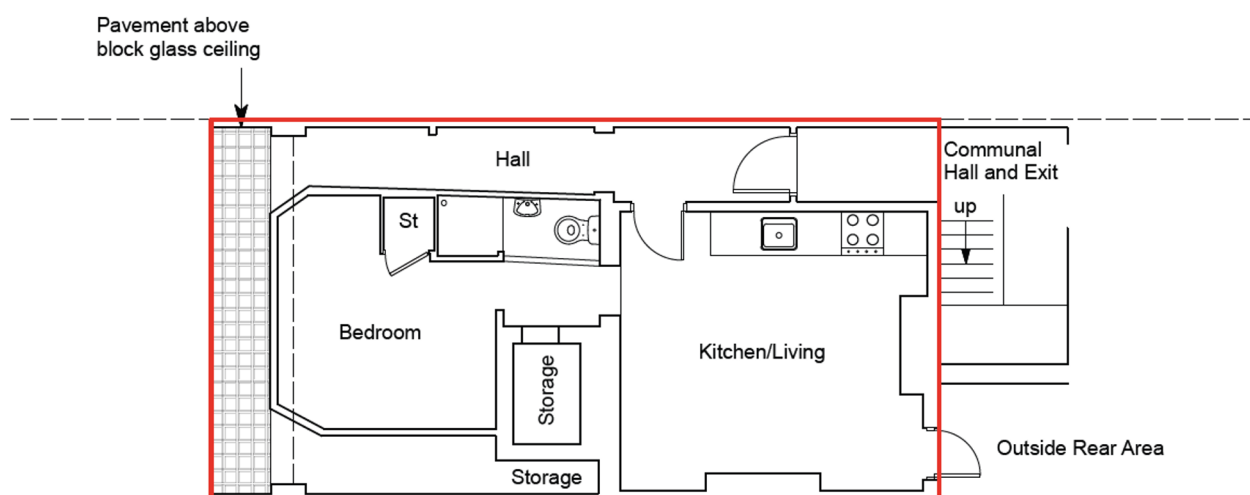


Supporting Statement



Project: Lawful Development Certificate
Site name: Basement Flat, 287 Archway Road N6 5AA
On behalf of: Henry Galvin
Date: September 2023

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A. SUMMARY AND CONCLUSIONS

1. This statement has been prepared by DLBP on behalf of Mr Henry Galvin to support an application for a Lawful Development Certificate at Basement Flat, 287 Archway Road N6 5AA (“the site”) to confirm the lawfulness of the basement as a self-contained single dwelling unit.
2. Section 171B of the Town and Country Planning Act 1990 (as amended) states that where there has been a breach of planning control consisting in the change of use of any building to use as residential units, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
3. A Lawful Development Certificate should be granted because the evidence is clear that on the balance of probabilities the use of the basement in its current layout as a self-contained single dwelling unit has been in continuous existence for at least four years before the date of the application and remains in such use currently.
4. The evidence submitted is comprehensive and includes invoices for past internal works, photographs of these works, an Assured Shorthold Tenancy Agreement, Statutory Declaration from the owner, a record of Council Tax payments, Title Register, and floor plans.
5. All of the tests required to demonstrate a lawful existing use have been passed, i.e there is a clear balance of evidence that shows at least four years of continuous, self-contained residential use of the basement as a single dwelling unit and including today, with no other use occurring in the period.

B. INTRODUCTION AND BACKGROUND

6. This statement has been prepared by DLBP on behalf of Mr Henry Galvan to support an application for a Lawful Development Certificate at Basement Flat, 287 Archway Road N6 5AA (“the site”) to confirm the lawfulness of the basement as a self-contained single dwelling unit.

The Site

7. The site, Basement Flat, 287 Archway Road N6 5AA, is part of a terraced property containing a commercial unit at ground floor level and a residential unit on first and second floor level self. The site is accessed from the main front door of the building which faces on to Archway Road and leads into a communal hall and stairwell to access all floors.
8. The site is composed of a kitchen/dinner, bedroom, and bathroom with storage spaces.
9. There is no relevant planning history connected to the site.

The Requirements of Evidence

10. The Town and Country Planning Act 1990 (as amended) Section 191(2) provides that an existing use or development is lawful if no enforcement action may be taken in respect of residential use, because the time for enforcement action has expired (in this case, four years), and no enforcement notice is in force in relation to the residential use.
11. A Lawful Development Certificate should be granted in this case because the basement flat in its current layout has been in continuous existence as a separate self-contained dwelling house for a period of at least four years before the date of this application. This statement explains the evidence to demonstrate this.
12. Planning Practice Guidance (Paragraph 007, Reference ID: 17c-007-20140306) explains that the onus of proof of lawfulness rests with the applicant. Therefore, this application includes the evidence required to demonstrate that the existing use of the property is lawful.
13. Planning Practice Guidance (Paragraph 007, Reference ID: 17c-007-20140306) explains the test for evidence submitted in support of a lawfulness application is the “*balance of probability*.” Paragraph 007 (Reference ID: 17c-007-20140306) states:

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.

The Content of the Application

14. The evidence submitted in support of the application to regularise use of the basement as a self-contained single dwelling unit at 287 Archway Road N6 5AA, consists of the following:
 - invoices from Ciobanu Build for past internal works;
 - photographs of past internal works;
 - an Assured Shorthold Tenancy (AST) agreement in the names of Mr Henry Galvan and Miss Malayna Maria Masterson dated 4 June 2019;
 - Statutory Declaration from Henry Galvan (the owner);
 - Council Tax records from 04 March 2023 to 04 March 2024;
 - public record of Council Tax;
 - correspondence with electricity provider EDF;
 - drawing no. 1250.PL.01 location plan;
 - drawing no. 200.S.01 site plan;
 - drawing no. 100.PL.01 floorplan prior to works;
 - drawing no. 100.PL.02 floorplan with works highlighted; and
 - drawing no 100.PL.03 floorplan post works.
15. Analysis of the evidence is outlined in the next chapter.

C. ASSESSMENT

The evidence

16. The evidence submitted with this application demonstrates that, on balance of probabilities, the use of the basement as a self-contained single dwelling unit has been in continuous existence for at least four years before the date of the application and remains in such use currently.

Whether the building is a single residential unit

17. The site has the following facilities and amenities fundamental to occupation as a self-contained single residential unit:
- Kitchen fully equipped to enable the storage, preparation, cooking and serving of hot and cold food;
 - dining/ living area;
 - bathroom, including full washing and lavatory facilities;
 - bedroom; and
 - storage area.
18. Existing floorplan - drawing no 100.PL.03 following internal works, show the property to have the facilities and amenities listed above, which are fundamental to occupation of a self-contained single residential unit, such that there is no doubt that it is a “residential unit” for the purposes of Section 171(B)2.

Analysis of Evidence

19. To improve the living arrangements and amenity standards of the site, internal works to expand the residential space of the basement into the existing void space were carried out between May 2019 and June 2019, as evidenced below:
- invoices from Ciobanu Build, addressed to the Basement Flat, 287-289 Archway Road, London N6 5AA show that Ciobanu Build undertook work to the Basement Flat periodically between 17 May 2019 and 31 May 2019, with a final invoice for the closing balance dated 7 June 2019 once the internal works were substantially complete;
 - photographs, dated between 3 May 2019 and 4 June 2019 show that internal works to the Basement Flat were undertaken periodically between May and June 2019, and substantially completed on 4 June 2019; and
 - plans demonstrate the floor plan of the Basement Flat prior to works (drawing no. 100.PL.01) and after works (drawing no. 100.PL.03), with drawing no. 100.PL.02 highlighting the works that took place.
20. Further to the above works being completed, the Basement Flat was occupied as a single residential dwelling on 4 June 2019.

21. An Assured Shorthold Tenancy Agreement was signed by the site leaseholder, Mr Henry Galvan (as landlord) and Miss Malayna Masterson (as tenant) for a 12 month term, from 4 June 2019 to 4 June 2020 inclusive. Miss Masterson stopped paying rent after 7 months, resulting in legal proceedings that led to her lawful eviction from the property on 25 July 2022.
22. Miss Masterson lived in the basement flat throughout this period, from 4 June 2019 to 25 July 2022. During this time, evidence of electricity payments could not be sourced as the metre was tampered with, and electricity unrightfully sourced from other properties in the building.
23. On eviction of Miss Masterson, the applicant - Mr Henry Galvan (as leaseholder) moved into the flat on 26 July 2022 and has continued to reside there to present day.
24. To correct the site's inappropriate electricity supply, Mr Galvan has liaised with provider EFD over the past year to ensure the basement flat has its own electricity meter. This was resolved in August 2023, as evidenced in the email correspondence where EDF confirm that a meter has been created and associated with address 'Basement Flat, 287-289, Archway Road, Hornsey, London'.
25. In Mr Galvan's registration as payee of Council Tax to the Basement Flat at 287 Archway Road, the Council addresses the site as 'Basement Flat, 289 Archway Road, London, N6 5AA' (Local Authority reference number 123100110) as evidenced in the Council Tax Bill 2023/2024.
26. In light that the Council identifies the site as Basement Flat, 289 Archway Road, London, N6 5AA, public records demonstrate that this property has been in residential use, liable to Council Tax band A since 16 June 2004.
27. Over the passage of time and ownership, it is noted that the above evidence details discrepancies in the naming of the property as 'Basement Flat 289 Archway Road', 'Basement Flat 287-289 Archway Road' and 'Basement Flat, 287 Archway Road'. The Statutory Declaration confirms that where these names are referred to in evidence, are all relevant to the application site at the flat which is located in the basement under 287 Archway Road N6 5AA.
28. The Statutory Declaration provided by Mr Henry Galvan, leaseholder of Basement Flat at 287 Archway Road, corroborates the above evidence with additional details. The information provided within this declaration is the truth as far as they know it to be.
29. The Statutory Declaration submitted is a formal statement made in the prescribed way affirming that the basement at 287 Archway Road has been in continuous use as a self-contained single dwelling unit and has been signed in the presence of a solicitor. As such, the Statutory Declaration submitted carries significant weight in the consideration of granting the Lawful Development Certificate.
30. The above evidence clearly demonstrates that on the balance of probabilities the use of the basement in its current layout (as shown on plan no. 100.PL.03) as a self-contained single dwelling unit has been in continuous existence for at least four years before the date of the application and remains in such use currently.

Absence of Deliberate Concealment

31. Section 124(1) of the Localism Act 2011 inserted new sections 171BA, 171BB and 171BC into the Town and Country Planning Act 1990 (as amended) to allow enforcement action, in England, to be taken against a breach of planning control when the time limits for taking action have expired and the breach has been concealed.
32. In order to use these powers, the Local Planning Authority must apply to the Magistrates Court for a Planning Enforcement Order within 6 months of the day on which the apparent breach came to the authority's knowledge. If an order is granted, the authority has one year to take enforcement action. The authority can also apply for a planning enforcement order before the time limits for taking action have expired, as the expiry date may be in dispute. The Magistrates Court may make the order only if satisfied, on the balance of probabilities, that a person or persons have deliberately concealed the apparent breach.
33. In this instance there has been no concealment of the occupation of the flat in the basement of the building.
34. There has been no deliberate concealment and accordingly, the provisions inserted by Section 124(1) of the Localism Act 2011 do not apply to this case.

Conclusion

35. All of the tests required to demonstrate a lawful existing use have been passed, i.e. there is a clear balance of evidence that shows at least four years continuous, self-contained residential use of the basement in its current layout (as shown on plan no. 100.PL.03) as a single dwelling unit up to and including today, with no other use occurring in the period.
36. The application more than complies with the requirements for a Lawful Development Certificate to be issued, because the evidence is sufficiently precise and unambiguous to support the claim and there is no contradictory evidence to suggest otherwise.
37. The evidence submitted is comprehensive and includes invoices for past internal works, photographs of these works, an Assured Shorthold Tenancy Agreement, a record of Council Tax payments, floor plans and a Statutory Declaration made by the leaseholder and signed in the presence of a solicitor.
38. Consequently, based on the submitted documentary evidence, the only reasonable conclusion which can be drawn is that having applied the balance of probability test, the application should be granted, and a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990 (as amended) must be issued.