



Officer Report

Application Number:	HGY/2023/1758
Application Type:	Lawful development: Existing use
Address:	Shop, 242 Archway Road, Hornsey, London, N6 5AX
Proposal:	Certificate of Lawfulness for the existing use of the basement as a self-contained flat.
Case Officer:	Nathan Keyte
Valid Date:	05/08/2023
Applicant:	Mr John-Paul Palmer
Agent:	

RECOMMENDATION

Refuse

PROPOSED DEVELOPMENT AND LOCATION DETAILS

Certificate of lawful development is sought for the existing use of the basement as a self-contained flat.

The proposal relates to a 3 storey building in mixed use with office and shop on the ground floor and residential above.

The site is located within the Highgate Conservation Area.

The applicant is the lessee, however has stated that the agent managing the property knows they have been living in the property since 2021.

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

Enforcement case - Unauthorised change of use of the basement to a flat - Case open

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 consultation took place.

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.”

ANALYSIS/ASSESSMENT OF THE APPLICATION

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 basement of the building at 282 Archway Road as a basement flat has been in place for a continuous period of 4 or more years.

Information Provided

The application form accompanying this application asserts that:

- The use began more than 10 years before the date of this application.
- The applicant started to work and live at the address in December 2013 intermittently.
- The applicant started living at the property full-time since 09-03-2016.

In addition to this, the applicant has provided the following evidence:

- Photos of an apartment with the details that these were taken 12 and 13 November 2016.
- Photos of the flat in use by another tenant. In an email to Council Officers dated 27/07/2023 the applicant stated: *In these photos it is when [Redacted] was living here. He has now moved out due to the stress and uncertainty, so I have moved into and putting it back as a two bedroom basement flat the other cooker is being removed.*

The evidence submitted by the applicant is not sufficiently precise and is not conclusive to demonstrate that, on the balance of probability, the use of the basement at 282 Archway Road as a self-contained flat has been in use for four years to date to show that this use is Lawful. Furthermore, it is noted in the evidence and correspondence provided that there is an inconsistency between whether the applicant has been living in the property for the entirety of the period stated, or whether it has been leased to another individual. The LPA would consider this application acceptable if a breadth of information covering the required period of 4 years – Present were submitted, alongside the already submitted evidence.

Examples of acceptable information would be additional council tax documentation covering the required period; complete tenancy records covering the period, maintenance receipts, and any other information that would corroborate continuous use of the basement of 282 Archway Road as a self-contained flat for a continuous period of 4 or more years.

RECOMMENDATION

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

Refusal Reasons:

From the documentation and evidence provided, the Local Planning Authority is not satisfied that, on the balance of probabilities, the use of the basement of 282 Archway Road has been as a self-contained flat for a continuous period of 4 or more years before the date of this application. Therefore, the sought use is considered to be unlawful.