

Officer's Report

Application Number	HGY/2023/1090
Type	Lawful development: Existing use
Location	19 Fairbourne Road, Tottenham, London, N17 6TP
Proposal	Use of the ground floor as 2 flats; Ground floor front and ground floor rear
Case Officer	Laina Levassor
Valid Date	20/04/2023
Applicant	Mr Adler
Agent	Mr Sruli Lieberman

RECOMMENDATION

Approve

SITE DESCRIPTION

The application site is a two storey building located on the western side of Fairbourne Road. The site is not located within any Conservation Area. It does not fall within the curtilage of any listed buildings.

The property falls within an area covered by an Article 4 Direction for Houses in Multiple Occupation which removes permitted development rights for the change of use of C3 dwellings to Houses in Multiple Occupation, requiring planning permission for this form of development.

The property falls within Haringey's 'Family Housing Protection Zone' which seeks to maintain larger family homes to meet housing needs. Policy DM16 of the Development Management DPD states that residential conversions will be permitted where compliant with relevant policies of the plan.

This application for a Certificate of Lawfulness for the existing use of ground floor levels as self-contained flats, referred to as 19A & 19B.

RELEVANT PLANNING & ENFORCEMENT HISTORY

HGY/2022/1626

Certificate of Lawfulness for the existing use as 2 self-contained units
Refused

OLD/1980/0311 | 19 Fairbourne Road N17

21/10/80 Conversion into two flats.

Grant permission

OLD/1977/0282 | 19 Fairbourne Road N17

14/6/77 Erection of balcony & staircase at rear to provide access to garden & fire escape.

Grant permission

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 for a continuous period of 4 or more years.

This assessment takes into consideration evidence provided as part of a previous application, in addition to new evidence as detailed below:

(PREVIOUS APPLICATION EVIDENCE)

The evidence provided upon submission of this application and officer assessment is as follows:

Application Form

The application form states that the use of the ground floor as two flats (known as ground floor front and ground floor rear) commenced 03 September 2009.

Submitted Drawings

FRH.19.EX.01: Plans provided do not include any annotations for rooms included - GF Front appears to show a combined kitchen/living space with separate bedroom with en-suite shower room. GF Rear appears to show a combined living/sleeping area with offshoot kitchen and shower room.

Tenancy Agreements

19a: December 2014 to June 2015 – not within relevant period

19a: August 2019 to August 2020

19a: January 2022 to January 2024

19b: August 2016 to August 2019 – agreement is made with a property company, this does not confirm the property was occupied

19b: May 2021 to November 2021

Council Tax

VOA records show that the units are registered with effect from 04/09/2009.

Other Documents

Statutory Declaration: Signed 13 April 2022 by 'director of Cornbrook Estates LTD' declares: Both flats have been let continuously since at least 2015, Flat A was occupied between December 2014 to January 2022, Flat B was occupied between August 2016 to March 2021.

Certificate of Insurance covering GF studios for July 2016 to July 2017, July 2017 to July 2018, July 2018 to July 2019, July 2020 to July 2021, July 2021 to July 2022 – shows that flats were occupied on the date of issue (21 June 2016 / 06 June 2017 / 11 June 2018 / 20 July 2020 / 20 July 2021) however does not attest to continuous occupation throughout the relevant period.

19A: Bank statements dated December 2014 to May 2019 showing monthly amount deposited into account in name of tenant shown on tenancy agreement.

19A: Bank statements dated September 2019 to September 2021 showing monthly amount deposited into account in name of tenant shown on tenancy agreement.

19A: Bank statements dated February 2022, March 2022, April 2022 showing monthly amount deposited into account in name of tenant shown on tenancy agreement. These support occupation for this period but the LPA has no way to determine the authenticity of these statements and as such these will be considered as supporting evidence which holds limited weight.

19B: Bank statements August 2016 to February 2021 showing monthly amount deposited into account in name of tenant shown on tenancy agreement. These support occupation for this period but the LPA has no way to determine the authenticity of these statements and as such these will be considered as supporting evidence which holds limited weight.

Council tax bill addressed to Ground Floor Front, with name of tenant as shown on tenancy agreement, covering period April 21 to September 21.

Email correspondence between tenant and neighbour dated September 2021 in regard to notice served to move out. Confirms tenant moved out of the GF Front Flat on 11/09/2021, as per instructions to allow for building works.

Invoice for repair works dated November 2021 which include repairing of walls and ceilings, replacement of windows, replacement of kitchen appliances, replacement of doors and flooring – works which are likely to have taken place whilst property was unoccupied (based on information revealed in email above).

19B: Invoice dated March 2021 for works including fitting kitchen units and general repairs/decoration – does not attest to occupation

19B: Invoice dated April 2021 for replacement of windows, remodeling of bathroom and general repairs/decoration – does not attest to occupation

Electrical installation condition report dated December 2021 – does not attest to occupation.

Letter addressed to tenant of 19b dated 20 January 2022

19A - Periods of Occupation covered within the relevant four year period (June 2018 to Present):

December 2014 to May 2019 (tenancy agreement)

August 2019 to August 2020 (tenancy agreement)

September 2019 to September 2021 (bank statement)

January 2022 to Present (bank statement)

Periods unaccounted for:

May to August 2019

September 2021 to January 2022

19B - Periods of Occupation covered within the relevant four year period (June 2018 to Present):

April 2021 to September 2021 (council tax bill)

May 2021 to November 2021 (tenancy agreement)

Periods unaccounted for:

June 2018 to April 2021

November 2021 to Present

Agency tenancy agreements dated August 2016 to February 2021 do not show occupation of the property – just that an amount was being paid for the property.

ADDITIONAL EVIDENCE

In addition to evidence assessed as part of the previous submission, the below was provided.

19A Fairbourne Road (Front):

Tenancy Agreements:

December 2014 to June 2015

Bank statements reveal periodic payments were made by listed tenants up to May 2019.

August 2019 to August 2020

Bank statements reveal periodic payments were made by listed tenants up to September 2021 - this corresponds with an email from tenant confirming leave date.

January 2022 to January 2024

Bank statements reveal periodic payments were made by listed tenants up to April 2022.

19b Fairbourne Road (Rear)

Tenancy Agreements:

May 2021 to November 2021

Bank statements reveal periodic payments were made matching rental amount on agreement up to March 2022.

August 2016 to August 2019

Bank statements reveal periodic payments were made matching rental amount on agreement up to February 2021

Invoices show that in 2021 works were undertaken to both units where there would have been an interruption to tenancies, It is considered that the period between works and re-occupation is reasonable therefore not interrupting the use.

It is considered the additional evidences fill gaps raised in assessment of the previous application and support other documents provided.

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 as two flats has been 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.