



Officer Report

Application Number:	HGY/2023/1748
Application Type:	Lawful development: Existing use
Address:	114 Chesterfield Gardens, Tottenham, London, N4 1LR
Proposal:	Certificate of Lawfulness: Existing use for a flue for fuel burner
Case Officer:	Oskar Gregersen
Valid Date:	03/07/2023
Applicant:	3
Agent:	Margaret GREENFIELDS

RECOMMENDATION

Approve

PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows.

HGY/2008/2388 | Erection of single storey side / rear extension of first floor rear extension
Approve

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

Notably, there is a building control application, CPS/0000/9487, where a competent person accepted a new insulated factory made system, with a new hearth/surround. This application was accepted on 29/03/2010.

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 had a multi fuel burner in place included within an approved rear/side extension for more than 4 years.

Applicant's evidence

The application form accompanying this application asserts that:

- the presence of a fuel burner on the side/rear extension commenced on 20/01/2010

The application is accompanied by the following evidence:

- Building control application, accepted 29/03/2010, shows that the installation of a chimney associated with a fuel burner was completed in 2010. This would assert that the burner has been in place for more than 4 years and is lawful.
- Image of safety information plate in situ on fuel burner. The plate states all information about the burner, notably stating that it was installed 20/01/2010, which correlates with the date of the accepted building control application.

Overall, although there is a small amount of information, the presence of the Building Control application is sufficient enough for officers to deem that, on a balance of probability, the likelihood of the burner having been in place for more than four years is high and can be considered lawful.

The evidence presented to substantiate the statement of case is considered comprehensive in nature. On the balance of probability therefore it is considered that the evidence submitted by the applicant precisely and unambiguously demonstrates that the multi-fuel burner has been in place for a continuous period of four years before the date of this application.

RECOMMENDATION

Grant 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 satisfied that, on the balance of probabilities the multi-fuel burner has been in place for a continuous period of four years before the date of this application. Therefore, the sought use is considered to be lawful.