

Officer's Report

Application Number	HGY/2023/1069
Type	Lawful development: Existing use
Location	441 West Green Road, Tottenham, London, N15 3PL
Proposal	Certificate of Lawfulness for the existing use of the basement as a self-contained flat.
Case Officer	Kwaku Bossman-Gyamera
Valid Date	18/04/2023
Applicant	Mr Raymond Lam
Agent	

RECOMMENDATION

Refuse

PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows.

- HGY/2021/0657 Approved 26/04/2021 Retention of existing studio flat. Proposed ground floor rear extension to existing studio flat.
- HGY/2021/0656 Approved 27/04/2021 Loft extension to existing 1st Floor self-contained Flat, incorporating a dormer onto rear main roof slope and outrigger dormer to provide a larger family size flat.
- HGY/2007/1877 06/11/2007 Change of use from a Youth Club to Day Nursery (D1)

There is no planning enforcement history in relation to this site.

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 counterevidence.

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 the basement as self-contained studio flat commenced in 2019.

The application is accompanied by the following evidence:

- Council Tax bills dated March 2023(Officer comments:)

The Local Planning Authority has checked the council's own council tax records and can confirm that basement has been placed on council tax records since 2020 for use as residential and as such short of the 4 years continuous use requirement. The legislation makes it very clear that the onus is upon the applicant to supply such evidence to substantiate the granting of a certificate of Lawful Use. In this case the applicant has failed to provide the evidence to substantiate their case.

The Local Planning Authority consider that the application is not supported by conclusive documentary evidence with respect to the use described and within the requirements of Section 171 B the Act Lawful Development status cannot be granted.

The evidence submitted by the applicant is not sufficiently precise and ambiguous in nature to demonstrate that, on the balance of probability, the use of basement as a studio flat has been in use for four years before the date of this LDC application.

RECOMMENDATION

Refuse the requested Certificate of Lawfulness under section 191 of Town and Country Planning Act 1990.

Refusal Reasons:

From the documentation and evidence provided, the Local Planning Authority is not satisfied that, on the balance of probabilities, the basement at 441 West Green Road, has been used as a self-contained residential flat for a continuous period of four years before the date of this application. Therefore, the sought use is considered to be unlawful.