

Officer's Report

Application Number	HGY/2023/0947
Type	Lawful development: Existing use
Location	10D Overbury Road, Tottenham, London, N15 6RH
Proposal	Certificate of lawfulness for the existing 10 year use of a large Sui Generis HMO
Case Officer	Mercy Oruwari
Valid Date	03/04/2023
Applicant	Provewell
Agent	Reina England

RECOMMENDATION

Approve

RECOMMENDATION

GRANT CERTIFICATE

PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application is for a certificate of lawfulness for the existing use of Unit D as a large HMO (Use Class Sui Generis).

The subject site is a building comprising of 6 private bedrooms, a shared kitchen/diner and 2 bathrooms. The surrounding area comprises light industrial/creative industries and commercial uses to the north and west and warehouse living units to the south and east. The site is not located within any conservation area and does not fall within the curtilage of a listed building.

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2013/0765 – Certificate of Lawfulness for four self-contained residential units – Refused on 13/6/2013

CONSULTATION RESPONSE

No one was consulted regarding the application.

RELEVANT LEGISLATION AND GUIDANCE

The application has been made under section 191 of the Town and Country Planning Act 1990 (as amended). Section 191 of the 1990 Act provides for anyone to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

By virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful" if the time for taking enforcement action in

respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.

By virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), a failure to comply with any condition or limitation subject to which planning permission has been granted is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.

Development or other activity on land is lawful for planning purposes if it is within one of the following categories and does not involve a failure to comply with a condition or limitation subject to which planning permission has been granted:

- (1) it is not within the definition of "development" in section 55(1) and (1A) of the 1990 Act. (This might be because it is so insignificant that it can be disregarded (a "de minimis" operation, use or activity); or because it involves a change of use which is not, as a matter of fact and degree, materially different, for planning purposes, from a previous lawful use of land.); or
- (2) it is specifically excluded from the definition of development by section 55(2) (for example, a use of land for the purpose of "agriculture"); or
- (3) it is within the definition of "development" in section 55, but is exempted from the need for planning permission by the provisions of section 57; or
- (4) it benefits from an extant grant of planning permission under Part III of the 1990 Act (or the equivalent Parts of preceding Acts); or
- (5) it benefits from a general planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418), or by a simplified planning zone or enterprise zone scheme; or
- (6) it benefits from deemed planning permission, whether under section 90 or by virtue of compliance with the requirements of an effective enforcement notice; or
- (7) it took place before 1 July 1948 (the "appointed day" Country Planning Act 1947); or
- (8) it is development by or on behalf of the Crown; or
- (9) the time for taking enforcement action has expired.

"Taking enforcement action" is defined in section 171A of the 1990 Act. It is the issue of an enforcement notice or the service of a breach of condition notice. The section also defines a "breach of planning control" (against which it is possible to take enforcement action) as the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.

Section 171B of the 1990 Act specifies the time-limits for taking enforcement action which are as follows:

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of ten years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- (4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or taking further enforcement action in respect of any breach of planning control if, during the period of ten years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

ANALYSIS/ASSESSMENT OF THE APPLICATION

This is not a planning application and the planning merits are not relevant to this submission. Rather the applicant seeks to prove by the submission of evidence that unit D has been in use as large Sui Generis HMO for a continuous period in excess of 10 years and is therefore immune from enforcement action.

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.

The applicant must prove that the use referred to in the application was lawful for planning purposes on the date of the application. The application form accompanying this application asserts that the use and/or activity of Unit D, 10 Overbury Road, London, N15 6RH for use as a large HMO commenced on 03-04-2013.

In this case, a Certificate is sought on the grounds that an existing building at Unit D, 10 Overbury Road, London, N15 6RH has been in use as a large HMO for a continuous period of 10 or more years.

Information provided by Applicant

The application is accompanied by the following evidence:

Evidence to Support – submitted with the application

1. Statutory Declarations – Appendix A - The timeframe is from 2012 to the present.

This document is a Statutory declaration signed by Shulem Aksler confirming the large HMO in Flat D (Unit D) has been used by the leaseholders since 2011.

2. AST Agreements – Appendix A – The timeframes are from 03/06/2011 to 03/06/2013 and 01/11/2015 to 30/09/2019.

These document shows the 2no. Assured Shorthold Tenancy (AST) Agreements for the leaseholders, Damien C Pajak and Damien Bertoncello. The first agreement was agreed for the term between 03/06/2011 to 30/06/2013 (24 months), although the signature is not available. The second agreement was agreed for the term between 01/10/2015 to 30/09/2019. The signatures were dated 09/10/2015 and 10/10/2015.

3. Bank Statements – Appendix A – The timeframe is from 2012 to the beginning of 2022

This document shows continuous rental payments from the leaseholders listed in the AST demonstrating continuous occupation for over 10 years. These transactions were with NatWest Bank. The payments were made into the bank account of the Landlord, Provewell Limited. The payments shown are dated from 07/02/2012 to 19/12/2022. There is a gap between 12/12/2012 to 10/07/2013.

4. Council Tax – Appendix B – The timeframe detailed in the email dates back from 1 April 2009

The document is an Email dated 16/12/2022 from the Haringey Council Tax team confirming uninterrupted liability to council tax since from 01/10/2009. This was also reconfirmed by another officer from the Council Tax team in Haringey.

5. Utility – Appendix C

The document is a Gas safety reports Flat D, 10 Overbury Road confirming it's an independent flat in continuous residential use. The timeframe is from 22/02/2013 to the present.

6. Certificate of Insurance – Appendix D – The timeframe is from 22/03/2012 to 21/03/2023

This document shows the Certificates of Insurance confirming continuous large HMO use at Flat A..

7. Floor plans – Appendix E – The timeframe is from June 2010 to the present

This document is the Floor plans showing the large HMO use and layout. The layout shows 6 bedrooms.

Assessment

The bank statements show continuous rental payments from the leaseholders listed in the AST demonstrating continuous occupation for over 10 years. These transactions were with NatWest Bank. The payments were made into the bank account of the Landlord, Provewell Limited, by the named tenants as shown in the bank statements. The payments shown are dated from 07/02/2012 to 19/12/2022. Although there appears to be no evidence for certain periods, the surrounding periods on either side of these months are continuous. They have therefore been in place for a period well in excess of 10 years and are therefore immune from enforcement action.

SUMMARY AND CONCLUSION

There is corroborative evidence submitted that suggest that the Unit D, 10 Overbury Road, London, N15 6RH, has been in use as a large HMO for 10 years or more and has become immune from enforcement action and is therefore lawful.

RECOMMENDATION

GRANT CERTIFICATE