

# Officer's Report

|                           |                                                                                                                             |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| <b>Application Number</b> | <b>HGY/2023/1091</b>                                                                                                        |
| <b>Type</b>               | <b>Lawful development: Existing use</b>                                                                                     |
| <b>Location</b>           | 30 Willingdon Road, Wood Green, London, N22 6SB                                                                             |
| <b>Proposal</b>           | Certificate of lawfulness for the existing use of the property as a small scale HMO for up to six occupants (C4 Use Class). |
| <b>Case Officer</b>       | Sarah Madondo                                                                                                               |
| <b>Valid Date</b>         | 20/04/2023                                                                                                                  |
| <b>Applicant</b>          | Mr Kamal Uddin                                                                                                              |
| <b>Agent</b>              | Mr Paul Samson                                                                                                              |

## **RECOMMENDATION**

### **Refuse**

#### **PLANNING & ENFORCEMENT HISTORY**

The relevant planning history is as follows:

#### **30 Willingdon Road**

HGY/2021/3116 - Retrospective planning application for proposed HMO. Application not proceeded with 15/11/2021.

HGY/2021/0555 - Certificate of lawfulness for the existing use of property as an HMO. Withdrawn 12/2/2021.

HGY/2015/3462 - Application for prior approval for the erection of a single storey extension which extends beyond the rear wall of the original house by 6m, with maximum height of 3.3m and an eaves height of 3m. Prior approval refused 24/11/2015.

HGY/2015/3339 - Certificate of lawfulness for construction of single storey side extension to rear. Refused 10/11/2015.

HGY/2015/2244 - Certificate of lawfulness for two rear dormer extensions and 2 roof lights to front roof slope. Approved (permitted development) 25/9/2015.

HGY/2015/1189 - Planning application for the conversion of the property into two self-contained flats. Refused 24/04/2015.

#### **28 and 30 Willingdon Road**

HGY/2019/0169 - Conversion of two dwelling houses into 4 separate self-contained flats. Refused 07/01/2019.

#### **Enforcement cases relating to 30 Willingdon Road:**

ENF/2023/0080 - Enforcement Notice served 22/3/2016 against the unauthorised use of the property as an C4 House in Multiple Occupation. Appeal lodged.

HMO/2020/00686 - Investigation into unauthorised use of the property as a large scale HMO (sui-generis use). Notice served and part complied with. This case was closed and superseded by the the investigation above (Ref: ENF/2023/0080).

## **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 a small scale HMO (C4 Use) for a period of 10 years.

### Applicant’s evidence

The application form accompanying this application asserts that:

- The use of 30 Willingdon Road N22 as HMO(Home for Multiple Occupation) commenced on 20/12/2015.

The application is accompanied by the following evidence:

- Tenancy agreements *(Officer comments: Such evidence covers from period 31st August 2014 to 31st of August 2023 which is a period of 9 years. The applicant has stated that property has been in use as HMO for more than 10 years but this is not quite reflected in the tenancy agreements submitted, as these only demonstrate 9 years of use. In addition, the email correspondence from Haringey Council Museum Service indicates that in 2013-2015 there was only 1 person registered to vote at this property and the name of that tenant does not match with any of the names on tenancy agreement submitted for the period of 1st September 2013 to 31st August 2014. The applicant has indicated on the copy of the tenancy agreement that 4 tenants were living at this property, however this information contradicts with the information held on the voters register for the period of 2013-2014. This raises doubt as to whether the property was indeed an HMO at that time. Given the lack of overall evidence, together with incontinences in was has been submitted, the submitted tenancy agreements do not demonstrate the ten years of use an HMO required.*

- Council Tax bills (Officer comments: The applicant submitted an email correspondence from the Council Tax department dated 15th June 2021 which states that from 16th December 2007 to 28th June 2016, 28th July 2017 to 12th August 2018 and 14 February 2021, the applicant was liable to pay council tax. Council Tax does not differentiate between C4 HMO and use of the property as a single dwelling (C3). In order for this evidence to be useful it would need to show the names of tenants paying Council Tax for the indicated period. The submitted records do not show with the applicant indicate as the sole payer of Council tax for much of the ten year period. This evidence therefore does not indicate ten years use a C4 HMO.

- Electoral Register (Officer comments: The applicant has submitted emails from electoral register as evidence, however upon examining this evidence, it is clear that from the period 2016 to 2019 no one was registered to vote at this property and coupled with the fact that the council tax enquiry response revealed that from the period of 16th December to 28 June 2016, the property was void as result the applicant was liable for council tax raises some doubt as to whether the property was tenanted during these periods. In addition the email confirmation from electoral register shows that from the period of 2013 to 2014 only one tenant was registered to vote, however the name of this particular tenant does not appear on the tenancy agreement for the period from 1st September 2013 to 31 August 2014. This brings into question the accuracy of the evidence submitted.

Overall, it is considered that the evidence submitted by the applicant is inconsistent and fails to demonstrate that on the balance of probability that the property changed to a HMO on or before 20th December 2015 and that the use then continued without significant interruption for 10 years after the date of the change.

## **RECOMMENDATION**

Refuse 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 not satisfied that, on the balance of probabilities, the use at 30 Willingdon Road N22, has been used as an HMO for a continuous period of ten years before the date of this application. Therefore, the sought use is considered to be unlawful for the reason(s) set out below.

### **Refusal Reasons:**

The applicant has not produced clear, precise and unambiguous evidence to support their claim that the application site has been in continuous use as a C4 House in Multiple Occupation for a continuous period of ten years preceding the date of the application.