



Officer Report

Application Number:	HGY/2023/1252
Application Type:	Lawful development: Existing use
Address:	82 Granville Road, Wood Green, London, N22 5LX
Proposal:	Certificate of Lawfulness for the existing use of the property as five self-contained flats.
Case Officer:	Mercy Oruwari
Valid Date:	10/05/2023
Applicant:	A. Papatheodorou
Agent:	Ms Mary Sim

RECOMMENDATION

Refuse

PROPOSED DEVELOPMENT AND LOCATION DETAILS

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

The subject site is two-storey mid terrace property. 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

- HGY/2022/1890 – Certificate of lawfulness for the existing use of 5 self-contained flats. Refused
- UNW/2006/00712 – Unauthorised conversion. Case closed based on property being a 6 bedroom 6 person HMO 20/02/2007

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 No 82 Granville Road N22 has been converted into 5 self-contained flats for a continuous period 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 No 82 Granville Road N22 as a dwelling converted into 5 self-contained flats commenced on or before 10-05-2019.

In this case, a Certificate is sought on the grounds that an existing building at No 82 Granville Road N22 has been converted into 5 self-contained flats for a continuous period of 4 or more years.

Information provided by Applicant

The application is accompanied by the following evidence:

Evidence to Support the submitted application

1. Affidavit from owner -

The owner declares that:

- They have owned the property since 9 February 2006.
- The property was converted into flats over four years ago.
- The property was converted into five flats as related in the plans.
- They have been used in this configuration since
- No change has occurred before or during the four years.
- The property's use has been residential during that time.
- That they are not aware of the site visit from Planning Enforcement in 2006 as stated in application HGY/2022/1890.

However they re-confirm that the property has been 5 self-contained units for the last four years.

The declaration does not carry enough weight to verify continuous occupation within the relevant four years. Three of the flats (2, 4, and 5) do not have any evidence for the period between 2006 to 2021, therefore part of the relevant period from May 2019 to May 2021 for flats 2, 4, and 5 has no substantial evidence. None of the flats have a substantial evidence to cover a continuous four year period; however, flat 1 does have the Virgin Media bills of 2015 and 2018 whilst flat 3 has the LBH Housing Team correspondence which reduces the gap.

2. Confirmations from Current Occupiers -

Confirmation from the occupiers of flats 1-4 has been submitted declaring that they have resided in the flats for 15 years (16 years for flat 3). They confirm that since moving in that the flat has been self-contained with its own bedroom, bathroom and kitchen area. There is no confirmation from flat 5. Although, this does cover the relevant period affidavits alone would not carry enough weight as evidence. They would support the additional conclusive evidence, which is not the case for this application.

3. Building Control Plans (FP/0007/9950) -

An email from Building Control in April 2022 confirms that the floorplans on file submitted in 2006 match the recent floor plans.

Although this does confirm layout it does not confirm occupation over the relevant four years. Within the notes recorded by the Building Control Officer, following the site visit dated 6th November 2006, it states 'flats not self-contained'. The application was also classed as invalid. These notes corroborate the feedback recorded following a site visit carried out by a Planning Enforcement Officer on the 1st November 2006 where they stated that there were '6 rooms in total and all the occupants will share kitchen and lounge'. Although it was stated in the previous application HGY/2022/1890 that following this site visit that it was described as a 6 bedroom, 6 person HMO it was actually described as 'not a HMO but still a single dwelling house'. This was also the final conclusion in the closure notes for the case on 20th February 2007. The above does precede the relevant period from 2019, however, evidence from this period has been submitted to support the claim that the property has been functioning as independent flats from 2006 but the evidence held by 2 council departments contradicts this.

4. HMO License for conversion –

The property has been awarded a House of Multiple Occupation (HMO) license for five years from August 2022 to August 2027. Although it is a HMO for self-contained flats the license does not cover the relevant period.

5. LBH Housing Team Letters –

Letters from the LBH Housing Services have been submitted. The letters dated July 2013 and 2014 are reminders addressed to the occupant of No 3 to renew the application to stay on the Housing Register for the year.

The letters only show the occupation for No 3. However, it is also noted that neither letter referred to it as a flat and therefore carries no weight as supporting evidence.

6. General Accommodation Management Company Letter –

The company confirms that they have been the property management company for the property since October 2021 to date. They also state they instructed that it be divided into 5 flats following their first visit in September 2021. They are currently managing and renting the property as five self-contained flats.

7. King and King Accountants -

King and King confirms that they have acted as the accountants for No 82 Granville Road for over 10 years. They state that the property has only been known as 5x 1 bedroom units during that time till date.

8. Electrical Installation (Condition) Reports –

An Electrical Certificate dated 6th December 2006 and a much later certificate dated 9th June 2022 both refer to the units in the document. Units can be used interchangeably as a reference to flats but can also refer to rooms.

Neither certificate concludes a continuous four year period. This certificate is dated 9th June 2022 and would therefore not sufficiently to cover the relevant four years.

9. Virgin Media Bills -

These bills are dated April 2015 and August 2018 but only shows occupation for flat 1. This does not cover the relevant period and only shows evidence for one unit.

10. TV License -

This license was valid until February 2023 and was therefore issued in February 2022. The license only shows the occupation for No 2. This does not cover the relevant period and only shows evidence for one unit, which is also referred to as room 2.

11. Existing Floorplans -

The plans submitted demonstrate that the property has been split.

Assessment

The evidence submitted by the applicant is contradictory. King and King Accountants states that it has been 5 flats for 10 years, however, General Accommodation Management in their statement claim that they instructed that it be divided into five flats following a visit in September 2021. The electrical installation refers to units in the paperwork. This could refer to flats as well as rooms. However, the notes from Planning Enforcement refer to the property as an HMO following a visit shortly after the 2006 electrical installation certificate were issued. In fact, the notes refer to shared facilities such as kitchen/lounge/washing and toilet cubicles. The confirmation from building control for the plans does not confirm implementation as they also refer to the property as an HMO following a site visit in 2006.

Although, the 2006 evidence does not form part of the relevant period it has been submitted as part of the evidence to support this application. This information like the more recent information is contradictory.

Furthermore, the Valuation Office Agency record state that the property has been registered as four separate, not five, since only 25th October 2021. Overall, the information submitted plus the gaps during the relevant periods results in the evidence not being conclusive enough to confirm the use of the property as five self-contained flats continuously for at least 4 years, and is therefore not immune from enforcement action.

SUMMARY AND CONCLUSION

The application of judicial authorities (Gabbitas et al) on lawful development certificate applications has always been predicated on three key tenets:

Is the applicant's evidence precise?

Is the applicant's evidence unambiguous?

Is the applicant's evidence consistent?

Based on the evidence submitted by the applicant and the evidence held by the LPA the response to all the three questions is no.

The evidence held by the Council contradicts the submissions by the applicant that on the balance of probabilities that the entire property has been used as five self-contained flats for a continuous period of four years. The submission is therefore not lawful by virtue of s.171(B)(2) of the Town and Country Planning Act 1990

RECOMMENDATION

REFUSE/GRANT CERTIFICATE

Refusal Reasons:

The application does not demonstrate that, on the balance of probabilities, the property has been used as five self-contained flats for a continuous period of four years. The use is therefore not considered to be lawful by virtue of s.171(B)(2) of the Town and Country Planning Act 1990.