

Delegated Report		Analysis sheet	Expiry Date:	04/09/2023
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Alex Kresovic			2023/2832/P	
Application Address			Drawing Numbers	
140 Fordwych Road London NW2 3PA			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Use of flats 1, 2, 3, 5, 6, 7, and 8 as self-contained flats (Use Class C3).				
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 application site is a two storey with loft red brick detached building with 8 self-contained units. The site is located on the western side of Fordwych Road.

The subject site is not located within a Conservation Area, however, is located within the Fortune Green and West Hampstead Neighbourhood Forum.

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 flats 1, 2, 3, 5, 6, 7, and 8 of 140 Fordwych Road have been in use as self-contained flats (Use Class C3) for a consecutive period of at least four (4) years before the date of the application, such that its continued use would not require planning permission.

Applicant's Evidence

1. Site Location Plan;
2. Existing Floor Plans;
3. Council tax records from 2011;
4. Bank Statements over the course of four (4) years;
5. Tenancy Agreements for all rooms for a period of over 4 years;
6. Statutory Declarations (Tenants);
7. Statutory Declarations (lettings agents); and
8. Statutory Declarations (tradespeople).

Council's evidence

Judging the evidence submitted and the history of the site, officers are satisfied that flats 1, 2, 3, 5, 6, 7, and 8 of 140 Fordwych Road have been in use as self-contained flats (Use Class C3) for a period of 4 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 flats 1, 2, 3, 5, 6, 7, and 8 of 140 Fordwych Road London NW2 3PA as self-contained flats (Use Class C3). The application is made on the basis that the use is lawful and is now immune from enforcement action because it has occurred for a continuous period of more than four years, before the date of the application – in other words since at least 10 July 2019 ("the relevant period").

The Council does not have any evidence to contradict or undermine the applicant's version of events. The Council Tax records illustrate that each of the flats have been paying Council Tax since August 2011. The tenancy agreements have been submitted for each of the flats which shows continuous

tenancies from 2015 and 2018 to the date of the submission of the application. The information submitted in support of the application maintains that flats 1, 2, 3, 5, 6, 7, and 8 of 140 Fordwych Road have been in use as self-contained flats (Use Class C3) for a consecutive period of at least four 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 flats 1, 2, 3, 5, 6, 7, and 8 of 140 Fordwych Road have been in use as self-contained flats (Use Class C3) for a consecutive period of at least four 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