

23rd February 2026

Head of Planning
Haringey Council
Planning Service
6th Floor
River Park House
225 High Road
Wood Green
London N22 8HQ

Dear Sir/Madam

Application for a Certificate of Lawfulness for Existing Use or Development (CLEUD)

Regarding the use of Lower Ground Floor front flat, Lower Ground floor middle flat, Lower Ground floor rear flat, Ground floor upper flat, First floor front flat, Second floor front flat, Second floor rear flat as self-contained residences at 258 Archway Road London N6 5AX

I refer to the above matter in which regard this firm has been instructed by our client, Mr Romer. In support of this application the following information is provided:

- Application form
- CIL form
- Location plan (Scale 1:1250)
- Floor plans for each flat
- Summary of evidence in support together with copies of evidence

This letter is submitted in support of a Certificate of Lawfulness application to regularise the existing use of 7 self-contained flats at 258 Archway Road, known as follows:

- Upper Ground Floor Front (GFFU)
- Lower Ground Floor Front (GFF)
- Ground Floor Middle (GFM)
- Ground Floor Rear (GFR)
- First Floor Front (FFF)
- Second Floor Rear (SFR)
- Second Floor Front (SFF)

3 Massetts Road, Horley, Surrey RH6 7PR | 01293 824354 | www.whiteandsons.co.uk

The application does not include the third floor flat or first floor flat at the rear as these were granted Certificates of Lawfulness under references HGY/2021/0106 and HGY/2014/0695. These flats have also been sold on long leases. The location of the Land is outlined in red on the Location Plan and floor plans for the flats are also attached.

Legislation

Section 55 of the Town and Country Planning Act 1990 concerns the Meaning of “development” which includes building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings. Paragraph (3)(a) confirms that “the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used”.

Section 191 of the Act enables an application to be made to confirm that a use or development is lawful. This includes whether development has become lawful through the passage of time under Section 171B of the Act. In summary, this confirms that where a breach of planning control has existed for a certain period, it becomes immune from enforcement action and, therefore, lawful. The immunity period for a breach of planning control is ten years beginning with the date of the change of use or the date on which the building operation was substantially completed.

Section 115 of the Levelling-up and Regeneration Act 2023 (LURA) amended what was originally a 4 year rule in England to 10 years for all development. The transitional provisions within Regulation 3(b) and 5(a) of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 (SI 2024/452) mean that the change does not immediately come into force for operational developments or changes of use to a dwelling that are substantially completed by 24th April 2024. In practice this means that any operational development or change of use completed before 25th April 2024 can benefit from a 4 year immunity period up until 25th April 2028. This applies to the flats which are the subject of this application. In this case, the relevant dates are the four years prior to the date of the application (or any consecutive 4 year period prior to the date of the application where there has been no intervening use or abandonment). This is discussed further below and under “Summary of the evidence and case for the Grant of a Certificate”.

It is clear from Planning Practice Guidance that it is for the applicant to prove, on the balance of probability that the use or operation has carried on for the relevant period. Providing that the Council’s evidence does not contradict that submitted or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse an application.

Case Law

The Judgment of F W Gabbittas v SSE and Newham LBC [1985] JPL 630 established the principle that the applicant’s own evidence does not need to be corroborated by ‘independent’ evidence in order to be accepted. If the LPA have no evidence of their

own, or from others, to contradict or otherwise make the applicants version of events less than probable, then there is not good reason to refuse an application for a Certificate of Lawfulness. This has now been carried forward into Planning Practice Guidance.

The Judgment of *Gravesham Borough Council v Secretary of State for the Environment* [1984] confirms that a dwelling is not defined in statute, but its distinctive characteristic is that it affords facilities for day-to-day private domestic existence (sleeping, cooking, eating, washing). Therefore flats are dwellings for the purposes of the Town and Country Planning Act 1990.

Planning Practice Guidance

The guidance contains a section on Lawful Development Certificates.

Paragraph 003 states that *“The statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.”*

Paragraph 006 states that *“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.” (our underlining)*

Paragraph 008 states that *“There is no statutory requirement to consult third parties including parish councils or neighbours. 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.” (our underlining)*

Paragraph 009 states that *“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 application or appeal process.” (our underlining)

Summary of the evidence and case for the Grant of a Certificate

It is confirmed that the use of the building as separate flats is development under Section 55(1) and (3)(a) of Town and Country Planning Act 1990, which confirms that “use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building”. The aforementioned case law confirms that a flat is a dwelling. The creation of any new dwelling amounts to a change of use which has now become lawful through the passage of time, as the flats have existed for more than 4 years prior to the date of the application and in some instances as far back as 2000.

The supporting evidence in respect of each flat, as set out in the Schedule of Evidence, provides considerable information demonstrating the existence and occupancy of the respective flats for more than the required 4 years prior to the date of the application. In particular the statements from Property Time Estate Agents on the flats which they let (including the Ground Floor front (upper) studio which they do not let) are compelling, along with the corroborating documents supporting the occupancy of each flat in the form of Council Tax banding, Electrical Certificates, dated photos of meters, Energy Performance Certificates, Inventories and Leases.

The certificate of lawfulness (HGY/2014/0695) for the “first floor flat rear” it itself highlights the need to distinguish it from the first floor front flat which this application relates to, reinforcing the fact that it existed at that time. The officer’s report for that application also notes that “significant weight is apportioned to the Council Tax records”. Therefore they have been included within this application.

It is not unusual for a flat to be vacant for a period of time between tenancies and whilst refurbishment is carried out for a short period as the use is not abandoned. However, residential immunity periods continue to accrue during such periods and they are not reset, as there is no intervening use with the intention being to resume occupancy straight after.

Where some of the leases indicate an overlap of tenancy for the same flat, this is as a result of a tenant leaving early and a new lease therefore being created.

The applicant has approached utilities companies to enquire whether they can provide information in support of the occupancy. However, it was not possible for them to provide information on current or previous tenants accounts under the Data Protection Act.

It is suggested that the supporting evidence confirms that the flats have existed for in excess of 4 years prior to the date of the application and therefore on the ‘balance of probability’ considered to be immune from enforcement action and lawful. The application therefore seeks a certificate to regularise this matter.

Conclusion

It can be concluded that the flats have each existed and been occupied for more than 4 years prior to the date of the application and have therefore become lawful under the terms of Section 171 (B)(1) and (2) of the Town and Country Planning Act 1990, having regard to the aforementioned transitional regulations.

Having regard to the above, on the balance of probabilities, it is considered that the flats are lawful. It is therefore requested that the Council issue a Certificate confirming lawfulness.

I trust that the above is satisfactory and that the proposal can be approved swiftly under delegated powers. However, if you have any queries or require any further information, please do not hesitate to contact me.

Yours sincerely,

Julian Sharpe MRTPI

Associate Partner

Email: julian.sharpe@whiteandsons.co.uk