



# Officer Report

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| <b>Application Number:</b> | <b>HGY/2023/1812</b>                                                                                                                                                                                       |
| <b>Application Type:</b>   | <b>Lawful development: Existing use</b>                                                                                                                                                                    |
| <b>Address:</b>            | 6 Rosebery Gardens, Hornsey, London, N8 8SH                                                                                                                                                                |
| <b>Proposal:</b>           | Certificate of lawful development for the existing use of 6 Rosebery Gardens as a self-contained 3-bedroom flat (C3 Use Class) and 56 Middle Lane as a 4-bedroom HMO (C4 Use Class) (AMENDED DESCRIPTION). |
| <b>Case Officer:</b>       | Cameron Sturges                                                                                                                                                                                            |
| <b>Valid Date:</b>         | 10/07/2023                                                                                                                                                                                                 |
| <b>Applicant:</b>          | Mr Ian Phillips                                                                                                                                                                                            |
| <b>Agent:</b>              |                                                                                                                                                                                                            |

## **RECOMMENDATION**

**Approve**

## **PROPOSED DEVELOPMENT AND LOCATION DETAILS**

This application relates to the end of terrace property located on the corner of Middle Lane and Roseberry Gardens. The ground floor and small basement area is arranged as a separate self-contained 3-bedroom room flat accessed from a front door onto Roseberry Gardens and is addressed as 6 Roseberry Gardens. The first and second floors are arranged as a separate self-contained flat accessed from a front door onto Middle Lane and addressed as 56 Middle Lane. The upper floor flat is currently in use as a 4-bedroom HMO (C4 Use Class).

This application is for a certificate of lawfulness for the existing use of 6 Roseberry Gardens as a self contained 3-bedroom flat (C3 Use Class) and the use of 56 Middle Lane as a 4-bedroom HMO (C4 Use Class).

The subject site is not located within a conservation area and does not fall within the curtilage of a listed building.

## **RELEVANT PLANNING AND ENFORCEMENT HISTORY**

HGY/2016/2613 - Demolition of existing extension and portico, return the bathroom to original footprint by reducing depth. Erection of single storey rear extension with sliding floors and rooflights in flat roof – APPROVED 10/10/2016

## **CONSULTATION RESPONSE**

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: 17c008-2014030).

No one was consulted regarding the application.

## **RELEVANT LEGISLATION AND GUIDANCE**

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 ground floor 3-bedroom flat & the 1<sup>st</sup> and 2<sup>nd</sup> floor HMO have been in use as separate flats 6 Rosebery Gardens/56 Middle Lanes and has been in place for a continuous period of 4 or more years.

### **Information provided**

The application is accompanied by the following evidence:

1. Multiple tenancy Agreements dating back to January 2013 for 56 Middle Lane and 2009 for 6 Rosebery Gardens.
2. Council Tax – Council Tax records date back to 2009 for 6 Rosebery gardens and 2009 for 56 Middle Lane.
3. Utilities bills – Multiple water bills for 6 Rosebery Gardens and 56 Middle Lane dating back to 2009.
4. Energy Performance Certificate – Dating back to 2017 for 56 Middle Lane and 6 Rosebery Gardens.
5. Internet statement of account – dating back to 2013 for 6 Rosebery Gardens
6. Gas Safety Certificate – Dating back to 2010 for 6 Rosebery Gardens and 56 Middle Lane
7. Letter from LBH HMO Licensing – Dated 2009 outlining the below:
  - (a) “6 Rosebery Gardens is a self-contained flat with a separate entrance independent of the entrance to the first/second floor flat known as 56 Middle Lane London N8 and if occupied family (persons related) would not be a flat in multiple occupation (FMO)”.
  - (b) “56 Middle Lane London N8 is not a licensable HMO because it comprises 2 self-contained flats both of which are un-licensable. The first floor flat will be a Flat in Multiple Occupation (FMO) occupied by less than 5 persons. The second floor flat will not be a FMO providing the occupiers are related”
8. Floor plans – The floor plans show the layout of the 3x bed self-contained unit and separate HMO.

9. HMO Certificate – Licenced for first floor flat 56 Middle Lane between 21 May 2020 and 20 May 2025.

The timeframes of the submitted evidence of the above documents corresponds, and sufficient information has been provided to suggest that the uses are both separate for a period of 4 years or more.

### **SUMMARY AND CONCLUSION**

There is corroborative evidence submitted that suggest that 6 Rosebery Gardens and 56 Middle Lane N8 8SH, has been in use as a separate self-contained residential flat/HMO for 4 years or more and has become immune from enforcement action and is therefore lawful.

### **RECOMMENDATION**

GRANT CERTIFICATE