



Officer Report

Application Number: HGY/2023/1867
Application Type: Lawful development: Existing use
Address: Flat B, 4 Craven Park Road, Tottenham, London, N15 6AB
Proposal: Certificate of Lawfulness for existing first floor rear extension.
Case Officer: Daniel Boama
Valid Date: 14/07/2023
Applicant: Mr moskowits
Agent: Mr victor fried

RECOMMENDATION

Refuse

RECOMMENDATION

REFUSE CERTIFICATE

PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application is for a certificate of lawfulness for the existing use of a first floor rear extension at the first floor flat.

The subject site is a two storey residential building includes a roof extension comprise a mansard roof appearance. Each floor accommodates 1no. self-contained flat. It is located at the south-west end of Craven Park Road. Texaco fuel station is to the immediate northwest of the site. The surrounding area is mostly residential in character, although the immediate neighbour to the east is a mechanics workshop.

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

4, Craven Park Road

HGY/2015/0284 | WIT 21/12/2015 Extension to part of first floor to accommodate a kitchen / dining room.

HGY/2009/1225 | WIT Conversion of existing second floor into one bedroom self contained flat and installation of metal staircase to provide access to the flat with common gardens area

4A, Craven Park Road

HGY/2011/0554 | GTD 17/5/2011 Erection of single storey rear extension.

4B, Craven Park Road

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HGY/2011/1377 | GTD 03/10/2011 Conversion of first floor flat and second floor flat into 1 x one bed and 1x two bedroom flats.

HGY/2007/0364 | GTD 24/4/2007 Roof extension to create additional storey.

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.

- (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.

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 as four flats has been in place for a period in excess of 4 years 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 existing use of the first floor rear extension referred to in the application was lawful for planning purposes on the date of the application. In this instance the relevant period comments on 01/03/2019.

Information Provided

Google Earth aerial view of site from 2019

Google Earth aerial view of site from 2020

Google Earth aerial view of site from 2021

Google Earth aerial view of site from 2022

Assessment

The aerial views of the site submitted as evidence do not clearly show that the extension to which this application related was completed 4-years ago. At least on of the images, dated 2020 appear to show it still under construction. No building control, records seem to exist for the extension and the applicant has submitted no documentary evidence such as a completion notice. Therefore, on the balance of probability, it is considered that the evidence submitted by the applicant is ambiguously and fails to demonstrate that the first floor rear extension at Flat B, 4 Craven Park Road, Tottenham, London, N15 6AB has been completed and in use for a continuous period of four years before the date of this application. The first floor rear extension, therefore, has not been in place for a period of well in excess of 4 years and is therefore not immune from enforcement action.

SUMMARY AND CONCLUSION

On the balance of probability, the applicant has not demonstrated that the first floor rear extension that is the subject of this application was completed 4 years before the date of this application, and so has not become immune from enforcement action and is therefore unlawful.

RECOMMENDATION

REFUSE CERTIFICATE

Refusal Reasons:

On the balance of probability, the applicant has not demonstrated that the first floor rear extension that is the subject of this application was completed 4 years before the date of this application, and so has not become immune from enforcement action and is therefore unlawful.