

LDC Report	09/01/2023
Officer	Application Number
Fast Track SC	2022/4980/P
Application Address	Recommendation
Endsleigh Court Upper Woburn Place London Camden WC1H 0HA	
1st Signature	2nd Signature (if refusal)
Proposal	
The areas of back of house at ground and lower ground floor levels are in residential use (Class C3) ancillary to main use of the site	
Assessment	
<p>The application site is nine storey, red brick with stucco at lower floor, residential building located on the south western side of Upper Woburn Place. The property has residential flats and upper floor level, there is one commercial unit at ground floor (solicitor's office).</p> <p>The application relates to the areas of back of house at ground and lower ground floor levels.</p> <p>The building is not listed and is located in the Bloomsbury Conservation Area.</p> <p>The application seeks to demonstrate that the areas at the back of house at ground and lower ground floor levels are in residential use (Class C3) ancillary to main use of the site and have existed and been use for a period of 10 years or more such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing residential units has existed for a period of 10 or more years.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • Covering letter JLL – 25/10/2022 • Statutory Declaration – Paul Lamper – 24/10/2022 • Existing Condition Report (dated June 2022) <p>The applicant has also submitted the following plans:</p>	

- A site location plan outlining the application site
- Existing Lower Ground Floor - 0497 (18) 099)
- Existing Ground -0497 (18) 100

Council's Evidence

Council tax have confirmed that liability for Council Tax for the following units. As the application relates to ancillary space rather than for establishing additional residential units additional Council Tax liability would not be expected.

VOA Website accessed – 24/01/2023

Flat 1 - 5199906 - Effect from 20 December 2021
 Flat 1 - 5136973 - Deleted - 13 June 2011
 Flat 2 - 5199909 – Effect from - 10 December 2021
 Flat 2 - 5029153 – Deleted – 13 June 2011
 Flat 3 - 5029136 – Effect date – no date provided
 Flat 4 - 5029139 – Effect date - April 1993
 Flat 5 - 5029145 – Effect date – N/A
 Flat 6 - 5199919 – 10th November 2021
 Flat 6 - 5029167 – Deleted - 13 June 2011
 Flat 7 - 5029170 – Effect date- N/a
 Flat 8 - 5167370 - 19 June 2012
 Flat 9 - 5029176 – Deleted - 13 June 2011

There is no relevant planning history or enforcement action on the subject site.

A site visit to the property was undertaken on the 28/02/2023, that the areas being considered by this application appear to be ancillary space to the main residential use of the building. However, internal building works/repairs were underway (stripping out, wiring, plastering) and this matter has been referred to the enforcement team for investigation. This suggests that works have started; converting the areas subject to the certificate of lawfulness to self-contained residential units which would require planning permission.

Assessment

The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the “balance of probability”, and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided the applicant’s evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

The proposed certificate relates to areas of back of house of the main building, which include porters office, kitchen, laundry, etc. These areas are identified with a red line on the plans submitted. These appear to have been ancillary to the main residential use of the building (the planning unit) for a period of more than 10 years. Section 55 of Town and Country Planning Act

1990 paragraph 2(d) states that “the following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land where the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such”. In this context the ancillary spaces were facilitating the enjoyment of the whole building by providing needed back of house support.

These areas are part of the whole building and have operated as such.

Therefore, the existing back of house areas of the building are in residential use, ancillary to the main operation of the building, which comprises self-contained residential flats.

The Council does not have any evidence to contradict or undermine the applicant’s version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability the areas of back of house at ground and lower ground floor levels has existed in residential use (Class C3) ancillary to main use of the site for a period of more than 10 years as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Recommendation: Approve