



Officer Report

Application Number:	HGY/2023/1501
Application Type:	Lawful development: Existing use
Address:	93 Broad Lane, Tottenham, London, N15 4DW
Proposal:	Certificate of Lawfulness for the existing use of the rear part of the ground floor as a separate self-curtained residential dwelling (C3 Use Class).
Case Officer:	Oskar Gregersen
Valid Date:	08/06/2023
Applicant:	Naz Abbabil
Agent:	

RECOMMENDATION

Refuse

PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows:

HGY/2023/0351 | Loft conversion with two front skylight and internal alterations
Approve

HGY/2022/4272 | Certificate of Lawfulness for the proposed conversion of the loft including the erection of a rear dormer roof extension.
Refuse

Planning enforcement history in relation to this site is as follows:

UCU/2009/00037 | Garage/Car park at rear being used for residential
Closed

Officers note that in the enforcement case has been closed, with notes added stating:

‘18/02/09. Site Visit. Saw that ground floor has A3 Use in fried chicken business. Did not enter the residential part which is **first and second floors**. Looks like rear access has external door at the courtyard behind the terrace where cars belonging to residents within the surrounding properties are packed. Noted that a new Perspex roof had been erected over the open access way. Need to get inside it to assess matters before decision on possible action.

29.6.09 SV- no breach observed MAW

It appears from the notes on the enforcement case that the structures in the rear were not in place in 2009, and have been constructed since then.

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 rear of the site has been used as residential dwelling for a continuous period of 4 or more years.

Applicant's evidence

The application form accompanying this application asserts that:

- the use of the rear of 93 Broad Lane as a self-contained dwelling commenced on 08/06/2019.

The application is accompanied by the following evidence:

- Location and Block Plans
- Existing ground floor plans
- Statutory declaration from Sami Ozkan dated 19/05/2023
- Statutory declaration from Raza Mir dated 06/06/2023

It is the view of the LPA that the evidence submitted is insufficient to suggest that on a balance of probability, the rear of 93 Broad Lane has been in continuous use as a self-contained dwelling since the required date of 08/06/2019. Further, the statutory declaration submitted by Raza Mir states that the rear of the site was being used for residential purposes since 2004, however the LBH enforcement officer's notes from UCU2009/00037 state that the residential portion of the site is the first and second floors and neglects to mention any residential use at the rear of the site on the ground floor.

Overall, the evidence submitted by the applicant is not sufficiently precise, is not conclusive, and has discrepancies, to demonstrate that, on the balance of probability, the use of the land at the rear of 93 Broad Lane as a self-contained unit has been in use for four years before the date of this LDC application.

RECOMMENDATION

Refuse the requested Certificate of Lawfulness under section 191 of Town and Country Planning Act 1990 for the following reason(s):

Refusal Reasons:

From the documentation and evidence provided, the Local Planning Authority is not satisfied that, on the balance of probabilities, the rear part of the ground floor of 93 Broad Lane, has been used as a self-contained dwelling for a continuous period of four years before the date of this application. Therefore, the sought use is considered to be unlawful.