

Officer's Report

Application Number	HGY/2023/0411
Type	Lawful development: Existing use
Location	17 Tower Terrace, Wood Green, London, N22 6SX
Proposal	Certificate of Lawfulness for existing garages and portacabins to the rear of 17 Tower Terrace and their use for purposes which are incidental to the dwellinghouse(s) and the installation of a means of access.
Case Officer	Gareth Prosser
Valid Date	10/02/2023
Applicant	c/o Agent
Agent	Mr Lewis Wilkinson

RECOMMENDATION

Refuse

PROPOSED DEVELOPMENT AND LOCATION DETAILS

Certificate of Lawfulness for the siting of garages and portacabins (operational development) for purposes which are incidental to the dwellinghouse(s) and the installation of a means of access (engineering operation).

The site is located in the Wood Green Common Conservation Area.

No. 17 Tower Terrace is locally listed as part of the wider terrace of houses.

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2021/2984 Planning permission refused for the erection of a single storey rear extension to the upper ground floor flat in the existing house; the erection of a new self contained three storey dwellinghouse with basement for the Applicant's own occupation on the rear garden of the same property.

OLD/1972/1479 Planning permission granted for the conversion of 17 Tower Terrace to 3 self-contained flats and the erection of 3 garages at rear.

OLD/1957/0648 Planning permission granted for the widening of vehicular access to Mayes Road.

OLD/2021/2167 Planning permission granted for the erection of a garage on site of parking area at rear.

OLD/1975/1314 Planning permission refused for the retention of existing caravan for habitable purposes or use as workshop or store.

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.

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 four 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 four 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 the * residential use* has been in place for a period in excess of 4 years and the use of the *** has been in continuous use for a period in excess of 10 years and *is/are* therefore immune from enforcement action.

The relevant test of the evidence is "the balance of probability" 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.

The applicant must prove that the *operations/use* referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 4 years.

- Location Plan
- Google Earth and Street View Imagery 2008 – 2022. Images show that in June 2017, the rear of the site had its own access with a double door in the boundary fence, facing Mayes Road. The door is surrounded by signage (unpermitted) advertising 'Wood Green Picture Framing'. The signage can be seen on photographs of the site up until Feb 2022. The site is therefore in commercial use and is not ancillary to the residential units at 17 Tower Terrace.
- Photographs of the installation of the portacabin buildings and associated plan 2012, 2016 and 2017. Shows buildings in situ for more than 4 years.
- Statutory Declaration of Yousaf Ali Khan states that the buildings to the rear of the property have been in place in excess of the 4 years and that the buildings are all used for purposes incidental to the dwellinghouse.
- Statutory Declaration of Boadicea Khan states that they resided at the Property from 2009 until 2016 and confirms the presence of the various buildings to the rear of the property which were used for purposes incidental to the dwellinghouse.
- Freehold Land Registry Title and Plan for 17 Tower Terrace Leases NGL269161 and NGL260082 show the access to the garages to the rear of 16 Tower Terrace.
- The Local Land Charge list refers to the widening of the access via Mayes Road.
- Copy of pre-application response (PRE/2017/0307) which makes reference to rear structures.

- Applicant states the following structures (for purposes incidental; to the dwelling house) have existed 4 or more years:

- 2 x garages pre 1998 (permitted OLD/1972/1479)
- Portacabin (a) installed 2010
- Portacabin (b) installed. 2012 Includes sink
- Portacabins (c) & (d) installed 2016 & 2017
- Garage 'Ga' and garage 'Gc' and portacabin D in flexible use as art studio , picture framing business installed 2016

The applicant states that the above mentioned Picture Framing Business is a hobby that is enjoyed incidental of the residential units. Officer have viewed the site and the evidence submitted. The site has been divided into two sections, with the rear garden containing the structures in question separated from the main (converted) dwelling house.

Images submitted by the applicant show that in June 2017, the rear of the site had its own access with a double door in the boundary fence, facing Mayes Road. The door is surrounded by signage (unpermitted) advertising 'Wood Green Picture Framing'. The signage can be seen on photographs of the site up until Feb 2022.

The site is also re-numbered as No147 Mayes Road, with signage giving advice for deliveries. This is currently present on site. The site has/is operating separately to the dwelling house with its own access and street number.

'Wood Green Picture Framing' as advertised on the rear garden site has its own website showing clearly the commercial use on the site, The website describes the site as 'North London's finest and cheapest bespoke picture framer..... All work is undertaken in-house in our purpose built workshops'.

Given that the owner was advertising commercial services on the site, which is now separate from the residential units and has been renumbered, officers consider that the site has clearly changed use to commercial and is not, as claimed 'incidental to the dwellinghouse'.

It is not then possible to revert to the previous use without obtaining a fresh planning permission for change of use to that previous use. The case law supporting this view is referenced by Petticoat Lane Rentals LTD v SSE, [1971] W.L.R. 1112; [1971] 2 All E.R.793.

SUMMARY AND CONCLUSION

The site has not been in residential use for several years and has been operating commercially. Therefore the 4 year test has not been satisfied in this instance. As such, the certificate should be refused.

RECOMMENDATION

REFUSE CERTIFICATE for the following reason(s):

Refusal Reasons:

The Local Planning Authority is not satisfied that, on the balance of probabilities, the site and buildings have been in continuous use for a period of four years before the date of this application for purposes incidental to the enjoyment of the residential dwellings within 17 Tower Terrace, and therefore, cannot be considered lawful.

