition. Ongoing
- HGY/2022/3284 - Certificate of Lawfulness to confirm the provision of music lessons is ancillary to the (Class C3) residential use of the property. Granted
- HGY/2022/2112 – Approval of details pursuant to condition 5 (Species and Landscape Plan) attached to planning permission ref: HGY/2022/0706. Granted
- COU/2022/00262 – change of use of the outbuilding for commercial use. Case closed – HGY/2022/3284
- HGY/2022/0706 – Proposed outbuilding/garden office including soft landscaping improvements to existing area of soft landscaping and minor increase to fence height on the boundary with No 3 Wolseley Road. Granted
- OLD/1984/1838 – 10/11/83 Conversion into 3 self-contained 2 bedroom flats. Granted

DETAILS OF PROPOSAL

This is an application for a certificate of lawfulness to confirm that following the previous application (confirming that the provision of music lessons is ancillary to the (Class C3) residential use of the property), that music lessons carried out in the rear garden outbuilding would be considered as incidental and ancillary and to the main dwelling due to the limited number/volume of activity.

RELEVANT PLANNING LEGISLATION

Legislative Framework

The application has been made under section 192 of the Town and Country Planning Act 1990 and relevant amendments. In specific Part 1 of Section 192 of the 1990 Act allows any person wishing to ascertain whether:

- (a) a proposed use of buildings or other land;
- (b) or any operations proposed to be carried out in, on, over or under land,

would be lawful, to make an application for the purpose to the Local Planning Authority specifying the land and describing the use or operations in question.

Under Part 2 of Section 192 if the LPA are provided with information satisfying them that the use or operations described would be lawful, they should issue a lawful development certificate to that effect. The Applicant's evidence does not need to be corroborated by independent evidence in order to be accepted by the LPA.

Section 192(3) requires this certificate to detail the specific land to which it relates, describe the use or operations in question, give the reasons for determining the use or operation to be lawful and specify the date of the application on the certificate.

When determining a Certificate of Lawfulness application, it must be borne in mind that planning permission can only be required where development takes place. The meaning of development requiring planning permission is provided in Section 55(1) of the 1990 Act, and comprises two elements:

- a) Operational Development being "the carrying out of building, engineering, mining or other operations in, on, over or under land" or
- b) "the making of any material change in the use of any buildings or other land."

No operational development is proposed as part of this certificate. In relation to the use of the outbuilding located in the rear garden for the provision of music lessons, subject of this application, such merits are discussed below.

This application is therefore not a planning application but instead the applicant seeks confirmation that the proposed use is lawful by way of a certificate of lawfulness application. Planning consideration in terms of impact on neighbouring amenities or the character of the area cannot be taken into consideration for this submission, nor can personal or restrictive covenants applying to a building/ land be taken into account. The granting of a such a certificate does not override any such restriction.

In determining this application it is highlighted that we are reminded in Paragraph 78 of Government Circular 03/2005: 'Changes of Use of Buildings and Land - The Town & Country Planning (Use Classes) Order 1987', that it advised that a fact and degree approach is needed in determining when the carrying on of business activities in a dwelling house requires planning permission, and that planning permission for working at home is not usually needed where the use of part of a dwelling house for business purposes does not change the overall character of its use as a residence.

It should also be pointed out that music tuition and other forms of tuition are often associated with lessons offered at a private home by a tutor/ instructor, i.e. on a one to one basis. As the purpose of the outbuilding was certified as incidental to the enjoyment of the dwelling house in application HGY/2022/0706, the music lessons being carried out in this building would also be permitted.

ASSESSMENT

The main question to be determined is therefore whether planning permission is needed for the use of the outbuilding for private music tuition. Underlying this is the question of whether the overall character of the use of the application property/outbuilding as a residence has changed.

The main property is in lawful use as three individual flats and got consent to be divided into flats in 1984 under planning permission ref: OLD/1984/1838. The habitable accommodation of the host flat is located on the ground floor of the property, which has access to the rear garden where the

recently approved outbuilding is located. Although it was stated in the previous application HGY/2022/3284 that 'Private music tuition would take place within the main part of the flat and not in the outbuilding', this application is to confirm that the outbuilding is indeed incidental to the dwelling and therefore tuition can also be carried out within this space.

The activity of providing private music tuition /activity from this flat in conjunction with its use as a private dwelling was outlined in the previously approved HGY/2022/3284 by the Applicant. The points outlined in relation to the tuition was that it would be:

8 hours a week teaching, with minor variations depending on time of year (at no point more than 10 hours a week), but an average of 8 hours a week over the year, between the hours of Monday – Friday 8am – 7pm, Saturdays 2pm – 5pm, not at all on Sundays and Bank Holidays.

No more than 4 hours of teaching in any one day.

No more than 2 pupils attending the property at any one time.

A requirement by the applicant to keep a log (Date/Time/Name of student) of all tuition from home, which can be inspected by the Council should complaints be received of any tuition occurring outside of the scope agreed.

As per the information provided, in terms of the teaching hours identified, it is noted these are to be limited to a maximum of 10 hours a week. It is accepted that such a use will generate some activity of people going to and from the property/outbuilding. However, pupils would arrive singly or in twos, and such comings and goings would not be significant in terms of the general activity found in such an urban area and on a busy road. The music tuition would not be carried out at unreasonable hours.

Application HGY/2022/3284 confirmed that the ground floor flat would still remain in use as a private residence. As the outbuilding has been confirmed in application HGY/2022/0706 as being used for purposes incidental to the main flat the music tuition within the limits set out above would also be permitted in this space.

CONCLUSION

The use of this premises including the outbuilding to provide music tuition would not constitute "development" as defined under Section 55 of The Town and Country Planning Act 1990 (as amended). Therefore, this lawful development certificate can be issued.

RECOMMENDATION

Grant Certificate

In pursuance of their powers under the above Acts and Order the London Borough of Haringey as local planning Authority hereby CERTIFY that the above proposal described by the applicant constitutes PERMITTED DEVELOPMENT and is therefore LAWFUL.