

Officer Report

Application Number:	HGY/2023/1700
Application Type:	Lawful development: Existing use
Address:	Unit 35, Millmead Business Centre, Mill Mead Road, Tottenham, London, N17 9QU
Proposal:	Certificate of lawfulness for use of unit E 35 as offices
Case Officer:	Sarah Madondo
Valid Date:	26/06/2023
Applicant:	3 Mr Billy Gradica
Agent:	Mr Finn Christiansen

RECOMMENDATION

Approve

REPORT FOR CONSIDERATION UNDER DELEGATED POWERS

APPLICATION DETAILS

Proposal: Certificate of lawfulness for use of unit E 35 as offices

1. RECOMMENDATION

GRANT CERTIFICATE

2. PROPOSED DEVELOPMENT AND LOCATION DETAILS

Certificate of lawfulness for use of unit E 35 as offices

3. RELEVANT PLANNING APPLICATION HISTORY

Planning History

HGY/2015/1999 Non-material amendment following a grant of planning permission
HGY/2015/0514, to re-arrange the internal layout and re-position the external windows and doors
GRANTED

HGY/2015/0514 35 Millmead Business Centre Mill Mead Road London N17 9QU Construction of a mansard roof to create an additional office use. Approve with Conditions

RELEVANT ENFORCEMENT HISTORY

Planning Enforcement History

None

CONSULTATION RESPONSE

None

LOCAL REPRESENTATIONS

The following were consulted:

None received

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.

8. 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 *residential use* has been in place for a period in excess of 4 years and has been in continuous use 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* referred to in the application were lawful for planning purposes on the date of the application. In this instance the relevant period commences on 06/02/2017

INFORMATION SUBMITTED

Copy of Lease:

The applicant has submitted copies of lease dated:

1st February 2017

17th July to 4th July 2018

5th June 2019

4th January 2021

14th November 2022

1st April 2023

The applicant has submitted collaborative evidence showing that this unit was leased for 4 years or more. This also indicates that the occupancy was continuous, therefore considered to be lawful.

Title register: The title shows that the transfer of ownership took place 28th August 2013. However, the title does not show the use of at that time the property.

Business Rates dated from rates covering a period from 2017 to 2024 : The applicant has submitted copies of Business Rates covering a period from 2017 to 2024. It is considered that the applicant has submitted evidence that this unit has been occupied for 4 years or more as an office.

Decision Notice for application for Non-Material Amendments dated 10th August 2015: The plans submitted with application reference HGY/2015/1999 are showing the whole building and not

this particular. Although it is indicates that the building is laid out as offices this does not show evidence that this unit was occupied in from 2017 and therefore this cannot be used as evidence.

SUMMARY AND CONCLUSION

There is corroborative evidence submitted that suggest that Office E Unit 35, Millmead Business Centre, Mill Mead Road has been used as office for more than 4 years and has become immune from enforcement action and is therefore lawful.

RECOMMENDATION

GRANT CERTIFICATE