



Officer Report

Application Number:	HGY/2023/1691
Application Type:	Lawful development: Existing use
Address:	37A Craven Park Road, Tottenham, London, N15 6AA
Proposal:	Certificate of lawfulness (existing): Use of building for office use (Class E).
Case Officer:	Sarah Madondo
Valid Date:	10/07/2023
	3
Applicant:	Norman Lok
Agent:	Mr Joshua Valler-Feltham

RECOMMENDATION

Approve

1. APPLICATION DETAILS

Proposal: Certificate of Lawfulness for use of outbuilding as Office use, Class E

2. PROPOSED DEVELOPMENT AND LOCATION DETAILS

Certificate of lawfulness for use of outbuilding as office. The site is an outbuilding to the rear of garden of 37 Craven Park Road and along Fairview Road. The site is not in conservation area nor is listed.

3. RELEVANT PLANNING APPLICATION HISTORY

HGY/2016/0258 37A Craven Park road N15 Prior Approval for change of use from B1(a) (office) to C3 (dwellinghouse) REFUSED DATED 18/3/2016

4. RELEVANT ENFORCEMENT HISTORY

Planning Enforcement History

COU/2019/00400 37A Craven Park Road Unauthorised use of rear garden outbuilding for commercial purposes CLOSED

BREACH_COU/2019/00400 37A Craven Park Road N15 Change of use Not Expedient

5. LOCAL REPRESENTATIONS

The following were consulted:

6. 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.

7. 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 2nd April 2013

INFORMATION SUBMITTED

Business Rate Bills

Business Rate Bill 2013/2014
Business Rate Bill 2014/2015
Business Rate Bill 2015/2016
Business Rate Bill 2016/2017
Business Rate Bill 2017/2018
Business Rate Bill 2018/2019
Business Rate Bill 2019/2020
Business Rate Bill 2020/2021
Business Rate Bill 2023/2024

The applicant has provided copies of Business Rate Bill dated from 2013 to 2023 which indicates that the property has been in use 4 years or more as an office Class E. This also indicates that the occupancy was continuous, therefore considered to be lawful.

Email from Council Tax dated 6th February 2023: The Council Tax department have confirmed in an email that the 37A Craven Park Rd has been registered for business rates since 01 Apr 2012 which collaborates with the information submitted by the applicant, therefore it is considered that the outbuilding has been in use as an office for 4 year or more, therefore lawful and has become immune from enforcement action.

BSBC statement: The bank statement indicates that the property has been used for business use as the statement indicates the name of the business since 2012 & 2013, however this is continuous so therefore evidence does not prove anything.

Statutory Declaration: The applicant has submitted a statutory declaration, however there is no telephone to check to allow the Council to verify this declaration.

9. SUMMARY AND CONCLUSION

There is corroborative evidence submitted that suggest that 37A Craven Park Road has been used as office Class E for more than 4 years or and has become immune from enforcement action and is therefore lawful.

10. RECOMMENDATION - GRANT CERTIFICATE