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Via Planning Portal Only

5th July 2022
Revised 19th August 2022

Dear Sir/Madam

CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING) WITH RESPECT TO THE LAWFUL EXISTING C3 USE OF THE GROUND FLOOR FLAT AND FLATS 1-4 AT NO. 23 ALVANLEY GARDENS, NW6 1JD.

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 lawful existing C3 use of the ground floor flat and flats 1-4 at no.23 Alvenley Gardens. The existing flats are lawful by virtue of the residential use having taken place for a period in excess of 4 years, prior to the date this application was made.

The following documents are submitted in support of the application:

- Completed application form;
- Site location plan;
- Site block plan;
- Existing floor plans;
- Gas Safety Certificate for flats 1-4;
- Energy performance certificates for each of the flats;
- Valuation Office records of the Council tax banding for each residential units;
- Tenancy Agreements for each of the flats;
- Council tax Bills.
- Sworn Affidavit from the property's owner regarding the continuous lawful use of the flats.

Supporting Evidence:

- Appendix 1 – Gas safety certificates for flats 1-4 dated 6th December 2016.
- Appendix 2 – Energy performance certificates for each flat dated, 11th December 2012.
- Appendix 3 – Valuation office records of Council tax banding for each flat.
- Appendix 4 – Tenancy agreements for each flat dated 18th November 1996, 1st March 2000, 6th November 2007, 7th September 2009 and 1st March 2011.
- Appendix 5 – Council Tax bills for flats 1, 3 and 4 dated 20th June 1998 and 17th August 2001.
- Appendix 6 – Sworn affidavit dated 4th July 2022.

The Site

The site is located on the west side of Alvenley Gardens, to the south of the junction with Finchley Road (A41). The site comprises a detached two storey building (with rooms in the roof). There is also a large outbuilding in the rear garden, accessible by a shared vehicular access to the north of the site. The property has dropped kerb access to a parking area at the front. The main building has been subdivided into 5 flats. An outbuilding to the rear of the site has been converted into a dwelling and falls outside the red line area for this application.

The site is on a street comprised of similar residential properties with a greater prevalence of commercial uses along Finchley Road.

Planning History

On the 28th of February 2012, planning permission (reference 2011/6068/P) was refused for the erection of a balustrade, decking and screening in connection with the use of the existing rear flat roof as terrace and the installation of a rooflight to flat (class C3).

On the 8th of January 1996, planning permission (reference 9501919) was granted for the creation of forecourt hard standing for car space and new means of vehicular access.

On the 19th of September 1985, planning permission was granted for the installation of a window at ground floor level in the flank elevation.

On the 19th of December 1984, planning permission was granted for alterations to existing dormer and erection of new dormer.

On the 23rd of November 1972, planning permission (reference CTP/F5/7/14/14269) was granted for alterations and additional storey at rear to provide two additional self-contained flats.

On the 3rd of February 1972, planning permission (reference CTP/F5/7/14/12382) was refused for the formation of a self-contained flat at 2nd floor level.

On the 20th of June 1958, planning permission (reference TP/81804/NW/2434/288) was granted for the conversion of no.23 Alvenley Gardens into two self-contained flats and one self-contained maisonette.

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:

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

Therefore, if it can be demonstrated that the works were substantially completed more than four years prior to the submission of this certificate application, then the development is lawful, and a certificate should be issued.

Planning Practice Guidance Paragraph 009

Planning Practice Guidance at paragraph 009 (Reference ID: 17c-009-20140306), 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 convert no.23 into separate self-contained dwellings were completed in 1961. Since completion of the conversion works, the flats have been continuously occupied by tenants other than short breaks

between tenants vacating and new tenants occupying the properties. 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.

Planning permission was granted in 1958 for the conversion of No.23 Alvanley Gardens into two self-contained flats and one self-contained maisonette (reference TP/81804/NW/2434/288). Gas Safety Certificates have been submitted for each of the dwellings dated 6th of December 2016 (**Appendix 1**). Energy Performance Certificates have been submitted for each of the dwellings dated 11th of December 2012 (**Appendix 2**). Valuation Office records confirm the Council tax banding for each of the 5 properties (**Appendix 3**). Tenancy agreements have been provided for some of the flats between 18th November 1996 and 1st March 2011 (**Appendix 4**). Council Tax bills have been provided for some of the flats dated 20th of June 1998 and 17th of August 2001 (**Appendix 5**). A sworn affidavit has been provided by the owner of the flats which confirms that the works for the conversion was carried out in 1960 and that the flats have been continuously occupied other than short breaks between tenants vacating and subsequently re-occupying the flats since 1961 (**Appendix 6**).

Summary & Conclusion

The evidence submitted demonstrates that flats at no 23 have existed in residential use for more than four years before the submission of this lawful development certificate application.

Accordingly, the requirements of s.191(2)(a) are satisfied (lawfulness through expiry of time), 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.

Yours faithfully

A black rectangular redaction box covering the signature of Stuart Minty.

Stuart Minty
Director
SM Planning