



Officer Report

Application Number:	HGY/2026/1099
Application Type:	Lawful development: Existing use
Address:	81 Downhills Park Road, Tottenham, London, N17 6AS
Proposal:	Certificate of Lawfulness (Existing use) for small House in Multiple Occupation (Use Class C4) for a maximum of 4 persons.
Case Officer:	Roland Sheldon
Valid Date:	20/04/2026
Applicant:	Ms Siobhan Ahearne
Agent:	Mr Edward Dill

RECOMMENDATION

Approve

1. SITE CONTEXT AND PLANNING & ENFORCEMENT HISTORY

The subject site contains a two-storey mid-terrace L-shaped property located on the southern side of Downhills Park Road, N17. The surrounding uses are residential. The site does not contain a listed building and is not located within a conservation area.

The relevant planning history in relation to the site is set out below:

Planning history:

OLD/1970/0252: Conversion into two self-contained flats – Approved 07/01/1970

HGY/2025/1012: Certificate of Lawfulness: existing use rear dormer extension – Approved 21/05/2025

No enforcement history

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).

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 a small house in multiple occupation (HMO) Use Class C4, from the years 2010 to 2020, and that as a result of this the use was implemented prior to the introduction of the Article 4 direction on small HMOs in November 2013.

Supporting evidence

- 160A2_PL01C: As approved and as built floor plans
- Pre-existing and as-built block plan
- 160A2_PL01A: Pre-existing & as-built plans (HGY/2025/1012), sections and Elevations
- Location plan
- Un-dated photos of loft area
- Miscellaneous un-dated photos of bike store
- Supporting statement
- Email to Council tax department dated 26/09/2017 with names of tenants responsible for paying council tax at 81 Downhills Park Road
- Email to Thames Water dated 26/09/2017 with names of tenants responsible for paying water bills at 81 Downhills Park Road
- Account balance indicating un-specified payments made for unspecified reason between 23/10/2017 – 21/09/2018
- Council tax list of tenant details 28/08/2020
- Thames Water bill dated 24/09/2020
- Invoice from plumbing company 23/05/2022 for works at 81 Downhill Park Road
- Invoice from plumbing company 14/09/2023 for works at 81 Downhills Park Road
- Invoice from plumbing company 06/07/2024 for works at 81 Downhill Park Road
- Invoice for Clearout house/garden/works/electical/plumbing 30/09/24 11/10/24
- Invoice from AlbCon Construction Ltd 20/11/2024 for internal works to building
- Invoice from AlbCon Construction Ltd 28/01/2025 for internal works to building
- EPC 10/04/2026
- Title register for 81 Downhills Park Road dated 23 March 2026 indicating property last sold for £450,000 in 21 December 2020
- Assured Shorthold Tenancy Agreement (AST) for 81 Downhill Park Road for 5 tenants 05/11/2010 – 04/05/2011
- (AST) for 81 Downhills Park Road for 4 tenants ten months 27/08/2011 – 27/06/2012
- (AST) for 81 Downhills Park Road for 4 tenants 1 year 08/07/2013 – 07/07/2014
- (AST) for 81 Downhills Park Road for 5 tenants 1 year 22/08/2015 – 21/08/2016
- (AST) for 81 Downhills Park Road for 5 tenants 1 year 17/10/2016 – 16/10/2017
- (AST) for 81 Downhills Park Road for 5 tenants 1 year 22/09/2018 – 21/09/2019
- (AST) for 81 Downhills Park Road for 5 tenants 1 year 22/09/2019 – 21/09/2020

On the basis of the information currently available, the HMO use appears to have pre-dated the Article 4 Direction and to have changed lawfully from C3 to C4 under permitted development rights at that time. It then appears to have continued operating lawfully as a C4 use. As such, the last known lawful use of the property is likely to have been C4.

However, given the period of vacancy since September 2020, consideration must be given to whether that lawful use may have been lost through abandonment. 'Abandonment' is a legal

concept used by the Courts to describe the circumstances in which rights to resume a use which has been lawfully carried on in the past may be lost because of the cessation of that use. In considering if this right has been abandoned the case law provides that regard should be had to the following:

- The physical condition of the building;
- The period of non-use;
- Whether there has been any other use; i.e. if the building stopped being used as a dwelling and has since been used as an office, or even changed back to C3 use.
- The owner's intentions.

A supporting statement has been provided as part of the application that the property has not been occupied since September 2020 for the following reasons:

- 1) The property became empty during the COVID - 19 pandemic which significantly disrupted the whole property market.*
- 2) The Managing Director of the property management company passed away.*
- 3) There were delays in securing a contractor to carry out refurbishment works, both during and post Covid-19. Various tradespersons worked within the property until the appointment of a final contractor who completed the works and further undertook the loft conversion.*

Further investigation by a member of the Council Planning Enforcement Team confirmed that court proceedings were brought against the then owner of the property by previous tenants for a rent repayment order (RRO) in 2020.

The period for which the RRO was sought was from 22nd September 2019 to 21st September 2020, on the basis that the property was an unlicensed HMO, contrary to S.72(1) of the Housing Act 2004.

The owner lost the court case on 25/06/2021 and was required to pay the RRO to the former tenants. It is presumed that following this determination, the applicant considered that they needed to carry out renovation works to the property in order to ensure it would meet licensing standards to be used as a small HMO. It is understood these works and those to implement the loft conversion deemed lawful under planning reference HGY/2025/1012 were subsequently carried out between 2022 and early 2025.

Whilst no explanation has been provided, invoices have been provided from a plumbing and construction company for substantial works to renovate and refurbish the property between 23/05/2022 – 20/11/2024.

On the balance of probabilities, the case officer therefore concludes that the owner's intention was to have the property occupied as an HMO during the relevant period prior to the submission of this application, but that due to financial, legal and family complications caused by the pandemic, the legal case brought against the former owner, the death of the managing director of the property management company and the need to undertake substantial and costly works to ensure that the property would meet licensing requirements, have caused sizeable delays in achieving this intention.

As such, the officer does not consider that the use has been abandoned through the duration of vacancy.

A site visit carried out by the case officer on 18/06/2026 confirmed that the layout of the property was as shown on the 'as-built' plans. Whilst one room in the loft space contains a separate kitchen as well as ensuite, it still benefits from use of the communal living room, kitchen and WC on the ground floor and therefore the layout in this particular instance can be considered to be that of a small HMO, with a communal kitchen, living room and WC on the ground floor, 3 ensuite rooms on

the first floor, and a loft floor ensuite room with kitchen. The plans show 4 single bed spaces for for individuals.

Therefore, on the balance of probabilities, on the basis of the evidence provided, the lawful use of the property no. 81 Downhills Park Road, Tottenham, London, N17 6AS is a small house in multiple occupation (HMO).

4. RECOMMENDATION

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