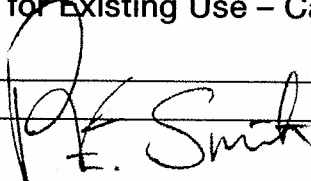


Haringey Council

Report for:	Regulatory Committee	Item Number:	
Title:	Certificates of Lawfulness for Existing Use – Cases determined since January 2009		
Report Authorised by:	 Paul Smith Head of Development Management		
Lead Officer:	Jeffrey Holt – Planning Officer 020 8489 5131 Jeffrey.Holt@haringey.gov.uk		
Ward(s) affected: All	Report for Key/Non Key Decisions: N/A		

1. Describe the issue under consideration

This report provides statistics and other information relating to applications for Certificates of Lawfulness for conversions of dwellinghouses into flats or similar accommodation and associated enforcement action.

2. Recommendations

That the Regulatory Committee note the information contained herein

3. Background information

Conversions of single dwellinghouses into smaller dwelling units are a common form development. Such conversions can result in a variety of living arrangements from completely self-contained flats to large Houses in Multiple Occupation (HMOs) with shared facilities. Such conversions require planning permission however those undertaken without permission can become immune to enforcement action after a period of 4 years. This immunity can be certified with a Certificate of Lawfulness for Existing Use application. Such applications require the submission of evidence to support the 4 year immunity claim. In certain instances, falsified evidence has been used and certificates subsequently revoked. In



response to this, more stringent procedures were put in place to reduce the likelihood of certificates being granted on false grounds.

Statistics relating to the number of applications and associated enforcement action is provided.

4. Comments of the Chief Finance Officer and financial implications

The cost of preparing this report has been met from existing budgets. As certificates of Lawfulness attract the same fee as a planning application the impact of following this course is budget neutral.

5. Head of Legal Services and legal implications

Sections 191 and 192 of the 1990 Act provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

If the evidence submitted meets the relevant criteria on the balance of probabilities then a lawful certificate must be granted. Circular 10/97 sets out advice on the consideration of certificate applications and makes it clear that where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability" The Council should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". The applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their 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 LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.



6. Appendices

APPENDIX 1 – Certificates of Lawfulness Practice Note

APPENDIX 2 – Extract of Annexe 8 of Circular 10/97

7. Local Government (Access to Information) Act 1985

Background Documents

- Certificate of Lawfulness Practice Note
- Adopted Haringey Unitary Development Plan 2006
- Circular 10/97: Enforcing planning control - legislative provisions and procedural requirement

Planning staff and application case files are located at 6th floor River Park house, 225 High Road, N22 8HQ. Applications can be inspected at those offices 2pm-4pm Monday, Wednesday and Friday. Case Officers will not be available without appointment.

In addition application case files are available to view, print and download free of charge via the Haringey Council website <http://www.haringey.gov.uk/planning-mainpage>. From this page follow the link to 'view planning applications' to find the application search facility. Enter the application reference number or site address to retrieve the case details.

Haringey Planning Policy documents are available to view on the Council's website www.haringey.gov.uk/planning-mainpage. Follow the link to 'Planning Policy'.

The Development Management Support Team can give further advice and can be contacted on 020 8489 1000 9.00am – 5.00pm, Monday – Friday.



REPORT FOR CONSIDERATION AT REGULATORY COMMITTEE

Certificates of Lawfulness for Existing Use relating to unauthorised conversions of single dwellinghouses to self-contained flats, Houses in Multiple Occupation or other similar division into smaller dwelling units

1. Statistics relating to Certificate of Lawfulness for Existing Use applications

From 01 January 2009 to 20 October 2011

- 157 applications were made
- 122 were approved
- 25 were refused (of which 3 were appealed but all were dismissed)
- 8 withdrawals
- 5 Certificates were revoked following discovery of false evidence
 - 10 Hampden Lane N17
 - 82 Warham Road N4
 - 49 Warham Road N4
 - 69 Roseberry Gardens N4
 - 13 Harringay Gardens N8

Note: Under Section 192 of the 1990 Act (see comment from Legal Services) applications can also be made for Certificates of Lawfulness for *proposed* uses or developments. These are commonly made to establish the lawfulness of a development allowed under Permitted Development regulations prior to that development being carried out. These types of applications have been excluded from the survey as they are rarely related to the type of development discussed here.

2. Enforcement Action

Of the applications withdrawn or refused, the following occurred during Planning Enforcement investigations:

- 2 applications not proceeded with as an Enforcement Notice was extant at the address
- 1 appealed and allowed
- 3 appealed and dismissed
- 1 liable for prosecution
- 1 possible case for revocation
- 3 investigated and found to be immune on the balance of probabilities
- 1 not expedient as permission is likely to be granted on planning merits



Haringey Council

- 1 no breach occurred
- 1 case to be re-opened
- Balance of cases being investigated

3. Change to assessment practices

Following the investigation into the fraudulent applications, more stringent procedures were put in place to reduce the likelihood of certificates being granted on false grounds

In August 2009, a Practice Note was published internally and officers have been assessing Certificates of Lawfulness applications this document (see Appendix 1). The Practice Note requires all evidence to be in the form of original documents, where applicable. Where copies are submitted, the originals must be available for the officer to view and verify personally. Evidence which comes from external organisations or other Council departments (such as Council Tax or utility bills) must be verified by the case officer with the relevant body. Certificates will be granted where 3 different types of verified evidence are present.



Haringey Council

APPENDIX 1 – Certificates of Lawfulness Practice Note



PRACTICE NOTE FOR DEVELOPMENT CONTROL MANUAL

CONSULTATION AND ASSESSMENT OF
CERTIFICATES OF LAWFULNESS FOR EXISTING USE,

WITH PARTICULAR REFERENCE TO FLAT CONVERSION AND HMO'S

Introduction

There is concern that some applications for Certificates of Lawfulness of existing use for self contained flats, non self-contained flats, and HMO's, have been supported by unsatisfactory documentary evidence, in a few cases possibly false documents. Planning Officers dealing with such applications, and officers doing validation and consultation, should observe the following procedure:-

A. VALIDATION AND CONSULTATION

At validation stage: validation officers should check that there are no Enforcement notices in force on the property. If there are it should be discussed with Head of Planning Enforcement Team or Team Leader in Development Management

Consultation: On applications for Certificates of Lawfulness for Existing Use, whether it be for flats, HMO's or any other claimed existing use (including retail, commercial or community uses) the following consultation should be carried out using the special consultation letter:-

For flats, HMO's, consultation should include the property itself, (including the individual flats within the property) two properties on either side, three properties opposite, three to the rear (i.e. the property itself and 10 properties). If adjacent properties are in flats, each flat within the property should be consulted. A special consultation letter is to be used which makes it clear that

the matters for consideration are factual ones on the history of use of the property, not the planning merits of the use or policy consideration.

Ward Members to be consulted.

Internal consultation; Building Control

Planning Enforcement.

Housing Improvement (Private Sector)

B. Documentation



NOTE; Except in the case of Council Tax Records, where officers can make internal checks, all other documents should be originals rather than photocopies.

For conversions and HMO's application should be accompanied by at least 3 out of 5 of the following documents:-

- Sworn Affidavit from some one who has owned, lived in, been a neighbour to, or known the property for the requisite number of years.
- Evidence in the form of tenancy agreements for each of the flats for the appropriate years; or copies of deeds of sale if flats have been sold rather than rented.
- Evidence in the form of utility bills e.g. Gas, Electric, or Water for each of the flats claimed to exist; or letter from utility company confirming when supply started.
- Housing Benefit documents, covering the appropriate years. These should be very carefully checked to ensure there has been no manual alteration e.g. insertion of flat numbers or letters by hand; and that correct headed paper has been used.
- Council Tax records

Evidence that the flats have been listed separately in Council Tax Records for at least 4 years.

NOTE: If the decision is partly dependent on Utility Bills or Housing Benefits as evidence, then the Case Officer should check, by phone or e-mail, with either the utility company or Housing Benefits, that the documents supplied are genuine, as it is in these areas where there is suspicion of some unsound documents being supplied.

- C. Case officers should check Planning History on I-Plan to ensure there is no conflict between the evidence supplied, and records of planning permission. The absence of any planning history does not mean that the evidence submitted with current application is necessarily flawed.
- D. Case officers should check Council Tax records for converted properties and HMO's. if Council Tax shows rates as separate flats or HMO for the requisite number of years, that would be very positive evidence in support of Certificate of Lawfulness. Absence of Council Tax record as flats does not mean that the application should be refused if other evidence is sufficient on the balance of probability: there is no requirement in planning law to have a property correctly rated for purposes of Council Tax.



- E. Case officers should check either electronically or by direct consultation with Planning Enforcement Team, and Building Control that there are no outstanding Planning Enforcement investigations under way in respect of the property and no Enforcement Notices in force.

- F. If above evidence is clear and there are no reasons to doubt the authenticity of the documents, or the continuity of the use for either 4 or 10 years, then the certificate should be granted. If evidence is manifestly lacking, the Certificate should be refused, and the reasons stated in the Decision Notice. In cases of doubt, refer to Team Leaders or Heads of Development Management; who if necessary will seek a legal opinion.

- G. The above procedures apply to Certificate of Lawfulness of Existing Use. For Certificates for Existing Operational Development (Buildings or Structures) there should be sufficient document evidence in the form of sworn affidavits, original and dated builders invoices (not photocopies); dated photographs; or original dated plans, as will clearly establish that the structure or building has been existent for over 4 years.

- H. For Certificates of Lawful Use or Development Proposed; the above documentary evidence is not required: what is needed here is accurate plans.

- I. Site Visits will be required in many cases to check that the number of flats on the site is as described in the application.

Paul Tomkins

12 August ; Revised 24 September 2009 and 14 October 2009.



Haringey Council

APPENDIX 2 – Extract of Annexe 8 of Circular 10/97



Haringey Council

Paragraph 8.15 of Annexe of Circular 10/97

In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see *F W Gabbittas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their 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 LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.