



Officer Report

Application Number:	HGY/2023/1968
Application Type:	Lawful development: Existing use
Address:	19 Albany Road, Hornsey, London, N4 4RR
Proposal:	Certificate of Lawfulness for the existing use of the property as two self-contained flats.
Case Officer:	Josh Parker
Valid Date:	20/07/2023
Applicant:	Anna Richardson
Agent:	

RECOMMENDATION

Approve

PROPOSED DEVELOPMENT AND LOCATION DETAILS

Certificate of lawful development is sought for the existing use of 19 Albany Road as 2 self-contained flats.

The proposal relates to a part 2-storey part three storey (rear) mid-terrace dwelling comprised of red brick.

The site is located within the Stroud Green Conservation Area.

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

All relevant enforcement and planning history has been considered for this application.

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 was sought.

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 (lower ground and ground floor) & (first floor and loft) have been in use as separate flats at 19 Albany Road and 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 as 2 flats began in the 90s.

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

- 1998 valuation by COLLEYS surveyors and valuers referring the property as 'two large maisonette's
- 1999 Gas bills by British Gas referring to the addresses as 'Ground floor' & 'Top floor'
- August 2022 energy bill from E.on referring to ' 19 Albany Top floor' & 19 Albany bottom floor'
- 2023 Survey with detailed floor plan supporting a 2-3 bedroom flat and a 4 bedroom flat.
- Real estate brochure from recent sale
- Photographic images of the entrance showing the 2 separate entrances in the front foyer,
- Photographic images of 2 separate gas meters showing dates to 13/8/2001. These both have readings to suggest both meters have had substantial use.
- CPS maintenance records dating 20/11/2020, 25/02/2021 & 24/03/21

The evidence submitted by the applicant is enough to demonstrate that, on the balance of probability, the use of the lower 2 floors and upper 2 floors being used as separate residences is Lawful. The officer accepts that the applicant has recently purchased the property and obtaining information that the building has been used as 2 separate entities can be difficult and there are gaps in the information/timeline. However, it is noted in the evidence and correspondence provided that the floor plans and layout of the building generally add up for a typical flat of this nature. This suggests the flat meets the initial eye test in regard to layout, which when complemented with the gas meters and historical bills dating back the 90s there can be a level of confidence that this residence has been operated a 2 separate flats for some time.

SUMMARY AND CONCLUSION

There is corroborative evidence submitted that suggest that 19 Albany Road, Hornsey, London, N4 4RR, has been in use as a self-contained residential unit for 4 years or more and has become immune from enforcement action and is therefore lawful.

RECOMMENDATION

GRANT CERTIFICATE