



Officer Report

Application Number: HGY/2023/1820
Application Type: Lawful development: Proposed use
Address: Shop, 84 Highgate High Street, Hornsey, London, N6 5HX
Proposal: Certificate of lawfulness: proposed use. Outbuilding to the rear garden.
Case Officer: Nathan Keyte
Valid Date: 10/07/2023
Applicant: Mr Michael Hapeshis
Agent:

RECOMMENDATION

Refuse

DETAILS OF PROPOSAL

This is an application for a certificate of lawfulness for the removal of the existing ancillary building to the rear of the site and replacement with a larger outbuilding.

SITE DESCRIPTION

The application site relates to a Grade II listed building, three storey terraced property located on the northern side of Highgate High Street. The property is in use as a dwellinghouse (flat) with shop located on the ground floor at the front of the site. The host property is also located within the Highgate Conservation Area and the Highgate High Street Local Shopping Parade.

PLANNING HISTORY

The planning history of the site has been taken into account when coming to this decision.

HGY/2020/2450 - Listed building consent for fire and sound proof partitioning at ground floor level between the shop and basement and the flat at 1st and 2nd floor levels and protecting rear means of escape – Approved 04/12/2020.

HGY/1996/1253 - Display of non-illuminated hanging sign between first and second floors of front elevation. – Approved 05/11/1996.

HGY/1996/0948 - Listed Building Consent for internal alterations to shop and formation of new staircase, repair and render of elevation and window replacement to match existing. – Approved 17/09/1996

RELEVANT PLANNING LEGISLATION

The application has been made under section 192 of the Town and Country Planning Act 1990 and relevant amendments. This not a planning application but instead the applicant seeks confirmation that the proposed development is lawful. As such, the impact of the proposed development of the neighbour's amenities or the character of the area cannot be taken into consideration for this submission.

ANALYSIS/ASSESSMENT OF THE APPLICATION

Class E – buildings etc incidental to the enjoyment of a dwellinghouse

A Certificate of Lawfulness for provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure or a container used for domestic heating purposes for the storage of oil or liquid petroleum gas can be issued if the proposal meets all the criteria under The Town and Country Planning (Generally Permitted Development) (Amendment) (No.2) (England) Order 2015 – Part 1, Class E 'buildings etc incidental to the enjoyment of a dwellinghouse'.

The property contains a mix of uses, being in part utilised as a shop as shown on the proposed plans. It is noted that the entrance to the upper flat is shown as separate to the shop on the plans.

The plans also note that the outbuilding is to be utilised as a 'Extended Store Room Ancillary to the shop'

During correspondence with the Agent, when it was raised that the certificate could not be granted due to the site being in use besides a dwelling house, the following comment was provided:

Just to clarify, there is no flat, the entire property is arranged as one dwelling, and simply the ground floor is used as a shop, just in the same manner that one would work from home. That's why Building Control accepts open staircases with no lobbies. It is a live/work unit.

The planning advise that I have urgently received just now states:

"Live work units are a composite B1/C3 use and enjoy permitted development rights under Part 3 Class E of the General Permitted Development Order allowing the work element to be extinguished by the live element".

And further:

You have wrongly classified this property as commercial when the only commercial element was the open plan ground floor which was never segregated from the residential unit upstairs and had been used as a live/work unit falling into B1/C3 Use Class.

Part 3 Class E of the General Permitted Development Order referred to relates to 'financial and professional or betting officer or pay day loan shop to shops' and has also been removed from the legislation.

Furthermore, under Schedule 2 Part 3 Class MA which relates to change of commercial, business and service uses to dwellinghouses, this requires Prior Approval and cannot occur where the building is a listed building.

Therefore, considering the points above, a Certificate of Lawfulness cannot be issued as the use of the site is not a single dwellinghouse.

Notwithstanding this above, an assessment of the other points relevant to outbuildings has been undertaken for completeness.

The current proposal will be assessed against these requirements as follows - E.1. Development is not permitted by Class E if—

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use)

Complies as relates to the flat on the site – although does not comply overall due to shop element.

(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)

Does not comply – area of curtilage excluding ground area of original dwellinghouse (or building containing the dwellinghouse and shop in this case) covered by buildings would be approximately 76%.

Total site approximate area: 90 m²
Area of original building footprint: 35 m²
Area of curtilage excluding original dwellinghouse: 55 m²
Area of proposed building footprint: 42 m²

(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse

Complies

(d) the building would have more than a single storey

Complies

(e) the height of the building, enclosure or container would exceed

(i) 4 metres in the case of a building with a dual-pitched roof,

(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or

(iii) 3 metres in any other case;

Does not comply. The proposed building will have a monopitched roof with a maximum height of 3.4m on the north east and south east boundaries, falling to 2.3m in height on the boundary with 86 Highgate Highstreet.

As confirmed in the Ministry of Housing, Communities and Local Government's Technical Guidance on permitted development rights for householders (September 2019), if any part of the building, container or enclosure is within 2 metres of the boundary of the curtilage of the house, then the height limit for the total development is restricted to 2.5m if it is to be permitted development.

(f) the height of the eaves of the building would exceed 2.5 metres;

Complies

(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;

Does not comply – the host building on the site is a Grade II listed building.

(h) it would include the construction or provision of a verandah, balcony or raised platform;

Complies

(i) it relates to a dwelling or a microwave antenna;

N/A

(j) the capacity of the container would exceed 3,500 litres.

N/A

E.2. In the case of any land within the curtilage of the dwellinghouse which is within (a) an area of outstanding natural beauty; (b) the Broads; (c) a National Park; or (d) a World Heritage Site, development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

Complies

E.3. In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.

Complies

Interpretation of Class E - E.4. For the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

SUMMARY AND CONCLUSION

The proposed development does not constitute permitted development by virtue of Schedule 2, Part 1, Class E, of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Recommendation

Refuse certificate for the following reason(s):

Refusal Reasons:

The use of the property is not a dwellinghouse, being in use as a residential flat and shop within the curtilage of the property therefore Schedule 2, Part 1, Class E, of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). However, even if this were not the case, the proposal fails to comply with Schedule 2, Part 1, Class E, section E.1(b), E.1(e), and E.1(g).