



Officer Report

Application Number:	HGY/2024/0532
Application Type:	Lawful development: Existing use
Address:	6 Whitley Road, Tottenham, London, N17 6RJ
Proposal:	Lawful development certificate for existing use of premises as 8 self-contained studio units.
Case Officer:	Roland Sheldon
Valid Date:	19/03/2024
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Applicant:	Mr J Elias
Agent:	Mr timothy edens

RECOMMENDATION

Approve

1. SUMMARY OF RECOMMENDATION

Lawful

2. PROPOSED DEVELOPMENT AND LOCATION DETAILS

The subject site contains a two-storey end-of-terrace dwellinghouse located on the northern side of Elmhurst Road at the junction shared with Whitley Road, in the Bruce Castle ward of Haringey, N17. The surrounding uses are residential. The site does not contain a listed building and is not located within a conservation area.

The proposal seeks the award of a lawful development certificate for the existing use of the premises as 8 self-contained flats.

3. PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows:

6 Whitley Road, N17

Planning history:

HGY/1995/1182: Change of use to hostel – Refuse 02/04/1996

HGY/1996/0619: Conversion of property into 7 self contained bedsit units and 1 common lounge – Refuse 16/7/1996

No Enforcement history.

4. 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).

There was no public consultation undertaken for the application, given that there is no statutory requirement for one to take place on certificate of lawfulness proposals.

The following were notified of the submission of lawful development application, and invited to provide comment:

- LBH Planning Enforcement
- LBH Council Tax
- LBH Private Housing

No representations were received.

5.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.”

6.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 8 self-contained flats for a continuous period of 4 or more years from when the application was submitted on 28/02/2024, so between 29/02/2020 – 28/02/2024.

Applicant's evidence

General Evidence:

- Location Plan
- Drawing SK02

The plan shows the property laid out over 2 floors with 4 self-contained flats located on the ground floor:

- Flat 1
- Flat 2
- Flat 3
- Flat 7

Four flats are shown located on the first floor:

- Flat 4
- Flat 5
- Flat 6
- Flat 8

All flats are shown on plan to contain a WC and shower, with kitchen sink and hob.

- Images of Council tax records for Studio Flats 1, 2, 3, 4, 5, 6, 7 and 8 at 6 Whitley Road, N17 6RJ, all with effect from March 2007.
- Undated draft HMO Licence for 6 Whitley Road for 11 persons in 8 households for 5 years (covering letter dated 29 May 2015).
- HMO licence for 6 Whitley Road, N17 for period 26/05/2022 – 25/05/2027
- Letter from Islington Private Housing Partnerships to Woodhouse Estates, confirming Flats 1-8, 6 Whitley Road has been used by Islington Council over the past 6 years to accommodate persons in housing need. Letter dated 07/02/2024
- Letter from Barnet Homes dated 22/02/24, confirming 6 Whitley Road has been used by Barnet Homes over 10 years for temporary accommodation. The building is confirmed as containing 8 self-contained studio flats.

- Covering letter from T.J. Edens of Planning & Development Consultant 28th February 2024
- A list of tenants for flat 1 between 29/12/2020 – 27/04/2023 – present day
- A list of tenants for flat 2 between 24/06/2019 – 28/01/2024 – present day
- A list of tenants for flat 3 between 26/09/2019 – 18/01/2023 – present day
- A list of tenants for flat 4 between 18/06/2019 – 21/10/2023 – present day
- A list of tenants for flat 5 between 19/09/2019 – 08/01/2024 – present day
- A list of tenants for flat 6 between 24/12/2019 – 17/05/2023 – present day
- A list of tenants for flat 7 between 09/09/2019 – 05/07/2023 – present day
- A list of tenants for flat 8 between 30/08/2019 – 31/01/2023 – present day

Evidence for individual units:

Studio Flat 1

- Letter from Islington Council to Woodhouse Estates dated 27/4/23 terminating contract for tenant Ms Rahwa Fesheha for Flat 1, 6 Whitley Road dated 01/04/2012
- A supplemental agreement – booking licence to occupy 'Flat 1 at Whitley Road, N17 6RJ' between London Borough of Barnet and Woodhouse Estates dated 08 June 2017
- Council tax record for Studio 1 6 Whitley Road for 2018/2019
- Letter from Islington Council to Woodhouse Estates dated 26/1/2024 terminating contract for tenant Chloe Branigan for Flat 2, 6 Whitley Road dated 01/04/2012
- Temporary Accommodation form for flat 1, 6 Whitley Road dated 02/05/23
- Energy Performance Certificate date of assessment 12/11/2018

Studio Flat 2

- Supplemental Agreement – Booking Licence to Occupy between London Borough of Barnet and Woodhouse Estates for flat 2, 6 Whitley Road dated 30/05/2013.
- Council Tax Bill for Studio 2, 6 Whitley Road, N17 for 2013/2014
- Energy Performance Certificate date of assessment 12/11/2018

Studio Flat 3

- Council Tax Bill for Studio 3, 6 Whitley Road, N17 for 2017/2018
- Haringey Council Temporary Accommodation Agreement for Alicjia Szponarska for flat 3, 6 Whitley Road dated 08/04/2013
- Supplemental Agreement – Booking Licence to occupy between London Borough of Barnet and Woodhouse Estates for flat 3, 6 Whitley Road dated 18/01/2023.
- Energy Performance Certificate date of assessment 12/11/2018

Studio Flat 4

- Haringey Council Temporary Accommodation Agreement for Patrick Appleby for flat 4, 6 Whitley Road dated 03/08/2011
- Letter from Islington Council to Woodhouse Estates dated 30/10/23 terminating contract for tenant Mr Everton Anderson for Flat 4, 6 Whitley Road dated 01/04/2012
- Council Tax Bill for Studio 4, 6 Whitley Road, N17 for 2018/2019
- Temporary Accommodation form for flat 4, 6 Whitley Road dated 27/10/23
- Energy Performance Certificate date of assessment 12/11/2018

Studio Flat 5

- Council Tax Bill for Studio 5, 6 Whitley Road, N17 for 2015/2016
- Haringey Council reservation of Flat 5 between 05/05/15 – 12/05/15
- Letter from Islington Council to Woodhouse Estates dated 20/12/23 terminating contract for tenant Sabiya Mubarak/Nessa for Flat 5, 6 Whitley Road dated 01/04/2012
- Temporary Accommodation form for flat 5, 6 Whitley Road dated 08/01/24
- Energy Performance Certificate date of assessment 12/11/2018

Studio Flat 6

- Council Tax Bill for Studio 6, 6 Whitley Road, N17 for 2017/2018
- Supplemental Agreement – Booking Licence to Occupy between London Borough of Barnet and Woodhouse Estates for flat 6, 6 Whitley Road dated 18/05/2018.
- Letter from Islington Council to Woodhouse Estates dated 18/5/22 terminating contract for tenant Tedros Adugna for Flat 6, 6 Whitley Road dated 01/04/2012
- Temporary Accommodation form for flat 6, 6 Whitley Road dated 17/05/23
- Energy Performance Certificate date of assessment 12/11/2018

Studio Flat 7

- Council Tax Bill for Studio 7, 6 Whitley Road, N17 for 2018/2019
- Supplemental Agreement – Booking Licence to occupy between London Borough of Barnet and Woodhouse Estates for flat 7, 6 Whitley Road dated 02/09/2011.
- Letter from Islington Council to Woodhouse Estates dated 05/7/23 terminating contract for tenant Ellie Cartwright for Flat 7, 6 Whitley Road dated 01/04/2012
- Temporary Accommodation form for flat 7, 6 Whitley Road dated 05/07/23
- Energy Performance Certificate date of assessment 12/11/2018

Studio Flat 8

- Haringey Council Temporary Accommodation Agreement for Gemal Hassen for flat 8, 6 Whitley Road dated 08/12/2010.
- Council Tax Bill for Studio 8, 6 Whitley Road, N17 for 2016/2017
- Temporary Accommodation form for flat 8, 6 Whitley Road dated 31/1/23
- Energy Performance Certificate date of assessment 12/11/2018

Overall review:

The Council tax records for 8 self-contained flats dating back to March 2007 provide strong evidence of the existence of the flats for over four years prior to submission of the application.

Whilst there are some gaps in comprehensive evidence demonstrating occupation of all the units for a continuous period of over 4 years, the letters from Barnet, Islington and Haringey Councils confirming their use of the flats for over 4 years as temporary accommodation provide strong evidence of occupation over the relevant period. The other associated evidence indicates that there have been no significant letting voids for any of the units during the relevant period.

On the balance of probabilities, sufficient evidence has been provided to demonstrate that the premises has been in use as 8 self-contained studio units for a near-continuous period for over 4 years prior to the date of the submission of the application.

As such, it is considered that a lawful determination can be given on the existing use.

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 sufficiently comprehensive in nature.

On the balance of probability therefore it is considered that the evidence submitted by the applicant precisely and unambiguously demonstrates that 6 Whitley Road, London, N17, has been used as 8 self-contained studio units for a continuous period of four years before the date of this application.