



Officer Report

Application Number: HGY/2023/1979
Application Type: Lawful development: Existing use
Address: 165 Westbury Avenue, Wood Green, London, N22 6RX
Proposal: Certificate of Lawfulness for the existing use of the property as a 6 person HMO (Use Class C4)
Case Officer: Laina Levassor
Valid Date: 20/07/2023
Applicant: Mr Mehmet Huseyin
Agent: Mr Chris Georgiou

RECOMMENDATION

Refuse

PLANNING & ENFORCEMENT HISTORY

HMO/2021/00609: Unauthorised change of use to HMO

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 been in use as two flats/maisonettes for a continuous period of 4 or more years.

Applicant's evidence

The application form accompanying this application asserts that:
Use as a 6 person C4 HMO commenced 02/05/2011.

The application is accompanied by the following evidence:

Floorplans (Drawing No: 1671/01) shows Room 1 and Room 2, a WC and Communal Kitchen at GF level, Room 3, Room 4 and Room 6 a WC, bathroom and Utility room at FF level and Room 5 (with

access to WC) at Loft level. Provided floorplans do not denote the number of occupants (bedspaces) for each room.

Affidavit stating the property has been arranged and tenanted as a six person HMO commencing May 2011 – signed 14 July 2023.

Tenancy Agreements - Room 1:

March 2023 to September 2023 (1 Occupant)
July 2021 to July 2022 (1 Occupant)
January 2021 to July 2021 (1 Occupant)
July 2021 to January 2021 (1 Occupant)
January 2020 to July 2020 (1 Occupant)
July 2019 to January 2020 (1 Occupant)
January 2019 to July 2019 (1 Occupant)
February 2019 to August 2019 (1 Occupant)
July 2018 to January 2019 (1 Occupant)
January 2018 to July 2018 (1 Occupant)
July 2017 to January 2018 (1 Occupant)
January 2017 to July 2017 (1 Occupant)
July 2016 to January 2017 (1 Occupant)
January 2016 to July 2016 (1 Occupant)
August 2015 to February 2016 (1 Occupant)
July 2015 to January 2016 (1 Occupant)
August 2014 to August 2015 (1 Occupant)
July 2014 to July 2015 (1 Occupant)
August 2013 to August 2014 (1 Occupant)
July 2013 to July 2014 (1 Occupant)
July 2012 to July 2013 (1 Occupant)
August 2011 to August 2012 (1 Occupant)
July 2011 to July 2012 (1 Occupant)

Tenancy Agreements – Room 2:

April 2023 to October 2023 (1 Occupant)
September 2022 to March 2023 (1 Occupant)
October 2021 to October 2022 (1 Occupant)
October 2019 to October 2021 (1 Occupant)
June 2018 to June 2019 (1 Occupant)
June 2017 to June 2018 (1 Occupant)
June 2016 to June 2017 (1 Occupant)
September 2016 to March 2017 (1 Occupant)
March 2016 to September 2017 (1 Occupant)
June 2015 to June 2016 (1 Occupant)
June 2014 to June 2015 (1 Occupant)
December 2013 to June 2014 (1 Occupant)

Tenancy Agreements – Room 3:

April 2023 to October 2023 (1 Occupant)
October 2022 to April 2023 (1 Occupant)
July 2020 to July 2021 (1 Occupant)
July 2019 to July 2020 (1 Occupant)
July 2018 to July 2019 (1 Occupant)
July 2016 to July 2016 (sic) (1 Occupant)
July 2016 to July 2017 (1 Occupant)
July 2015 to January 2016 (1 Occupant)
July 2014 to July 2015 (1 Occupant)
July 2013 to July 2014 (1 Occupant)
July 2012 to July 2013 (1 Occupant)

Tenancy Agreements – Room 4:

April 2023 to April 2024 (1 Occupant)
October 2022 to April 2023 (1 Occupant)
March 2022 to April 2023 (1 Occupant)
May 2022 to May 2023 (1 Occupant also named on March 23 agreement for Room 1)
September 2021 to March 2022 (1 Occupant)
March 2021 to September 2021 (1 Occupant)
September 2020 to March 2021 (1 Occupant)
February 2021 to August 2021 (1 Occupant)
September 2019 to September 2020 (1 Occupant)
September 2018 to September 2019 (1 Occupant)
September 2017 to September 2018 (1 Occupant)
September 2016 to September 2017 (1 Occupant)
September 2015 to September 2016 (1 Occupant)
September 2014 to September 2015 (1 Occupant)
September 2013 to September 2014 (1 Occupant)
December 2013 to June 2013 (1 Occupant)
June 2013 to December 2014 (1 Occupant)
March 2013 to September 2013 (1 Occupant)
September 2012 to March 2013 (1 Occupant)
March 2012 to September 2021 (1 Occupant)
September 2011 to March 2012 (1 Occupant)
March 2011 to September 2022 (1 Occupant)
September 2010 to March 2011 (1 Occupant)
March 2010 to September 2010 (1 Occupant)
September 2009 to March 2010 (1 Occupant)
March 2009 to September 2009 (1 Occupant)
September 2007 to March 2009 (1 Occupant)
March 2008 to September 2009 (1 Occupant)
March 2007 to March 2008 (1 Occupant)

Tenancy Agreements – Room 5 (Loft Room):

May 2023 to November 2023 (1 Occupant)
April 2022 to March 2023 (1 Occupant)
April 2021 to April 2022 (1 Occupant)
April 2020 to April 2021 (1 Occupant)
April 2019 to April 2020 (1 Occupant)
March 2018 to March 2019 (1 Occupant)
April 2017 to April 2018 (1 Occupant)
December 2011 to December 2012 (1 Occupant)
June 2011 to October 2011 (1 Occupant)
March 2022 to September 2022 (1 Occupant)
December 2021 to June 2022 (2 Occupants)

A tenancy agreement for “Studio Flat [loft]” is provided within the ‘Room 2’ ASTs evidence documents alongside a letter dated 25 February 2014 which confirms a named tenant on the agreements above was previously occupying Room 4. Room 4 however is shown on plans as being located at First Floor Level rather than loft. The following also appear to be for ‘loft’:

A tenancy agreement for “Studio Flat [loft]” is provided within the ‘Room 3’ ASTs evidence documents commencing December 2021 to June 2022 (2 Occupants).

Tenancy Agreements – Room 6:

December 2023 to June 2023 (1 Occupant)
December 2022 to June 2023 (1 Occupant)
June 2021 to June 2022 (1 Occupant)

April 2020 to April 2022 (1 Occupant)
April 2019 to April 2020 (1 Occupant)
April 2018 to April 2019 (1 Occupant)
April 2016 to April 2018 (1 Occupant)
October 2015 to April 2016 (1 Occupant)
January 2015 to January 2016 (1 Occupant)
June 2014 to January 2015 (1 Occupant)
June 2013 to June 2014 (1 Occupant)

[Tenancy Agreements & other documents were provided as part of separate document packs for each room. There are some discrepancies in these packages eg. Tenancy Agreements labelled as 'Room 1' are in the evidence package titled 'Room 5'. Most of the individual agreements do not refer to a specific room therefore agreements have been detailed in list above where rooms are listed and tenants match however some dates overlap.]

Enforcement History

An enforcement investigation was opened October 2021 following receipt of a HMO Licensing Application. This application stated the property was in use as a 8 person, 7 Household, 7 bedroom HMO. The HMO application also states that the 'Loft Floor' bedroom does not include kitchen facilities however, this conflicts the inventory details provided as above. Plans provided for this show an additional bedroom at first floor level.

By the applicant's own admission, the use in 2021 was not as a C4 HMO but a Large HMO considered as Sui Generis.

An inventory list dated 2021. 2023, details the loft as including furniture associated with a bedroom, however, also includes a sink, cooker/oven/hob, fridge/freezer and washing machine. The addition of a kitchen and bathroom within this unit means there are provisions enough for it to be self-contained.

LPA findings and evidence provided for assessment conflict with the alleged C4 use – showing a self-contained unit and use as a Large HMO. C4 use therefore cannot be considered to have been continuous and uninterrupted.

The evidence submitted by the applicant is not sufficiently precise and is ambiguous in nature, is not conclusive and has discrepancies to demonstrate that, on the balance of probability the property has been in use as a C4 HMO for up to six occupants.

RECOMMENDATION

Refuse the requested Certificate of Lawfulness under section 191 of Town and Country Planning Act 1990.

Refusal Reasons:

The submitted evidence is not sufficiently precise, is ambiguous in nature, is not conclusive and has discrepancies, and therefore fails to demonstrate that, on the balance of probabilities the property has been in use as a C4 HMO for up to six occupants. Therefore, the sought use is considered to be unlawful.