



Officer Report

Application Number:	HGY/2026/1288
Application Type:	Lawful development: Existing use
Address:	13 Falkland Road, Hornsey, London, N8 0NU
Proposal:	Certificate of lawful development for the existing use of property as a House in Multiple Occupation (HMO) for up to 7 residents in 5 households (Class Sui Generis).
Case Officer:	Mark Chan
Valid Date:	07/05/2026
Applicant:	6
Agent:	ASHGROVE INVESTMENTS LTD. Mr George Athanasi

RECOMMENDATION

Approve

PROPOSED DEVELOPMENT AND LOCATION DETAILS

Proposal

Certificate of lawful development for the existing use of property as a HMO for up to 7 residents and 5 households (Class Sui Generis).

Site Description

The application site is a two-storey, mid-terraced property with a two-storey rear outrigger on the northern side of Falkland Road. The site is not within a conservation area and not listed or within the curtilage of listed building.

The site is located within the area of the borough covered by an Article 4 direction removing permitted development rights for changes of use from Class C3 to Class C4. It also within Haringey's designated Family Housing Protection Zone (FHPZ).

Planning and Enforcement History

OLD/1976/0803 – 8/7/76 Partial use of ground floor kitchen for machining garments for payment using an industrial sewing machine operated by Mrs. C. Christodolou. Refused 23/08/1976.

HMO Licence History

HMO Licence (Ref: HAR-283813368475) under Housing Act 2004 for up to 7 occupiers and 5 households from 28/10/2024 to 27/10/2029.

HMO Licence under Housing Act 2004 for up to 8 occupiers and 5 households from 01/10/2019 to 30/09/2024.

HMO Licence under Housing Act 2004 for up to 7 occupiers and 5 bedrooms from 16/12/2013 to 15/12/2018.

REPRESENTATION

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 LEGISLATION AND GUIDANCE

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.”

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 13 Falkland Road, London, N8 0NU has been in use as a 7-person, 5-bedroom HMO for a period of 10 years or more. It is noted that HMOs are not defined as single dwellinghouses and therefore for the purposes of Section 171B of the 1990 Act, the four-year rule have never applied to them.

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.

The applicant must prove that the use referred to in the application was lawful for planning purposes on the date of the application. In this instance, the relevant period commences on or before 07/05/2016.

APPLICANT'S EVIDENCE

The application form accompanying this application asserts that the use of 13 Falkland Road, London, N8 0NU as a Class C4 HMO commenced on 28/03/2008.

The application is accompanied by the following evidence:

Tenancy agreements for Room 1 – 5

Room 1: The tenancy agreements cover period from 19/04/2019 to 26/10/2025 lasting for around 6 years with a significant gap between 27/09/2020 and 26/10/2021. However, there is a contractual rollover clause where the tenancy can legally be converted to a monthly periodic tenancy during this 13-month window until a new fixed-term contract was signed in October 2021.

Room 2: The tenancy agreements cover period from 30/03/2019 to 04/02/2027 lasting for around 8 years with a gap between March 2020 and September 2020. However, there is a contractual rollover clause where the tenancy can legally be converted to a monthly periodic tenancy during this gap until a new fixed-term contract was signed.

Room 3: The tenancy agreements cover period from 02/04/2019 to 30/04/2026 lasting for around 7 years with some intermittent gaps from a few days to several months. However, there is a contractual rollover clause where the tenancy can legally be converted to a monthly periodic tenancy during this gap until a new fixed-term contract was signed.

Room 4: The tenancy agreements cover period from 02/04/2019 to 11/09/2026 lasting for around 7 years with some intermittent gaps from a few days to several months. However, there is a contractual rollover clause where the tenancy can legally be converted to a monthly periodic tenancy during this gap until a new fixed-term contract was signed.

Room 5: The tenancy agreements cover period from 27/03/2009 to 26/09/2009 and a Section 21 Notice for eviction date after 26/08/2018. The other tenancies lasted from 01/03/2019 to 15/09/2025 with a significant gap between 16/09/2023 to 15/09/2024. However, there is a contractual rollover clause where the tenancy can legally be converted to a monthly periodic tenancy during this 12-month window until a new fixed-term contract was signed. The total period covered by tenancy for this room lasted for more than 10 years.

(Officer comments: The above evidence covers a range of time periods with the bulk of the evidence covering the period from March/April 2019 to 2025 onwards. With the exception of Room 5, the above evidence does not clearly support the proposed use for a period of at least 10 years.)

HMO Licences

(Officer comment: The applicant has submitted copies of 3 HMO licenses issued by the Council covering the periods 16/12/2013 to 15/12/2018, 01/10/2019 to 30/09/2024 and 28/10/2024 to 27/10/2029. Whilst there are some gaps in the license history, the gaps are relatively short and is likely due to the time needed for the applicant to renew the HMO licence. The submitted information supports the proposed use.)

Statutory Declaration

(Officer comment: This sworn statement is from the Managing Director of Ariston Property who was the letting agent of then Landlord – St Andrew's Greek Orthodox Cathedral Trust for the period from 2008 until 2019. Ariston Property now manages the property for the present Landlord – Ashgrove Investments Ltd. The above evidence does support the proposed use for a period of at least 10 years.)

Existing Ground Floor, First Floor and External Photographs

(Officer comment: The photographs show the exterior and interior of the host building. However, they are not time stamped and the Officer is unable to determine when these photographs were taken. As such, the above evidence does not clearly support the proposed use for a period of at least 10 years.)

Existing Ground Floor, First Floor and Site Plans

(Officer comment: The plans show that the property has 5 bedrooms with sizes ranging from 10.5 sqm to 19 sqm. There is a kitchen, a bathroom and 2 toilets on the ground floor and a smaller kitchen

and shower room on the first floor. However, the above evidence does not clearly support the proposed use for a period of at least 10 years.)

CONCLUSION

The evidence presented, in particular the tenancy agreements, HMO Licenses issued by the Council and the Statutory Declaration from the Managing Director of Ariston Property, are considered sufficiently comprehensive in nature and supports the proposed use for a period of at least 10 years. On the balance of probability, therefore it is considered that the evidence submitted by the applicant sufficiently precisely and unambiguously demonstrates that the use of 13 Falkland Road, London, N8 0NU has been used as Class Sui Generis HMO for up to 7 residents and 5 households for a continuous period of 10 years or more before the date of this application and is therefore immune from enforcement action as result of being considered lawful.

RECOMMENDATION

GRANT 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 13 Falkland Road, London, N8 0NU has been used as a Class Sui Generis HMO for a continuous period of 10 years or more before the date of this application. Therefore, the sought use is considered to be lawful.