



Officer Report

Application Number:	HGY/2023/2045
Application Type:	Lawful development: Existing use
Address:	2 Frome Road, Tottenham, London, N22 6BP
Proposal:	Certificate of lawfulness: for the exiting use of 2 Frome Road as five self contained flats.
Case Officer:	Oskar Gregersen
Valid Date:	02/08/2023
Applicant:	Mr Finbarr Cummins
Agent:	

RECOMMENDATION

Refuse

PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows:

HGY/2011/0809 | Erection of rear dormer window (certificate of lawfulness) - Withdrawn.

HGY/1995/1348 | Change of use from residential to day care centre and erection of single storey extension and conservatory - Refused.

There is no planning enforcement history in relation to 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 5 flats for a continuous period of 4 or more years.

Applicant's evidence

The application form accompanying this application asserts that:

- the use of 2 Frome Road as 5 self-contained flats commenced on 27/07/2013.

The application is accompanied by the following evidence:

- Tenancy agreements valid for one year dated 10/2012

(Officer Comment: The documents submitted only cover occupation from a period of 10/2012 – 10/2013. Applications of this type require evidence be submitted to show that, on a balance of probability, the existing use has been continuous for the required period. In this instance the required period since 27/07/2019. The applicants have not submitted any information to show occupancy during this period and as such it is difficult to assert that, on a balance of probability, the use is lawful.)

- Statutory Declaration from letting agent dated 16/05/2023

(Officer Comment: The document submitted suggests that the internal layout of 2 Frome Road has been that of 5 self-contained flats for a period of over 10 years, however the LPA would require some additional evidence such as bank statements showing regular payments into accounts covering the required period, as well as council tax documentation and other utility bills to corroborate the site has been in continuous use as 5 self-contained flats for the required period.)

- Energy Bills addressed to applicant dated 08/2012

(Officer Comment: Energy letters submitted show that accounts were set up in the name of 5 self-contained flats, in 2012. However, these are insufficient evidence to show that the site has been in continuous use as 5 self-contained flats for the required period.)

- Sound insulation testing – dated 10/2012

(Officer Comment: The submitted documentation shows that a sound insulation test was completed at the site in late 2012. This document is not sufficient to corroborate that the site has been in continuous use as five self-contained flats for the required period since 27/07/2019, as it does not support that the site has been continuously occupied, but instead shows sound data.

- Floor plan drawings.

It is noted that the property has never been registered with Haringey's Council Tax collection service or with the Valuation Office Agency as anything other than a single dwelling.

The evidence submitted by the applicant is not conclusive to demonstrate that, on the balance of probability, the use of 2 Frome Road as five self-contained flats has been in use for four years before the date of this LDC application. Further detailed information would be required to be

submitted, such as regular rent payments covering the required period, as well as utility/council tax bills paid regularly to support the use.

RECOMMENDATION

Refuse the requested Certificate of Lawfulness under section 191 of Town and Country Planning Act 1990.

Refusal Reasons:

From the documentation and evidence provided, the Local Planning Authority is not satisfied that, on the balance of probabilities, the use at 2 Frome Road, has been as five self-contained flats for a continuous period of four years before the date of this application. Therefore, the sought use is considered to be unlawful.