

02/08/2023

Sent via planning portal only:

Dear Sir/Madam

CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING) – THE TOWN & COUNTRY PLANNING ACT 1990

INSTALLATION OF SECURITY ROLLER SHUTTERS, SHUTTER BOXES AND AWNING TO SHOP FRONT WITH ASSOCIATED ACCESS RAMP

37 BELSIZE LANE, LONDON NW3 5AS

This is an application under Section 191 (1) (b) of the Town and Country Planning Act 1990 to obtain a Lawful Development Certificate to confirm that the erection of security roller shutters, shutter boxes, awnings to the shopfront and ramped access to No.37 Belsize Lane are lawful by virtue of the works having been carried out in excess of four years prior to the submission of this application.

The site

The site is located on the east side of Belsize Lane close to its junction with Belsize Terrace and comprises of two three storey, mid terrace properties with commercial uses on the ground floor and residential living above No.37 and a mix of residential and office above No.39. The two ground floor commercial units at numbers 37 and 39 Belsize Lane have been amalgamated into one unit, in use as a café; however, the frontages appear as separate shopfronts.

The site is located within the Belsize Conservation Area, however it is not a listed building (nor are there any nearby listed buildings). The building is identified as making a positive contribution to the character of the conservation area, in the Belsize Conservation Area Statement (2002).

Planning history

On the 28th February 2022 planning permission was refused (ref: for the 2018/5532/P) for the installation of security roller shutters, shutter boxes and awnings to shop fronts at no. 37 and 39 and access ramp to no. 37 (Retrospective). This was later taken to appeal and dismissed on the 27th April 2023 (ref: APP/X5210/W/22/3300966) however the planning inspector outlined that the works at No.39 were in fact lawful due to the passage of time and therefore the dismissal purely related to those works at No.37.

2010/4654/P: Planning permission was granted on the 8 November 2010 for the 'Change of use from doctor's surgery (Class D1) to snack bar (Class A1).'

CTP/G7/10/2/36085: Permission for development (conditional) was granted on 12 July 1983 for 'Change of use of ground and basement floors from retail to doctor's surgery.'

CTP/G7/10/2/5678: Permission for development was granted on 21 August 1968 for 'Installation of new shop front.'

Legislative Background and Guidance

Section 191 of the Town and Country Planning Act 1990 (as amended)

Section 191 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") allows applications to a Local Planning Authority for the issue of Certificates of Lawful Use or Existing Development. This provides a statutory mechanism for obtaining confirmation that an existing use of land, operational development, or activity in breach of a planning condition, is lawful and consequently immune from enforcement action.

Section 171B(1) of the Town and Country Planning Act 1990 (as amended)

Section 171B(1) of the Town and Country Planning Act provides for the 'four year rule' in respect of operational development. It states:

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

Therefore, if it can be demonstrated that the works were substantially completed more than four years prior to the submission of this certificate application without enforcement action, then the development is lawful, and a certificate should be issued.

Planning Practice Guidance Paragraph 009

Planning Practice Guidance at paragraph 009, states:

"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."

In light of the above, a certificate of lawful use or existing development is not a planning permission. The planning merits of the use, operation or activity in the application are not therefore relevant and planning policies are thus not applicable. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The test in this instance is whether 'on the balance of probability' the applicant has demonstrated that the development was carried out and substantially completed more than four years prior to the submission of this certificate application.

The lawfulness of the existing development

As outlined above, the application is not to be considered against local or national planning policy. The question to ask is whether the applicant has demonstrated, on the balance of probability, that the development occurred more than four years prior to the submission of this certificate application.

The 'balance of probability' threshold was previously set out in Circular 10/97 (now cancelled), but that threshold is repeated in current Planning Practice Guidance. Further, case law dictates that an applicant's own evidence does not need to be corroborated by "independent" evidence to be accepted (*FW Gabbittas v SSE and Newham LBC* [1985] JPL 630). If the local planning authority has no evidence of its own, or 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."

The works to install security roller shutters, shutter boxes, awnings to the shop front and access ramp were commenced and completed at different points in time, please refer to the below for greater detail. The existing works have been in continuous use since their installation.

Based on the evidence available it can be demonstrated, on the balance of probability, that the development occurred in excess of four years prior to the submission of this application. The following provides a summary of the evidence submitted in support of the application.

An invoice has been submitted as part of this application which contains the scope of works and services as well as the total amount paid for the works relating to the roller shutters and boxes. This invoice is addressed to 37 Belsize Lane, and states that payment had been made. This invoice is dated 14th March 2018, please refer to Appendix 1 for greater detail.

Within Appendix 2 of this submission, there are dated photographs taken from google street view, dating back to July 2019 for the retractable awning and photographs of the ramped access dating back to March 2018 which is in excess of the 4-year requirement.

Summary

The evidence submitted demonstrates that the works carried out to the property in relation to the, occurred more than four years before the submission of this certificate application.

Accordingly, the requirements of lawfulness through expiry of time are satisfied, and any refusal from the Council would be unfounded. It is therefore respectfully requested that a certificate is issued.

I trust the commentary above is clear but please do not hesitate to contact me if you have any queries or if I can offer any further points of clarification.

Louis Brewer
Planner
SM Planning