



Officer Report

Application Number:	HGY/2023/1314
Application Type:	Lawful development: Existing use
Address:	10 Caxton Road, Wood Green, London, N22 6TB
Proposal:	Mixed use religious (class F1) and residential educational institution (class C2).
Case Officer:	Zara Seelig
Valid Date:	18/05/2023
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Applicant:	Mr. Osman Kocak
Agent:	Mrs Ayhan Bilgi

RECOMMENDATION

Refuse

RECOMMENDATION

REFUSE CERTIFICATE

PROPOSED DEVELOPMENT AND LOCATION DETAILS

The proposal is for the existing use of 10 Caxton Road as Mixed use religious (class F1) and residential educational institution (class C2). The site is situated on the South-Eastern side of Caxton Road. The site is not located in any conservation area, nor is it a listed building.

Relevant Planning and Enforcement History

HGY/2002/1730 - Change of use from A3 (Ex-Service War Club) to D1 (Place of Worship) - Approved (with conditions)

HGY/2006/0067 - Erection of extension at rear first floor level for use as teaching room - Approved (with conditions)

HGY/2007/2230 - Erection of first floor side extension - Refused permission

HGY/2013/0988 - Addition of new third storey extension for use as student accommodation, erection of part single/part three storey rear extension to provide new entrance and staircase, provision of amenity space to roof and extension of existing fire staircase to roof - Refused permission

HGY/2013/1579 - Addition of new third storey extension to existing building for use as non-residential institution / training centre (D1) use, and erection of part single / part three storey rear extension to provide new entrance and staircase - Granted permission (with conditions)

NOTE: It should be noted that the main issue with the refused application ref: HGY/2023/0988, was the proposed student/residential accommodation within the building. The following application removed this from the extensions and was approved, no residential was permitted, or permitted within the lease of the building.

CONSULTATION RESPONSE

The following were consulted regarding the application:

No consultees

The following responses were received :

Support: 7

Objections: 0

LOCAL REPRESENTATIONS

The following were consulted:

No letters were sent for this 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.

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 10 Caxton Road as Mixed use religious (class F1) and residential educational institution (class C2) has been in place for a period in excess of 10 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 10 Caxton Road as Mixed use religious (class F1) and residential educational institution (class C2) referred to in the application were lawful for planning

purposes on the date of the application. In this instance the relevant period commences on 18/05/2013.

Information Provided:

· 5 x Statutory Declarations:

1 x worked as a teacher from September 2012 to February 2019 and as a volunteer teacher until the present

1 x resided and studied from September 2012 until September 2016

1 x resided and studied from October 2012 until the present

1 x resided and studied from September 2016 until the present

1 x resided and studied from September 2018 until August 2021

· Plans: Ground Floor Plan, First Floor Plan, Second Floor Plan, Site Plan

· Planning Statement

The required date for this application, which the proposed existing use would be immune from enforcement action, is 18/05/2013. A proposal for residential educational facility was previously deemed unacceptable and was refused. The plans submitted show 16 dormitory beds with only 5 statutory declarations having been submitted with this application, only one covering the 10 year continuous period. Whilst it appears there has been an element of overnight staying within the building, it is unclear as to the quantum floorspace that has been continuously used and so the level of residential space shown on the plans cannot be confirmed as lawful via this application. 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 10 Caxton Road has been in use as Mixed use religious (class F1) and residential educational institution (class C2) for a period of 10 years. Therefore, the council cannot confirm it has become immune from enforcement action and is therefore unlawful.

RECOMMENDATION

REFUSE CERTIFICATE for the following reason(s):

Refusal Reasons:

It is not considered that the evidence provided is sufficient to show that, on the balance of probability, the property has been continuously occupied as an Mixed use religious (class F1) and residential educational institution (class C2) throughout the relevant 10-year period and therefore the use is not considered lawful.

