

<b>LDC (Existing) Report</b>		<b>Application number</b>	2023/2259/P
<b>Officer</b>		<b>Expiry date</b>	
Tony Young		27/07/2023	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
25 Birchington Road London NW6 4LL			
<b>Conservation Area</b>		<b>Article 4</b>	
No		Article 4 Directions (basements)	
<b>Proposal</b>			
Use as 2 x self-contained flats at 2nd floor level (2-bed unit) and 3rd floor level (1-bed unit), including installation of 2 x front rooflights.			
<b>Recommendation</b>		<b>Issue Certificate</b>	
<p><b>Introduction</b></p> <p>The application site comprises a 3-storey (with basement) terraced dwelling house, located on the south-east side of Birchington Road, midway between Mutrix Road to the north-east and Kilburn High Road to the south-west. The dwelling is divided into flats.</p> <p>The building is not listed and is not located within a conservation area. The site falls within the Kilburn Neighbourhood Area. An Article 4 Direction applies to this property in regard to any basement works.</p> <p>The application seeks to demonstrate that, on the balance of probability, the use as 2 x self-contained flats at 2nd floor level (2-bed unit) and 3rd floor level (1-bed unit) began and have continued as such for a continuous period of at least four years before the date of the application, such that their retention would not require planning permission. The application also seeks to demonstrate that building works to install 2 x rooflights to the front roofslope were completed and have been in existence for a continuous period of at least four years before the date of the application.</p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following documents/information in support of the application:</p> <p><u>Supporting documents (2<sup>nd</sup> floor flat):</u></p> <ul style="list-style-type: none"> <li>Assured Shorthold Tenancy agreements from Estate Management London signed 22/06/2017, 09/06/2022 and 20/04/2023 respectively, indicating occupancy during various periods between July 2017 to the present date;</li> <li>Tenant Rent Statement from Estate Management London (ref. TE1130) dated 31/05/2023, showing rent payments made between 18/04/2015 and 19/05/2023;</li> <li>Inventory &amp; Schedule of Condition document from No-Letting-Go Inventory Management dated 17/12/2014, providing a record of the decor, contents, fixtures and fittings of the property (2<sup>nd</sup> floor flat - 2-bed unit) on that date;</li> </ul> <p><u>Supporting documents (3<sup>rd</sup> floor flat):</u></p> <ul style="list-style-type: none"> <li>Assured Shorthold Tenancy agreements from Estate Management London signed 18/05/2017, 22/08/2019, 19/10/2022 and 22/05/2023 respectively, indicating occupancy during various periods between June 2017 to the present date;</li> <li>Tenant Rent Statements from Estate Management London (ref. TE1268) dated</li> </ul>			

25/05/2023, showing rent payments made between 24/06/2017 and 01/05/2023;

- Inventory & Schedule of Condition documents from No-Letting-Go Inventory Management dated 24/05/2017 and 01/09/2019, providing a record of the decor, contents, fixtures and fittings of the property (3rd floor flat - 1-bed unit) on that date;
- Council Tax Statement (account ref. 83420259) dated 18/09/2019, for period 06/07/2019 to 26/09/2019;
- Council Tax document from [www.tax.service.gov.uk](http://www.tax.service.gov.uk), with effect from 03/04/2010.

The applicant has also submitted the following drawings:

- Site location plan
- Floor plans and elevation drawings numbered AP.01, AP.02, P.01 and P.02

### **Council's Evidence**

There is the following planning history relevant to the subject site:

- 2004/5189/P - The installation of a rear dormer and a front roof light in connection with the conversion of the loft into habitable space for the flat below. Planning permission granted 25/01/2005
- 19681 - Change of use to 4 self-contained flats, including works of conversion. Planning permission granted 21/03/1975

There is no enforcement history relevant to the subject site.

### **Council Tax records:**

- Council tax valuation for band D property (Flat 2nd Floor, 25 Birchington Road, London NW6 4LL) effective 13 December 2009 (Local authority reference number: 5155890).
- Council tax valuation for band C property (Flat 3rd Floor, 25 Birchington Road, London NW6 4LL) effective 03 April 2010 (Local authority reference number: 5155891).

### **Geographic Information System (GISMO):**

- The Council's GISMO shows 2 x front rooflights in aerial images dated from 2014 which are consistent with the size and position of the 2 x rooflights which are the subject of this application and as shown on front elevation drawing (ref. P.02) submitted by way of evidence by the applicant.

### **Assessment**

In regard to applications for a Certificate of Lawfulness, 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, nor any from others, to contradict or otherwise make the applicant's version of events less probable, 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.

It is considered that the information provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use as 2 x self-contained flats at 2nd floor level (2-bed unit) and 3rd floor level (1-bed unit) began at least four years before the date of this application. It is also considered that building works to install 2 x rooflights to the front roofslope were completed at least four years before the date of this application. Both the use and building works appear to have remained as such until the present time.

This being the case, and given the fact that the Council does not have any evidence to contradict or undermine the applicant's version of events, the use and building works would not require planning permission. As such, it is recommended that a Certificate of Lawfulness be granted.

**RECOMMENDATION: Grant Certificate of Lawfulness**