



Officer Report

Application Number: HGY/2023/1282
Application Type: Lawful development: Existing use
Address: Ground Floor Flat, 12 Barratt Avenue, Wood Green, London, N22 7EZ
Proposal: Certificate of Lawfulness for the existing use of the property as two self-contained flats (comprising one ground floor flat and one first floor flat).
Case Officer: Daniel Boama
Valid Date: 08/08/2023
Applicant: Mr Mostakin miah
Agent:

RECOMMENDATION

Approve

RECOMMENDATION

GRANT CERTIFICATE

PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application is for a certificate of lawfulness for the existing use of 2no. flats on the Ground Floor level and First Floor level at 12 Barratt Avenue, London, N22 7EZ.

The subject site is a two-storey residential building that has been subdivided into two self-contained flats. It is located at the east end of Barratt Avenue, adjacent to the bend of the road. The surrounding area is predominantly residential in character.

The site is within walking distance of Wood Green Underground station to the east and Alexandra Palace train station to the west, both via Station Road.

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2007/0078 | REF 21/2/2007 Erection of rear dormer window and extension over existing two storey rear addition to create additional 1 x 1 bedroom flat at roof level.

HGY/1996/0463 | GTD 28/5/1996 Conversion of house into 2 No. 1 bedroom self-contained flats.

CONSULTATION RESPONSE

LBH Council Tax Officer: According to our records we have had 12 Barratt Ave registered as 2 separate flats/dwellings since 27 April 1996 and C tax has been paid continuously on both since that date.

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.

Section 171B of the 1990 Act specifies the time-limits for taking enforcement action which are as follows:

- (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 ten 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 ten 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

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.

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 two 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.

Information provided by Applicant

The application form accompanying this application asserts that the use of 12 Barratt Avenue, Wood Green, London, N22 7EZ as 2 flats commenced on 01-04-2013.

The application is accompanied by the following evidence:

1. Planning Statement
2. Assured Shorthold Tenancy Mr Leszek Skuka and Mrs Marta Skuka dated 01 March 2013
3. EX Ground Floor and PP 1st Floor Plans
4. Identity Card Skuka Leszek
5. Letter from Mebarek Yacine Charef dated 27 July 2023
6. Signed Tenancy Agreement Hassene Edissi 20 Sept 2022
7. Signed Tenancy Agreement dated 10 June 2021
8. Signed Tenancy Agreement Hassene Edissi and Miss Ewa Warmbier 10 June 2021
9. Signed Tenancy Agreement Mebarek Yacine Charef 14 Feb 2018
10. Tenancy Agreement Hassene Edissi 20 Sept 2022
11. Tenancy Agreement Hassene Edissi and Miss Ewa Warmbier 10 June 2021
12. Tenancy Agreement Leszek Skuka and Martha Skuka 01 Nov 2010
13. Tenancy Agreement Mr Mebarek Yacine Charef dated 25 Jan 2018
14. Tenancy Agreement Mr Yasser Abbad dated 19 Feb 2021
15. Witness signature for 308 High Road, Wood Green - Skuka Leszek

The evidence presented to substantiate the statement of case is considered comprehensive in nature. On the balance of probability therefore it is considered that the evidence submitted by the applicant precisely and unambiguously demonstrates that the use of 12 Barratt Avenue, London,

N22 7EZ has been used as two separate self-contained flats for a continuous period of four years before the date of this application.

The property has been registered with Haringey and the Valuation Office Agency as two separate flats since 1996.

RECOMMENDATION

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

From the documentation and evidence provided, the Local Planning Authority is satisfied that, on the balance of probabilities the use of 12 Barratt Avenue, London, N22 7EZ has been used as two self-contained flats for a continuous period of four years before the date of this application.

Therefore, the existing use is considered to be lawful.