



Officer Report

Application Number:	HGY/2023/2261
Application Type:	Lawful development: Existing use
Address:	3 Aubrey Road, Hornsey, London, N8 9HH
Proposal:	Certificate of Lawfulness to certify that the use of the basement flat as a separate dwellinghouse is lawful.
Case Officer:	Josh Parker
Valid Date:	21/08/2023
Applicant:	Mr Simon Fraser-Allen
Agent:	David Evans

RECOMMENDATION

Approve

PLANNING & ENFORCEMENT HISTORY

All relevant planning history has been considered for this site.

BWU/2003/00003 -Conversion of subject property into flats. The complainant also has concerns regarding the installation of velux windows in the front bay window which overlook his property – Enforcement deemed at the time after a site visit that there is the windows can be installed under permitted development and the dwelling was one single family home at time of visit.

Officer comment: This may contradict some of the information below however there was no enforcement notice was served and the flat appears to be established for approximately 20 years.

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 sought nor 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."

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/maisonettes for a continuous period of 4 or more years.

Applicant's evidence

The following timeline and supporting information has been set out in the covering letter set out by the agent:

In terms of the background, Mr Fraser-Allen's declaration sets out how this property has been used since it was acquired by him and his wife on 29 July 2002.

In summary, soon after they acquired the property the Fraser-Allens carried out works to create a self-contained flat in the basement; see para. nos. 6 and 7 of his declaration.

The rest of the declaration details how this flat – which we will refer to here as “the Flat” – has been used since it was created in 2002.

Paragraph 8 states that the Flat has been used and occupied separately from the rest of the property since it was created. Paragraph 9 contains a table setting out the list of occupiers. These run from May 2003, when Ms Leigh Davy moved in to the Flat to Ms Francesca Lamacchi and Mr Alexander Cox who occupy the Flat at the current time.

The Flat was occupied on a full time basis from May 2003 through to April 2013 by four occupiers. Initially Ms Davy occupied the Flat. She was followed by Mr Tim Graham and after he moved out it was occupied by Mr Alan Andrews and Ms Katherine Gamble. A copy of the tenancy agreement with Mr Alan Andrews and Ms Katherine Gamble is annexed to the declaration; see para no. 11 and exhibit no. SRFA3.

The Flat was then used for short-term accommodation. This started in February 2014 and carried on through until June 2017. During this time, there were periods when the Flat could not be used as such because of flood damage and the subsequent renovation work. Details of the period when the Flat was being used for “temporary sleeping accommodation” can be found at para no. 15 and the exhibit numbered SRFA5.

The Flat was then used for permanent accommodation, starting with the tenancy agreed with Ms Gleeson and Mr Doherty in June 2017; see para. no. 16. They lived in the Flat for a year. They were followed by Mr Herbert who lived there for 90 nights. There was also some short periods of use as temporary accommodation. These amounted to 19 nights in 2018 and 89 nights in the first half of 2019.

For just over the past four years, the Flat has been used and occupied by Ms Francesca Lamacchi and Mr Alex Cox. A copy of their tenancy agreement can be found at exhibit no. SRFA7.

Mr Fraser-Allen explains at para. no. 19 that the Flat has all the facilities necessary for day[1]to-day private domestic existence. In para. no. 20 he explains the position with regard to utilities and so forth.

Ms Lamacchi's declaration sets out how she has used and occupied the Flat since moving there on 17 July 2019. She confirms, at para. no. 6, that she and her partner have always used it for self-contained accommodation. At para. nos. 7 to 9 she sets out how much rent she pays and the position with utilities.

Supplementary ScottishPower for the 'Lower Ground Floor, 3 Aubrey Road' from 2019 to Current (2023) has also been submitted.

RECOMMENDATION

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

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 3 Aubrey Road, Hornsey, London, N8 9HH has been used as 2 self-contained flats for a continuous period of four years before the date of this application.