

Officer Report

Application Number:	HGY/2026/0194
Application Type:	Lawful development: Existing use
Address:	492 Archway Road, Hornsey, London, N6 4NA
Proposal:	Lawful development: Existing use. Use of lower ground floor as two flats (Use Class C3)
Case Officer:	Adam Silverwood
Valid Date:	03/02/2026 6
Applicant:	Ms Justine Cawley
Agent:	Mr John Jowitt

RECOMMENDATION

Refuse

1. SITE LOCATION

The building is a two-storey end of terrace property with a basement level, located on the northern side of Archway Road. The property has been converted into flats and backs onto a trainline.

2. DESCRIPTION OF PROPOSAL

The application seeks to determine if the lower ground floor of the property has been in use as two separate dwellings for a period greater than four years prior to this application.

3. PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows:

HGY/2016/1830 - Alterations to existing flats including the creation of a 2 bedroom lower ground floor flat with garden access. - Approve with Conditions: 13/02/2017

HGY/2017/2824 - Variation of a condition 2 (approved plans) of planning application HGY/2016/1830. Amendments include: 1. Removal of the chimney stack. 2. Alterations to the terrace in middle floor flat, plus associated internal/external changes. 3. Removal of the metal spiral staircase as access to lower ground flat and replace it with a normal side entrance using natural slope of the ground, plus associated internal/external changes. - Approve with Conditions: 22/11/2017

HGY/2018/1328 - Certificate of lawfulness for the existing use of upper ground floor rear extension. - Approve with Conditions: Approve with Conditions

HGY/2018/1440 - Variation of condition 2 (accordance with the approved plans) following a grant of planning permission HGY/2016/1830 in order to introduce minor changes to the previously approved drawings - Approve with Conditions: 19/06/2018

HGY/2004/0097 - Erection of two storey rear extension to facilitate conversion of house to form 2 x 2 bed self-contained flats with new entrance door and car parking spaces at rear. – Refuse: 29/01/2004

HGY/2004/0871 - Conversion of property to form 2 x 2 bed flats including alterations to elevations and creation of new side entrance to lower ground floor flat. Formation of 3 x parking spaces to rear of property and refuse enclosure to front. – Refused: 05/08/2004

2. REPRESENTATIONS

Planning Practice Guidance (PPG) on Lawful Development Certificates, sets out that:

“There is no statutory requirement to consult third parties. 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.” (Paragraph: 008 Reference ID: 17c-008-2014030).

No representations have been received.

RELEVANT PLANNING LEGISLATION

The application has been made under section 191 of the Town and Country Planning Act 1990 and relevant amendments. This is not a planning application but instead the applicant seeks confirmation that the proposed development is lawful.

Town and Country Planning Act 1990

Section 191 of the Town and Country Planning Act 1990 (as amended by section 10 of the Planning and Compensation Act 1991) states that:

"If any person wishes to ascertain whether any existing use of buildings or other land is lawful ...he may make an application for the purpose to the Local Planning Authority specifying the land and describing the use ... For the purposes of this Act uses ... are lawful at any time if –

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

If, on an application under this section, the Local Planning Authority are provided with information satisfying them of the lawfulness at the time of the application of the use, described in the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

National Planning Practice Guidance (PPG)

National Planning Policy Guidance issued by the Government in relation to Lawful Development Certificates explains the process for obtaining a lawful development certificate for existing or proposed use.

In this case, the Local Planning Authority is requested to grant a certificate confirming that: “(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990” Paragraph 001 Reference ID: 17c-001-20140306.

Paragraph: 009 Reference ID: 17c-009-20140306 of the PPG indicates:

“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 particular application or appeal process.”

As such, the impact of the proposed development on the neighbouring amenity or the character of the area cannot be taken into consideration for the purpose of this submission.

Paragraph: 006 Reference ID: 17c-006-20140306 of the PPG indicates:

“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.”

3. EVALUATION

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.

In this case, a Certificate is sought on the grounds that the building outlined in red on the submitted plan has been in use as two flats for a continuous period of 4 or more years.

Applicant's evidence

The application form accompanying this application asserts that:

- the use of the lower ground floor of 492 Archway Road as two separate studio flats commenced on 01/01/2015.

The application is accompanied by the following evidence:

- Tenancy agreements:

A tenancy agreement for Flat A/1, 492 Archway Road, London, N6 4NA that indicates that first payment of rent was on the 2nd April 2022.

A tenancy agreement for Flat A/2, 492 Archway Road, London, N6 4NA that indicates that the first payment for rent was on the 22nd April 2022.

These are both word documents. No written signature is present on either document.

- Bank statements covering the periods:
 - 02/12/2021 to 31/12/2021: This document shows two monthly payments, one with the payment reference 'Flat 4 Rent' totalling £800 and the other with a reference that is not clear to its reason totalling £866.
 - 01/01/2022 to 30/12/2022: This document shows two monthly payments, one with the payment reference 'Flat 4 Rent' totalling £800 and the other with a reference stating A2 totalling £866.
 - 31/12/2022 to 29/12/2023: This document shows two monthly payments, one with the payment reference 'Flat 4 Rent' totalling £900 and the other with a reference stating A2 £950.
 - 30/12/2023 to 01/05/2024: This document shows two monthly payments, one with the payment reference 'Flat 4 Rent' totalling £900 and the other with a reference stating A2 totalling £950.
 - 02/05/2024 to 01/08/2024: This document shows two monthly payments, one with the payment reference 'Flat 4 Rent' totalling £1,100 and the other with a reference stating A2 totalling £1,100.
 - 31/08/2024 to 31/12/2024: This document shows two monthly payments, one with the payment reference 'Flat 4 Rent' totalling £1,100 and the other with a reference that is not clear to its reason totalling £1,100.
 - 01/01/2025 to 28/02/2025: This document shows two monthly payments, one with the payment reference 'Flat 4 Rent' totalling £1,100 and the other with a reference that is not clear to its reason totalling £1,100.
 - 01/03/2025 to 01/05/2025: This document shows two monthly payments, one with the payment reference 'Flat 4 Rent' totalling £1,100 and the other with a reference that is not clear to its reason totalling £1,100.
 - 01/05/2025 to 01/09/2025: This document shows two monthly payments, one with the payment reference 'Flat 4 Rent' totalling £1,100 and the other with a reference that is not clear to its reason totalling £1,100.
 - 02/09/2025 to 01/12/2025: This document shows two monthly payments, one with the payment reference 'Flat 4 Rent' totalling £1,100 and the other with a reference that is not clear to its reason totalling £1,100.
- Floor Plans have been submitted that show the basement of the property at no. 492 with two studio flats marked out as studio 1 and studio 2.
- A signed affidavit has been provided that explains the applicants understanding of the history of this property. This is as follows:

The building was purchased on the 28th February 2015 and comprised five studio flats comprised as:

- Lower ground floor: Flat 2 and Flat 1
- Upper ground floor: Flat 3 and Flat 4
- First floor: Flat 5

The applicant then advises that the upper ground floor and first floor were converted to 2 flats in 2017, resulting in a loss of one flat total equating to 4 flats marked out as

- Lower ground floor: Flats A1 and A2
- Upper ground floor: Flat B
- First floor: Flat C

The applicants have stated that a tenant moved from flat 4 to flat A2 on the 15th May 2017 but did not update the payment reference to the applicant.

Officer Assessment

In determining if this application is lawful it falls upon the applicant to evidence that the lower ground floor has been in use as two separate dwellings for a period greater than 10 year or 4 years should the development have occurred prior to the 25th April 2024.

Credible information has been provided that indicates that this building has been in operation as separate flats. However, this is known as the property already contained separate dwellings. What has not been established by the evidence is if and when the lower ground floor was divided into two studio dwellings, and if they have been in near continuous use for the relevant period.

Although officers appreciate that there has been some movement of tenants within the building, which is entirely credible, insufficient evidence exists to confirm the exact division of dwellings for a period greater than four years. The payment reference remains indicative of flat 4 and therefore this can only be considered evidence of the existence of this flat.

Further information supporting the date of the works or the layout of the building at the time of purchase has not been provided and therefore it is considered that insufficient evidence that the two downstairs flats have been in operation as two separate studio flats for a period greater than 4 years.

The evidence submitted by the applicant is not sufficiently conclusive to demonstrate that, on the balance of probabilities, the use of the lower ground floor of 492 Archway Road, Hornsey, London, N6 4NA as two flats has been in use for four years before the date of this LDC application. Additional information will need to be submitted specifically relating to all the flats in the building should be submitted in order to allow for the other flats in the block to be discounted as well as any details at purchase that would indicate the situation as the applicant describes.

4. RECOMMENDATION

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

On the basis of the documentation and evidence provided, the Local Planning Authority is not satisfied that it has been demonstrated, on the balance of probabilities, that the the lower ground floor of 492 Archway Road, Hornsey, London, N6 4NA, has been in near continuous use as two self-contained flats for over four years before the date of this LDC application. Therefore, the sought use is considered to be unlawful.

Refusal Reasons:

On the basis of the documentation and evidence provided, the Local Planning Authority is not satisfied that it has been demonstrated, on the balance of probabilities, that the the lower ground floor of 492 Archway Road, Hornsey, London, N6 4NA, has been in near continuous use as two self-contained flats for over four years before the date of this application. Therefore, the sought use is considered to be unlawful.