



Officer Report

Application Number:	HGY/2023/2188
Application Type:	Lawful development: Existing use
Address:	34 Parkhurst Road, Wood Green, London, N22 8JQ
Proposal:	Certificate of lawfulness: for the existing use of the property as 5 self contained flats
Case Officer:	Mercy Oruwari
Valid Date:	11/08/2023
Applicant:	ENDER CEMGIL
Agent:	MR. ENDER CEMGIL

RECOMMENDATION

Approve

RECOMMENDATION

GRANT CERTIFICATE

PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application is for a certificate of lawfulness for the existing use of 5x self-contained studio flats.

The subject site is a two storey end of terrace property located on the corner of Parkhurst Road and Marquis Road. The house has been converted into 5 studio flats along with an additional communal kitchen on the ground floor providing access to the communal amenity space at the rear. Two of the flats are on the ground floor whilst the other three are located on the first floor. The site is not located within any conservation area and does not fall within the curtilage of a listed building.

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

The relevant Planning and Enforcement history for this site is as follows

- ENF/2023/0199 – Unauthorised rear extension. Pending – structure demolished
- HGY/2014/1325 - Erection of a single storey fully wheelchair accessible and functional self-contained dwelling. Refused
- HGY/2011/0518 - Use of property as a five-room HMO. Approved with conditions.
- FCV/2010/00416 – Unauthorised conversion into flats. Closed – Immune.

CONSULTATION RESPONSE

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 (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.

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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

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 first floor of Lumen House has been in use as self-contained flat in excess of 4 years and is therefore immune from enforcement action.

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.

The applicant must prove that the use referred to in the application was lawful for planning purposes on the date of the application. The application form accompanying this application asserts that the use and/or activity of 34 Parkhurst Road, Wood Green, London, N22 8JQ for use as 5 self-contained studio flats commenced on or before 11/08/2019.

In this case, a Certificate is sought on the grounds that 34 Parkhurst Road, Wood Green, London, N22 8JQ has been in use as 5x self-contained studio flats for a continuous period of 4 or more years.

Information provided by Applicant

The application is accompanied by the following evidence:

Evidence to submitted to support the application includes:

1. Tenancy Agreements – The timeframes are from January 2018 – May 2023 for flat 1, from September 2018 – August 2023 for flat 2, from November 2017 – April 2023 for flat 3, from September 2018 – September 2023 for flat 4, and from May 2022 – May 2023 for flat 5. Although the tenancy agreements do not cover the full period for flat 5 the other supporting documents do support its existence since 2019.

2. Council Tax – The VOA information submitted states that the flats have been registered independently since April 2009. This has been verified with a search on the VOA website and confirmed by the LBH Revenues/Collection team.

4. – Electrical Installation Condition Report – Each of the five flats have independent reports.
5. Floor plans –

The floor plans show the layout of the 5x self-contained studio flats.

Assessment

The timeframes of the submitted evidence of the tenancy agreements, council tax and the Electrical Installation Condition Reports corresponds.

SUMMARY AND CONCLUSION

There is corroborative evidence submitted that suggest that 34 Parkhurst Road, Wood Green, London, N22 8JQ has been in use as 5x self-contained studio flats for a continuous period of 4 or more years and has become immune from enforcement action and is therefore lawful.

RECOMMENDATION

GRANT CERTIFICATE