

Delegated Report		Analysis sheet	Expiry Date:	06/07/2023
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Alex Kresovic			2023/1904/P	
Application Address			Drawing Numbers	
Oakshott Court, Flat 34 Polygon Road London NW1 1ST			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Use of the flat as a HMO (Use Class C4).				
Recommendation(s):	Grant Certificate of Lawfulness (Existing)			
Application Type:	Certificate of Lawfulness (Existing)			
Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				

Site Description

The building known as Oakshott Court comprises of a block of maisonettes with internal pedestrian access and an area of open space. The site is centrally located, with the British Library, multiple train and tube stations as well as pubs, restaurants, museums, medical centres and retail units located less than 300m, or 10 minutes' walk, away. Other metropolitan services such as University College London (UCL) and Regents Park are located less than 15 minutes' walk from the site.

The subject site is not located within a Conservation Area.

Relevant History

APPLICATION SITE:

No relevant planning history associated to the application site.

Assessment

Background

The certificate seeks to demonstrate that on the balance of probability that Flat 34, Oakshott Court, Polygon Road, London, NW1 1ST has been in use as a Small HMO (Use Class C4) for a consecutive period of at least ten (10) years before the date of the application, such that its continued use would not require planning permission.

Applicant's Evidence

1. Site Location Plan Ref. 12956-0001-01;
2. Block Plan Ref. 12956-0002-01;
3. Existing Layout Plan Ref. 12956-0003-01;
4. Email between the Applicant and Victorstone Property Consultants and invoice dated 15/06/2011;
5. Invoice for letting services/administration for 34 Oakshott Court by Victorstone Property Consultants dated 23/07/2012;
6. Assured Shorthold Tenancy agreement (AST) for period covering 13/07/2012 to 12/07/2013, 20/07/2013 to 19/07/2015; 20/07/2015 to 19/07/2016; 20/07/2016 to 19/07/2017; 10/09/2017 to 09/09/2019; 12/09/2019 to 11/09/2021; 12/09/2021 to 11/09/2023; and 15/09/2022 to 14/07/2024;
7. Receipts for refurbishment materials dated 01/08/2017;
8. HMO Licence to Mr Kunal Patel (the Applicant) for 34 Oakshott Court covering the period between 04/04/2017 to 03/04/2022; and
9. Email correspondence between the Applicant and the Council regarding the renewal of the HMO licence, exchange of emails between 03/01/2022 until 12/01/2023.

Council's evidence

Judging the evidence submitted and the history of the site, officers are satisfied that flat 34 of Oakshott Court has been in use as a Small HMO (Use Class C4) for a period of 10 or more years continuously.

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 (Planning Practise Guidance para. 006), 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 application for the certificate relates to the existing use or operation of flat 34 of Oakshott Court as a Small HMO (Use Class C4). The application is made on the basis that the use is lawful because it is now immune from enforcement action because it has occurred for a continuous period of more than ten years, before the date of the application – in other words since at least 11 May 2013 ("the relevant period").

The Council does not have any evidence to contradict or undermine the applicant's version of events. The supporting information submitted in support of the application maintains that flat 34 of Oakshott Court has been in use as a Small HMO (Use Class C4) for a consecutive period of at least ten years before the date of the application.

The information provided by the applicant is therefore deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' that flat 34 of Oakshott Court has been in use as a Small HMO (Use Class C4) for a consecutive period of at least ten years before the date of the application as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Conclusion

Recommendation: Grant Certificate