



Officer Report

Application Number:	HGY/2023/0982
Application Type:	Lawful development: Existing use
Address:	53 Park Ridings, Wood Green, London, N8 0LB
Proposal:	Certificate of lawfulness for the existing use of the loft as a self-contained flat
Case Officer:	Sabelle Adjagboni
Valid Date:	05/04/2023
Applicant:	3
Agent:	Ms Marika Lysandrou

RECOMMENDATION

Refuse

PROPOSED DEVELOPMENT AND LOCATION DETAILS

This is an application for a Certificate of lawfulness for the existing use of the top floor of the property as a self-contained residential flat.
The property is not located in a conservation area, nor does it have a listed status.

PLANNING & ENFORCEMENT HISTORY

There is no relevant planning and enforcement history in relation to the site.

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.”

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 application form accompanying this application asserts that:

the use of the top floor at 53 Park Ridings as a self-contained flat commenced on 20/02/2019.

The application is accompanied by the following evidence:

- **Assent Building Control Certificate**

Officer's comments: This document dating back to the 4th of February 2019 describes the works it relates to as “Domestic Loft conversion within permitted development – L-shape with 2 bedrooms + 1 shower room. 2 Velux to front roof slope; Existing Residential Property.” It further stipulates that “the work excludes any gas work [...]”. Therefore, this document only proves that a loft conversion was done to provide two additional bedrooms including 1 ensuite but does not demonstrate that the loft conversion is for an independent flat.

- **Ikea Invoice**

Officer's comments: This document dated 8th of February 2019 includes information relating to the sale of a kitchen unit. In a supporting email, the applicant explains that the invoice was for the kitchen unit they purchased for the loft. It is worth pointing out that this date is a few days after the building control assessment certificate.

- **HM Government Energy Performance Certificate**

Officer comments: the certificate dating back to the 10th of March 2019, describes the site as “a top-floor flat”. It also states that the total floor area is 33m2 which corresponds to area of the plans provided.

- **Gumtree advert creation for a loft studio apartment**

Officer's comments: This document shows pages of Gumtree to update an ad. The advert description refers to a “new loft studio apartment, self-contained, with Juliet balcony. Separate kitchen with dining area and a large ensuite bedroom/living room. The studio is at the top of a Victorian terrace house [...]”. It further shows the date available as “04/03/2019”. As this document is not a published ad but the form to create/update an ad, it is not sufficient to prove that such an ad was in fact published in March of 2019.

- **Email response to advert**

Officer's comments: This is an email from a Leila via Gumtree dated 13th of March 2019 with the subject line “Leila replied to your ad: Beautiful, new self-contained loft, fully furnished, all the bills included in rent” expressing interest in viewing the property.

- **Tenancy Deposit Protection Certificate**

Officer's comments: This is a certificate from the Tenancy Deposit Scheme regarding a deposit beginning on the 29th of March 2019 for a 'Loft Studio at 53 Park Ridings'. The tenancy deposit agreement is between the applicants and Leila Moeeni.

- **Tenancy agreement with tenant, Leila**

Officer's comments: The document is a picture of the page in the tenancy agreement containing the property details described as a loft studio and the tenancy terms: 6 months starting from the 29th of March 2019.

- **Email from tenant, Leila**

Officer's comments: This refers to an email conversation dating on the 29th of August 2022 where the tenant, Leila, gives notice of her intentions to move out by the 29th of September 2022.

- **Assured Shorthold Tenancy Agreement – Residential Landlords Assoc.**

Officer's comments: This is a tenancy agreement dated on the 12th of September 2022 between the applicants and a new tenant for a top floor apartment at 53 Park Ridings. The date of the tenancy is from the 1st of October 2022 to the 1st of October 2023. The document further stipulates that all bills are included in rent: gas, electric, water, council tax and Wi-Fi.

Further to the above, more corroborating information to support the application has been provided. Such information includes Site photos, and Floor Plans. The site photos show a kitchen and a date of the 6th of March 2019. Updated plans were sent to the officer during the application which reflect that there is a kitchen with an ensuite bedroom, and a private entrance from the stairs.

Officer's concluding comments

From the evidence provided, it can be deduced that a loft conversion was done around February 2019 without planning permission. At the time of the loft conversion the layout was for two bedrooms one of which was ensuite. The first plans included in this application reflect this layout. The evidence then shows that once the building regulation control was done February 2019, the applicant proceeded to change the plans of the loft to make it a 'self-functioning' addition without planning permission and rented it out from March 2019.

However, for planning purposes, a flat is a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally, as defined by the Leasehold Reform, Housing and Urban Development Act 1993, Section 101.

The unit of accommodation in the loft is dependent on access through the dwelling. Equally, it has been dependent on it in relation to power, gas, water, etc. In order to be classed as a flat, the loft should be accessed independently of the main dwelling, without any access required through it.

Hence, the evidence presented to substantiate the statement of case is considered comprehensive in nature. However, on the balance of probability, it is considered that the evidence submitted by the applicant does not precisely and unambiguously demonstrates that the top floor at 53 Park Ridings is a self-contained flat.

RECOMMENDATION

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

From the documentation and evidence provided, the Local Planning Authority is not satisfied that, on the balance of probabilities the use of the top floor at 53 Park Ridings has been used as a self-contained flat for a continuous period of over 4 years before the date of this application. Therefore, the sought use is considered to be unlawful.