



Officer Report

Application Number:	HGY/2023/0668
Application Type:	Lawful development: Existing use
Address:	Flat B, 580 Green Lanes, Hornsey, London, N8 0RP
Proposal:	Certificate of Lawfulness for existing use of Flat B as two separate self-contained units (2 x 1 bedroom flats).
Case Officer:	Laina Levassor
Valid Date:	08/03/2023
Applicant:	MRS UMUT GEDIK KILIC
Agent:	MRS UMUT GEDIK KILIC

RECOMMENDATION

Refuse

PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows this site.

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 representations have been received.

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.”

EVALUATION

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 building outlined in red on the submitted plan has been in use as two flats/maisonettes for a continuous period of 4 or more years.

Applicant's evidence

The application form states that use as 2 self-contained flats commenced 01 January 2017.

Drawing Number: 2301-03-01

The units, referred to as Flat A & Flat B are accessed through a main entrance at ground floor level. Flat A, located at the front of the building features a combined living/dining/kitchen area, a WC, and a bedroom with access to a shower room. Flat B, located at the rear features a combined kitchen/dining area, and a bedroom with access to a shower room. There is a WC shown in what appears to be a communal hallway which is outside of the door shown as the access to Flat B.

Tenancy Agreements

Flat A:

Dated: 14/11/2018

Period: 14/11/2018 - 2019 and 2019 - 2023

Given Address: Flat A

Dated: 07/07/2022

Period: 07/07/2022 - 2023

Given Address: Flat A

A request was made to the agent to provide clarification on the overlapping dates for these tenancy agreements however no further details were received.

Flat B:

Dated: 01/02/2016

Period: 01/02/2016 - 2019

Given Address: Flat B

Dated: 27/05/2021

Period: 27/05/2021 - 2022

Given Address: Flat B

Dated: 02/08/2022

Period: 02/08/2022 - 2023

Given Address: Flat B

No evidence is provided for the occupation of Flat B between 01/02/2019 to 26/05/2021.

The following tenancy agreement does not define which unit the agreement relates to and refers only to the whole property address:

Dated: 20/02/2017

Period: 20/02/2017 - 2018

Given Address: 580 Green Lanes

Other

A letter by 'David Key' dated 14/10/2022 states -

The Landlord "has been responsible to pay all bills since 1st January 2016 till the 1st of January 2021. Since 2021 the new tenant ... is registered account holder for the utility bills".

The name of the tenant provided is only shown on a tenancy agreement for Flat B dated 02/08/2022.

Correspondence from the council provided to the applicant confirms that the Council Tax liability period for the flats commenced 01/02/2017. It is not considered that confirmation of the taxation of a property shows that it was occupied and no additional evidence of occupation was provided to support this.

CONCLUSION

The evidence as provided does not allow for the assessing officer to confirm that the property has been occupied as two self-contained flats as there are periods of occupation which are not evidenced as above.

The evidence submitted by the is not conclusive to demonstrate that, on the balance of probability, the use as two self-contained flats has been in use for four years before the date of this LDC application.

Requests for the missing periods of information were made 11/05/2023, 08/06/2023, 07/08/2023 and 25/08/2023 however, no further details were received.

RECOMMENDATION

From the documentation and evidence provided, the Local Planning Authority is not satisfied that, on the balance of probabilities, the property has been in use as two self-contained units for a continuous period of four years before the date of this application. Therefore, the sought use is considered to be unlawful.

Refusal Reasons:

From the documentation and evidence provided, the Local Planning Authority is not satisfied that, on the balance of probabilities, the property has been in use as two self-contained units for a continuous period of four years before the date of this application. Therefore, the sought use is considered to be unlawful.