

Officer Report

Application Number:	HGY/2023/2258
Application Type:	Lawful development: Existing use
Address:	Flat 1, 144 Mayes Road, Wood Green, London, N22 6SY
Proposal:	Certificate of lawfulness for existing use of 2no. self-contained ground floor flats at Flat A1 and Flat A2 at 144 Mayes Road, Wood Green, London, N22 6SY. (AMENDED DESCRIPTION)
Case Officer:	Daniel Boama
Valid Date:	21/08/2023
Applicant:	S.Y. Properties Ltd.
Agent:	Mr George Athanasi

RECOMMENDATION

Approve

RECOMMENDATION

GRANT CERTIFICATE

PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application is for a certificate of lawfulness for existing use of 2no. self-contained ground floor flats at Flat A1 and Flat A2 at 144 Mayes Road, Wood Green, London, N22 6SY.

The subject site is 2no. self-contained ground floor flats in a three-storey semi-detached residential building that has been subdivided into flats on each floor. It is located at the northeast side of Mayes Road, adjacent to the bend of the road. The surrounding area is predominantly residential in character. This site is not in a conservation area nor is it within the curtilage of the listed building.

The site is within walking distance of Wood Green Underground station to the east and Alexandra Palace train station to the west, via Mayes Road to the northwest that connects to Station Road. It is also within walking distance of the open spaces at Barratt Gardens and Wood Green Common via Western Road to the west of Mayes Road.

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

HGY/2003/0114 | GTD 11/3/2003 Erection of 3 storey rear extension to provide new kitchens to existing flats.

OLD/1987/0945 | GTD 10/9/1987 Conversion into three self-contained flats.

CONSULTATION RESPONSE

No consultees.

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 the ground floor at 144 Mayes Road, Wood Green, London, N22 6SY as 2 flats commenced on 29-07-1999.

The application is accompanied by the following evidence:

1. Flat A1 Deposit Certificate dated May 2007
2. Flat A1 Ground Floor council tax
3. Flat A2 Deposit Certificate Nov 19-Oct 20_Apr 22-Mar 23
4. Flat A2 Ground Floor council tax
5. Flat A2 Mydeposit Certificate Jul 22-Jul 23
6. Jan 2022 - Jun 2022 - Bank Statement
7. July 2022 - Flat A2 - Tenancy Agreement Spiridonova and Tsvetanov
8. July 2023 - Flat A2 - Tenancy Agreement Spiridonova
9. March 2022 - Flat A2 - Tenancy Agreement Emilov and Borisova
10. May 2014 - Flat A1 - Tenancy Agreement Norris
11. May 2015 - Flat A1 - Tenancy Agreement Norris
12. May 2016 - Flat A1 - Tenancy Agreement Norris
13. May 2017 - Flat A1 - Tenancy Agreement Norris
14. May 2018 - Flat A1 - Tenancy Agreement Norris

15. May 2019 - Flat A1 - Tenancy Agreement Norris
16. May 2020 - Flat A1 - Tenancy Agreement Norris
17. May 2021 - Dec 2021 - Bank Statements
18. May 2022 - Assured Shorthold Tenancy Agreement Vitez
19. May 2023 - Assured Shorthold Tenancy Agreement Orlando and Gorgoglione
20. Nov 2008 - Flat A2 - Tenancy Agreement Emilov and Borisova
21. Nov 2009 - Flat A2 - Tenancy Agreement Emilov and Borisova
22. Nov 2011 - Flat A2 - Tenancy Agreement Emilov and Borisova
23. Nov 2012 - Flat A2 - Tenancy Agreement Emilov and Borisova
24. Nov 2013 - Flat A2 - Tenancy Agreement Emilov and Borisova
25. Nov 2014 - Flat A2 - Tenancy Agreement Emilov and Borisova
26. Nov 2015 - Flat A2 - Tenancy Agreement Emilov and Borisova
27. Nov 2016 - Flat A2 - Tenancy Agreement Emilov and Borisova
28. Nov 2018 - Flat A2 - Tenancy Agreement Emilov and Borisova
29. Nov 2019 - Flat A2 - Tenancy Agreement Emilov and Borisova
30. Nov 2020 - Apr 2021 - Bank Statement
31. Oct 2017 - Nov 2019 - Bank Statement

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 ground floor at 144 Mayes Road, Wood Green, London, N22 6SY has been used as two separate self-contained flats for a continuous period of four years before the date of this application.

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 the ground floor at 144 Mayes Road, Wood Green, London, N22 6SY 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.