



Planning Department
Camden Council
5 Pancras Square
London
N1C 4AG

1 November 2023

Dear Sir/Madam

RE: 104 West End Lane, West Hampstead, London, NW6 2LS

Town and Country Planning Act (1990) Section 191(1)(B) Application for Lawful Development Certificate for Existing Development

On behalf of our client, Anthony Martin Green and Antony Ian Spencer, I hereby submit an application for a Certificate of Lawfulness for Existing Development for a two-storey rear extension and rear external flue at 104 West End Lane.

Application documents

The following documents are enclosed with this application:

- a) Completed application form;
- b) A plan identifying the land; and
- c) Evidence that proves that the two-storey extension and rear external flue have been substantially complete for at least four years and the reasons that the applicant thinks that they are entitled to a Lawful Development Certificate.

The requisite fee of £298 is to be paid online following submission on the Planning Portal (ref: PP-12166128).

Background

104 West End Lane comprises a 2.5 storey building with a lower ground floor on West End Lane. The building contains a two-storey extension to the rear of the building at ground and lower ground floor as well as an external flue which extends from the ground floor to the second floor. The extension cannot be viewed from the front of the building on West End Lane (see Figure 1) or from West Hampstead Underground station to the rear (see Figure 2). It can be viewed and accessed from a passageway to the south that connects the building to 196a Broadhurst Gardens (Figure 3). The extension can be seen in the Google Earth image in Figure 4. It can also be seen from the upper floors of 104 West End Lane, as shown in the photographs in the statutory declarations of Antony Spencer and Anthony Green.

The flue can be viewed from West Hampstead Underground station to the rear of the site, as shown in Figures 2 and 4 and from nearby Blackburn Road as shown in the photographs attached as Appendix F.

The Council's online planning database reveals that there has been no planning application for the erection of the extension or the flue. It is understood that the flue was erected before the extension when the building was first used as a takeaway over ten years ago. The extension has also been present for more than ten years.



Figure 1: Image of 104 West End Lane (Source: Google Earth)



Figure 2: View of rear of site (including flue) from West Hampstead Underground Station



Figure 3: View from passageway looking towards extension



Location of extension

Figure 4: Aerial view of extension and flue (Source: Google Earth)



Applicant's interest in the land

The applicant is the freehold owner of No. 104 West End Lane.

Relevant Legislation

Section 55 (1) of the Town and Country Planning Act 1990 defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

The Planning and Compensation Act 1991, section 4 (171B) introduced rolling time limits within which local planning authorities can take planning enforcement action against breaches of planning control. In respect of 'operations', Section 171B (1) states:

"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."

The development therefore becomes immune from enforcement action four years after the operations are substantially completed. Once this time limit has passed the development becomes lawful, in planning terms.

The Town and Country Planning Act (1990), section 191 sets out the statutory provisions for certificates of lawfulness of existing use or development. Section 191 (1)(b) sets out the provision that if a person wishes to ascertain whether any operations carried out in, on, over or under the land are lawful they may make an application for that purpose to the local planning authority specifying the land and describing the operations.

Section 191(2) state that for the purposes of the Act, operations are lawful at any time if:

(a) no enforcement action may be taken in respect of them (...or because the time for enforcement action has expired...); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Section 191(4) states that if on application, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the operations described in the application, they shall issue a certificate to that effect. The Planning Practice Guidance confirms that the burden of proof is with the applicant and the relevant test is the 'balance of probability'.

The requirement is that the evidence submitted is sufficiently precise and unambiguous to justify the grant of a Certificate. If this is the case, then there is no good reason to refuse the application.

Description of building operations

The application is for a Lawful Development Certificate for an Existing Development for the two-storey extension and flue that are located to the rear of the building as shown in Figures 2 (flue only), 3 (extension only) and 4. Access to the upper storey of the extension is through a door to the rear of the takeaway at ground floor level. Access to the lower storey is from a passageway that connects No. 198a Broadhurst Gardens. The extension measures 20 sqm (GIA) and the floorplans are shown on the submitted Location Plan.

Evidence of Extension

In support of this application, please find enclosed the following evidence that demonstrates that the extension and flue have been substantially completed for a period of at least 10 years.

- (a) **October 2023 - Antony Spencer Statutory Declaration.** The Statutory Declaration confirms that Antony Spencer purchased the site in 1990 alongside his business partner. It further confirms that the owners have taken an active interest in the management of the property, making frequent visits to inspect the condition of the property.
The Statutory Declaration confirms that the tenants of the property around the time of 2011-2012 built a two-storey extension accessed by the rear walkway alongside the flank wall of 198a Broadhurst Gardens. Antony Spencer first saw the extension at the beginning of 2013.
- (b) **October 2023 - Anthony Green Statutory Declaration.** The Statutory Declaration confirms that Anthony Green purchased the site in 1990 alongside his business partner. It further confirms that the owners have taken an active interest in the management of the property, making frequent visits to inspect the condition of the property.
The Statutory Declaration confirms that the tenants of the property around the time of 2011-2012 built a two-storey extension accessed by the rear walkway alongside the flank wall of 198a Broadhurst Gardens. Anthony Green first saw the extension at the beginning of 2013.
- (c) **October 2023 - Robert Reifft Statutory Declaration.** The Statutory Declaration advises that Robert Reifft works as a Commercial Estate Agents at Dutch and Dutch. Dutch and Dutch are estate agents located on 174 West End Lane, which is a 4-minute walk from 104 West End Lane.
The Statutory declaration confirms that Dutch and Dutch were the estate agents responsible for the letting of the premises from 24th October 2018. Robert Reifft made frequent visits to inspect the condition of the property and can confirm from his personal knowledge that the rear extension has existed in its current form since at least 24th October 2018.
- (d) **April 2020 - Google Earth Screenshots.** The Google Earth screenshot shows the extension and flue to the rear of the building in the present day.
- (e) **November 2012 - Date Stamped Photographs.** Date stamped photographs taken of the site on 30 November 2012 provide evidence that the extension has been present at the site since this time.
- (f) **April 2018 - Google Earth Screenshots.** The Google Earth screenshots are taken from West Hampstead Underground Station and Blackburn Road and are dated from July 2008 to June 2022. All screenshots show the flue and provides incontrovertible evidence that the flue has been present since July 2008.



Conclusion

The enclosed evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The evidence is compelling and demonstrates that the two storey extension and rear flue at 104 West End Lane were substantially completed over four years ago and for a have existed for period of at least ten years.

In accordance with Section 191(1)(B) of the Town and Country Planning Act (1990) as amended no enforcement action may be taken in these circumstances. The building and flue are lawful and a Lawful Development Certificate for the proposed development should be issued.

I look forward to receiving confirmation that the application has been validated. Should you require any further information, please do not hesitate to contact me at jbell@hghconsulting.com or my colleague Lauren Manoharan (manoharan@hghconsulting.com).

Yours faithfully

Jill Bell

Associate Director



LIST OF APPENDICES

Appendix A - Statutory Declaration of Antony Spencer

Appendix B - Statutory Declaration of Anthony Green

Appendix C - Statutory Declaration of Robert Reifft

Appendix D - Google Earth Screenshots

Appendix E - Date Stamped Photographs

Appendix F - Google Earth Screenshots