

LDC (Proposed) Report		Application number	2023/0036/P
Officer		Expiry date	
Daren Zuk		20/04/2023	
Application Address		Authorised Officer Signature	
455-457 Finchley Road London NW3 6HN			
Conservation Area		Article 4	
N/A		Basements E to C3	
Proposal			
Use of lower ground, upper ground, 1 st , 2 nd and 3 rd floors as 17 self-contained studio flats (5 studio flats at no.455 and 12 studio flats at no.457).			
Recommendation:		Grant Certificate of Lawfulness	

1. Site Description

1.1. The site comprises two three-storey (plus basement) mixed use residential/commercial buildings on the west side of Finchley Road at its junction with West End Lane. The site is not located within a conservation area nor does it comprise a listed building.

2. Relevant History

455 Finchley Road

2013/3453/P – Change of use from office (Class B1) to 1 x 3-bed residential flat (Class C3) at part ground, first and second floor level, retention of a ground floor retail unit to include shop front alterations, erection of a rear extension to first floor level, installation of terrace at second floor level to rear elevation and installation new entrance at ground floor level to side elevation, alteration and removal of 1x window to side elevation. **Refused 15/08/2013**

457 Finchley Road

9005347 - Change of use of the first and second floors from Class B1 to use as a drug advice centre within Class D1(a) of the Use Classes Order 1987 as described in letters dated 18th June 1990, 13th July 1990, and 3rd September 1990. **Granted 01/08/1990**

9200009 – Change of use of ground floor from shop within A1 to use within financial and professional services (Class A2) of Town and Country Planning (Use Classes) Order 1987, as shown on one un-numbered site plan. **Granted 27/02/1992**

9301065 – Change of use of the basement and ground floors from retail to a Drug Response Unit within Class D1 (a) of the Town & Country Planning (Use Classes) Order 1987 as an extension of the existing use on the first and second floors. **Granted 18/11/1993**

PW9703004 – The erection of a rear basement fire escape, as shown on drawing number; 01 and 02. **Granted 12/02/1998**

3. Proposal

3.1. The application seeks a Certificate of Lawfulness for the existing use of the 17 flats as residential units, as per application drawings: 01 Rev A, 02 Rev A, Location Plan.

4. Applicant's Evidence

- Gas Safety Certificate
- Energy Performance Certificate
- Council Tax Bands
- Tenancy Agreement
- Affidavit of owner (Robert Lawee) regarding the use of the 12 flats at 455 Finchley Road since 2012 and 5 flats at 457 Finchley Road since 2015.
- Drawings 01 Rev A, 02 Rev A, Location Plan

5. Council's Evidence

- Planning history
- Council tax records

6. Assessment

6.1. The Town and Country Act 1990, Section 191, sets out that the purposes of the Act, uses and operations are lawful at any time if:

- (a) *No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*
- (b) *They do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

6.2. The applicant is therefore required to demonstrate that the existing use of the building's floors (excluding the ground floor office and retail units) as 17 self-contained studio flats, as per the application drawings: 01 Rev A and 02 Rev A, has continued on a continuous basis for the four-year period prior to the date of this application.

6.3. 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 granting 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.

6.4. The Gas Safety Certificates, Energy Performance Certificates, Tenancy Agreements, and signed affidavit submitted by the applicant indicated that the 17 flats have existed at 455 Finchley Road since 2012 and at 457 Finchley Road since 2015.

6.5. Also significantly, the Council's Tax Records confirm that the 17 flats have existed at 455 Finchley Road since 2015 and at 457 Finchley Road since 2012. The Valuation Office Agency records also show the 17 flats have existed at 455 Finchley Road since 09/2015 and at 457 Finchley Road since 08/2013.

6.6. On balance of probability, it is considered that the properties have been in use as the 17 flats indicated on the application drawings for the whole of the relevant period. There is no evidence at this time of any intervening uses, or that the use of the 17 flats were abandoned. As such, the use as 17 flats is lawful, and the Certificate of Lawfulness should be granted.

7. Recommendation: Grant Certificate of Lawfulness