



Officer Report

Application Number:	HGY/2024/1226
Application Type:	Lawful development: Existing use
Address:	645 Green Lanes, Hornsey, London, N8 0QY
Proposal:	Certificate of lawfulness for existing use of the upper floors to this building as 6 self-contained flats operating under C3 use.
Case Officer:	Daniel Boama
Valid Date:	21/06/2024
Applicant:	4
Agent:	Executive Properties Limited Mr Michael Koutra

RECOMMENDATION

Approve

1. PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows.

HGY/2017/2961 - Proposed conversion of the rear of the shop to a residential unit and associated work to the shop. Refused permission on 30/11/2017.

HGY/2011/2257 - Creation of 1 x one bed flat to rear of property in place of existing storage area. Granted permission on 19/12/2012.

HGY/2006/0161 - Variation of condition re opening hours of restaurant / take away attached to planning application reference HGY/2003/0809 granted on appeal to allow opening 8am - 2am Monday to Sunday. Refused permission on 21/3/2006.

HGY/2005/1305 - Extension of opening hours from 0800 - 2300 to 24 hours opening. Refused permission on 31/8/2005.

HGY/2003/0809 - Change of use from retail (A1) to restaurant/take-away (A3). Refused permission on 24/6/2003.

2. 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).

3. 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."

4. 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.

It is noted that the recent change in legislation replacing the 4-year immunity test for residential uses and building operations with a ten-year requirement in-order to be immune from enforcement and therefore lawful does not apply to residential uses or building works carried out before this change to legislation came into force. The four-year rule therefore still applies in this case.

In this case, a Certificate is sought on the grounds that the upper floors in the building outlined in red on the submitted plan has been in use as six flats for a continuous period of 4 or more years.

Applicant's evidence

The application form accompanying this application asserts that:

- the use of 645 Green Lanes, Hornsey, London, N8 0QY as 6 flats commenced on 01-01-2018.

The application is accompanied by the following evidence:

- Planning Statement by MSK Design Ltd dated April 2024 (Officer comments: Signed Affidavit dated 2nd May 2024 of Mr Tony Chrysanthou, the Managing Agent of Chris Anthony Estates, who states that they have managed the rental agreements, maintenance and day-to-day requirements of “the Property” since 2018, and that “the Property” has been used as 6 self-contained flats addressed “Flats 1, 2, 3, 4, 5 and 6” since 2018)
- 10106-MSK-00-DR-00-PL-001-0 645 FLOOR PLANS (Officer comments: Shows the Ground Floor Plan, First Floor Plan, and Second Floor Plan, whereby Flats 1 to 3 is on the First Floor Plan and Flats 4 to 6 on the Second Floor Plan)
- PLANNING STATEMENT - 645 Green Lanes PART 2A
 - Officer comments - Includes the following:
 - Includes Appendix A Assured Shorthold Tenancy (AST) Agreement for Flat 1 page 2 to 67, showing three contracts from 16 December 2019 to 15 December 2024.
 - Appendix B AST Agreement for Flat 2 page 68 to 156, showing four contracts from 29 September 2018 to 28 August 2025.
 - Appendix C AST Agreement for Flat 3 page 157 to 245, showing four contracts from 4 March 2018 to 3 March 2025.
- PLANNING STATEMENT - 645 Green Lanes PART 2B
 - Officer comments - Includes the following:
 - Appendix D AST Agreement for Flat 4 page 2 to 89, showing four contracts from 16 April 2018 to 15 April 2025.
 - Appendix E AST Agreement for Flat 5 page 90 to 178, showing four contracts from 30 June 2018 to 29 December 2025.
 - Appendix F AST Agreement for Flat 6 page 179 to 201, showing one contract from 5 August 2024 to 28 August 2026.

The evidence presented by the applicant to substantiate the statement of case is considered comprehensive in nature. Other evidence reviewed by the officer external to the submission is that flats 1-6 have been listed as separate flats since August 2001. On the balance of probability therefore it is considered that the evidence submitted by the applicant precisely and unambiguously demonstrates that the use of 645 Green Lanes, Hornsey, London, N8 0QY has been used as six separate self-contained studio flats (Class C3 Use) for a continuous period of four years before the date of this application.

5.RECOMMENDATION

Grant 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 satisfied that, on the balance of probabilities the use of 645 Green Lanes, Hornsey, London, N8 0QY has been used as six separate self-contained studio flats (Class C3 Use) for a continuous period of four years before the date of this application. Therefore, the sought use is considered to be lawful.