

Officer's Report

Application Number	HGY/2023/1283
Type	Lawful development: Existing use
Location	64 Turnpike Lane, Wood Green, London, N8 0PR
Proposal	Certificate of Lawfulness for the existing use of the first and second floors of 64 Turnpike Lane as two separate self-contained 1-bedroom dwellings.
Case Officer	Zara Seelig
Valid Date	15/05/2023
Applicant	Mr P Thi
Agent	Mr GUY HAYNES

RECOMMENDATION

Refuse

RECOMMENDATION

REFUSE CERTIFICATE

PROPOSED DEVELOPMENT AND LOCATION DETAILS

The proposal is for the existing use of the first and second floor of 64 Turnpike Lane as two separate self-contained flats. The site is situated on the Northern side of Turnpike Lane. The site is not located in any conservation area, nor is it a listed building.

Relevant Planning and Enforcement History

HGY/1992/1423 - Conversion of property to form 1 X 1 bed and 1 X 2 bed self contained flats – Granted permission (with conditions)

HGY/2020/0791 - Ground floor front extension and conversion to restaurant. Amendments to existing rear extension roof layout – Refused permission

HGY/2023/0460 - rear and front extension to create new shop unit at front and storage unit at rear – Current Application

PRE/2022/0271 - Proposals to convert the ground floor to an restaurant by completing a front and rear extension

REPRESENTATIONS

N/A.

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 use of the first and second floors of 64 Turnpike Lane as two separate self-contained flats has been in place for a period in excess of 4 years and is 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 use of the first and second floors of 64 Turnpike Road side as two separate self contained flats referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 16/02/2019.

Information Provided:

- Electrical Certificates for Flats 1 and 2 dated 26 June 2015
- Plan no's Location Plan, GAH/302 – 401, GAH/302 – 402, GAH/302 – 403, GAH/302 – 404.

The required date for this application, which the proposed existing use would be immune from enforcement action, is 16/02/2019. Council Tax records show the building as one residential unit and so this does not corroborate the statement of this application. Although electrical certificates have been submitted with the application for each of the two flats dated from 2015, no other information has been submitted and therefore continuous use for more than 4 years has not been demonstrated. No sworn affidavits, tenancy agreements, utility bills etc have been submitted. This is not sufficient to show the use is now immune from enforcement action and therefore is considered to be unlawful.

SUMMARY AND CONCLUSION

The applicant has not demonstrated on the balance of probability that the first and second floor of 64 Turnpike Lane has been sub-divided as two self-contained flats for a period of 4 years. Therefore, the council cannot confirm it has become immune from enforcement action and is therefore unlawful.

RECOMMENDATION

REFUSE CERTIFICATE.

Refusal Reasons:

The applicant has not demonstrated that on the balance of probability the first and second floor of

the property have been in use as two separate self-contained flats continuously for a period of four years prior to the submission of this application and therefore is not lawful.