



Officer Report

Application Number:	HGY/2023/1082
Application Type:	Lawful development: Existing use
Address:	57 Park Avenue, Wood Green, London, N22 7EY
Proposal:	Certificate of lawfulness for use of property as HMO Class C4
Case Officer:	Sarah Madondo
Valid Date:	10/07/2023
Applicant:	3
Agent:	Ms Kamaljit Kaur

RECOMMENDATION

Approve

APPLICATION DETAILS

Proposal: Certificate of Lawfulness for use of existing property as 4 bedroom HMO. The application relates to the host property and not the outbuilding which is under enforcement investigation reference ENF/2022/0802.

1. RECOMMENDATION

GRANT CERTIFICATE

2. PROPOSED DEVELOPMENT AND LOCATION DETAILS

This is a certificate of lawfulness for use of property as HMO (House in Multiple Occupation) use Class C4.

The site application is two story end of terraced property on the corner with Barratt Avenue. The property has been extension by way of rear dormer and rear outbuilding. The area is residential in character and the site is not in any conservation area and not listed.

3. RELEVANT PLANNING APPLICATION HISTORY

HGY/2010/0059 57 Park Avenue N22 Removal of existing garage to rear and erection of garden room. Decision Made Approve with Conditions 04/03/2010

HGY/2009/1163 57, Park Avenue, London, N22 Erection of garden room to rear of property Decision Made Refuse 24/08/2009

HGY/2010/2060 57, Park Avenue, London, N22 Retention of garden room to rear of property as separate residential unit Decision Made Refuse 24/12/2010

HGY/2008/1760 57, Park Avenue, London, N22 Erection of rear dormer window and insertion of 1 x velux window to rear elevation to facilitate a loft conversion. Decision Made Approve with Condition 21/10/2008

4. RELEVANT ENFORCEMENT HISTORY

Planning Enforcement History

ENF/2022/0802 57, Park Avenue, London, N22 7EY Change of Use of Outbuilding PENDING

CV/2013/00648 57 Park Avenue N22 Change of Use - Flat Conversion BREACH CLOSED 16/09/2013

BREACH_CON/2010/00565 57 Park Avenue, Wood Green, London, N22 Change of use - Flat Conversion CLOSED 17/08/2010

5. CONSULTATION RESPONSE

One objection has been received from 21 Barratt Avenue in relation to the use of the property HMO which is noted. Although this application does not require the Council to consult the neighbouring properties, in response to the objection. Officers consider that the applicant has submitted sufficient evidence which indicates that the property was used as small HMO for 3 to 6 unrelated residents.

6. LOCAL REPRESENTATIONS

The following were consulted:

LBH Council Tax

7. 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 01/01/2009

INFORMATION SUBMITTED:

Bank Statement: The bank statement submitted as evidence reveal that rental payment has been made by tenants into the applicant's bank account since 2012 and this has been continuous. In addition the name of the some of payments do appear the applicant bank account which indicates that the evidence does collaborate and therefore it is considered that the property has been used as HMO for at 10 years.

House share tenancy agreement: The applicant has submitted a number of tenancy agreements dating from 2012 to 2023 which indicates that the property has been rented out to a number of people who are not related. The names of some of the tenants do appear on the applicant's bank statement submitted with this application. The evidence provided is collaborative and therefore it is considered that the property has been use as HMO Class C4 for at 10 years, as result the use is lawful and immune from enforcement action.

Statutory declaration: The applicant has submitted statutory declaration, however there is no telephone on the document for officer's verify the declaration.

9. SUMMARY AND CONCLUSION

There is corroborative evidence submitted that suggest that 57 Park Avenue N22 has been used as HMO Class C4 for more than 10 years or and has become immune from enforcement action and is therefore lawful.

10. RECOMMENDATION - GRANT CERTIFICATE