



Officer Report

Application Number:	HGY/2024/0994
Application Type:	Lawful development: Existing use
Address:	91 High Road, Wood Green, London, N22 6BB
Proposal:	Certificate of Lawful Development for the existing use of the property as six self-containing flats (Flat 1,2,3,4,5, and 6)
Case Officer:	Iliyan Topalov
Valid Date:	29/07/2024
Applicant:	Executive Properties Limited
Agent:	Mr Michael Koutra

RECOMMENDATION

Refuse

PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows.

HGY/2019/2646 - Erection of second floor rear extension, internal alterations to reconfigure layout of HMO.

Refused - 06/11/2019

HGY/2019/0869 - Internal alterations to existing HMO and proposed second floor rear extension.

Refused - 13/03/2019

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 counterevidence.

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 six self-contained flats for a continuous period of 4 or more years. This means that the applicant is seeking confirmation that 91 High Road, Wood Green, London, N22 6BB has been divided into six self-contained flats. Three being located on the First Floor, two being located on Second Floor, and one being located on Third/Loft Floor.

Applicant's evidence

The application form accompanying this application asserts that:

- The use of 91 High Road, Wood Green, London, N22 6BB as six self-contained flats commenced on 01-01-2019.

The application is accompanied by the following evidence:

- Site Location Plan:
 - o Site Location Map – Showing the location of the property
- Floor Plans:
 - o Combined Floor Plans 91 High Road N2 6BB Existing Plans – Floor plans showing the existing flats.
- Tenancy Agreements:
 - o Tenancy agreements for Flat 1 starting from 28.01.2020 to the date of this application.
 - o Tenancy agreements for Flat 2 starting from 17.03.2020 to the date of this application.
 - o Tenancy agreements for Flat 3 starting from 11.03.2020 to the date of this application.
 - o Tenancy agreements for Flat 4 starting from 10.12.2020 to the date of this application.
 - o Tenancy agreements for Flat 5 starting from 19.12.2020 to the date of this application.
 - o Tenancy agreements for Flat 6 starting from 7.12.2020 to the date of this application.
- Written Statement:
 - o Affidavit of the letting agent stating - I have managed the rental agreement, maintenance and day-to-day requirements of 91 High Road N22 6BB since 2018. 91 High Road N22 6BB has been used as 6 self-contained flats addressed as "Flats 1, 2, 3, 4, 5, and 6". Each flat comprises of living space, bedroom, kitchen and bathroom. 91 High Road N22 6BB has been continuously used as six self-contained flats since 2018 to date, by tenants whom have all been residing at these flats continuously under an assured shorthold tenancy agreement.

Officer comment:

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The assured shorthold tenancy agreements on their own are not sufficient to demonstrate a change from C4 HMO to C3 self-contained studio flats, as both are residential in nature and will not differ much from one another when it comes to the tenancy agreement. Even if the AST are to be considered precise enough evidence, Flats 4,5, and 6, do not demonstrate 4 years of continuous use as self-contained flats.

There is also discrepancy in the provided evidence for flat 2, as the assured shorthold tenancy agreement dated 17th March 2020, refers to "Room 2, 91 High Road Wood Green N22 6BB" rather than flat 2.

The written statement of the letting agent clashes with the statement on the planning application. One stating that use has been since 2018 and the other since 2019.

Both the date stated in the written statement of the letting agent, and the date stated on the planning application clash with previous planning applications ref: HGY/2019/2646 and HGY/2019/0869 which describe and refer to the property as HMO rather than flats. The submitted “existing” plans for those two applications do not match the existing plans submitted by this application. The existing plans for HGY/2019/2646 and HGY/2019/0869 both show HMO use, and different configuration of the property.

For the above reasons and discrepancies, the planning officer deems the evidence submitted by the applicant to be not sufficient to demonstrate that, on the balance of probability, the use of 91 High Road, Wood Green, London, N22 6BB as six self-contained flats has been in use for four years up to date.

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 at 91 High Road, Wood Green, London, N22 6BB, has been used as six self-contained flats for a continuous period of four years before the date of this application. Therefore, the sought use is considered to be unlawful.