

Officer's Report

Application Number	HGY/2023/0380
Type	Lawful development: Existing use
Location	38 Eade Road, Tottenham, London, N4 1DH
Proposal	Certificate of Lawfulness for the existing use of the property as six self-contained flats
Case Officer	Laina Levassor
Valid Date	24/03/2023
Applicant	ms E Poulaki
Agent	michael david

RECOMMENDATION

Approve

PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows:

UCU/2008/01017 – Unauthorised change of use to HMO – no evidence of breach, closed

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

Town and Country Planning Act 1990

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.

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 6 flats for a continuous period of 4 or more years.

Applicant's evidence

The application form states that the alleged use commenced more than 4 years before the date of application, beginning 01/11/2006.

Floor Plan (Drawing Number: 79/22) shows that GF contains:

Flat 1 - A 1 bedroom unit with combined living/kitchen area and bathroom, located to the front

Flat 2 - A 1 bedroom unit with combined living/kitchen area and bathroom, located to the rear

FF contains:

Flat 3 - A 1 bedroom unit with combined living/kitchen area and bathroom, located to the front

Flat 4 - A studio unit, located centrally

Flat 5 - A 1 bedroom unit with combined living/kitchen area and bathroom, located to the front

SF (loft floor):

Flat 6 - A 1 bedroom unit with combined living/kitchen area and bathroom

Tenancy Agreements:

Flat 1 - June 2022 to June 2023

Flat 1 - June 2021 to June 2022

Flat 1 - June 2020 to June 2021

Flat 1 - June 2019 to June 2020

Flat 1 - February 2018 to February 2019

Flat 2 - July 2021 to July 2022

Flat 2 - June 2020 to June 2021

Flat 2 - June 2019 to June 2020

Flat 2 - May 2018 to May 2019

Flat 3 - June 2022 to June 2023

Flat 3 - June 2021 to June 2022

Flat 3 - June 2019 to June 2020

Flat 3 - June 2018 to June 2019

Flat 4- March 2023 to March 2023

Flat 4 - March 2021 to March 2022

Flat 4 - March 2020 to March 2021

Flat 4 - March 2019 to March 2020

Flat 4 - March 2019 to March 2019

Flat 5 - June 2022 to June 2023

Flat 5 - February 2022 to July 2022

Flat 5 - February 2021 to February 2022

Flat 5 - February 2020 to February 2021

Flat 5 - February 2019 to February 2020

Flat 5 - February 2018 to February 2019

Flat 6 - January 2022 to January 2023

Flat 6 - July 2021 to January 2022

Flat 6 - January 2020 to June 2020
Flat 6 - January 2019 to January 2020
Flat 6 - January 2018 to January 2019

Statutory Declaration made by owner stating property was converted to six self-contained units over four years ago, signed and witnessed 30 January 2023.

Utility bills dating to 2014.

CT registered with effect from 03 November 2006.

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 38 Eade Road has been used as six self-contained 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 38 Eade Road has been used as six 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.