

LDC (Existing) Report		Application number	2023/2441/P
Officer		Expiry date	
Tony Young		07/08/2023	
Application Address		Authorised Officer Signature	
165-167 Haverstock Hill London NW3 4QT			
Conservation Area		Article 4	
Belsize		Article 4 Directions (basements) & (Use Class E to C3 Outside CAZ KQ)	
Proposal			
Use of part of building as 18 studio flats.			
Recommendation	Issue Certificate		
<p>Introduction</p> <p>The application site comprises a 4-storey (with basement) terraced property, located on the south-west side of Haverstock Hill, just south of its junction with Howitt Road. The wider area is mainly characterised by properties with a mix of commercial uses at ground floor level with upper floors in use for residential purposes.</p> <p>Council records indicate that the ground and basement floors at the application site are in commercial and storage use respectively with the 3 floors above being in residential use (known as Flats A to F), including a separate dental surgery unit at part 1st floor level. Flats C to F were granted House in Multiple Occupation (HMO) licences in early 2019.</p> <p>The host building is not listed and is located within the Belsize Park Conservation Area. A number of Article 4 Directions apply to the property restricting basement works and change of use from Class E to C3.</p> <p>The application seeks to demonstrate that, on the balance of probability, the use of part of building as 18 studio flats began, and has 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.</p> <p>Responses</p> <p>Given the nature of certificate of lawfulness applications, and in particular that purely matters of legal fact are involved in their determination, the Council does not have a statutory duty to engage in a formal consultation process.</p> <p>Notwithstanding this, it is Council practice to allow a short period of time for our local residents and amenity groups to comment should they choose to do so. As such, the details of the application were made available online.</p> <p>During this period, a response was received from an interested party residing in Regents Park Road who raising objections to the proposals in regard to concerns about building standards and spatial living conditions for residents and in regard to a 'cylinder store' shown on drawings.</p> <p>Having carefully considered the response, no evidence has been provided to contradict or undermine the applicant's proposal or assertions. Therefore, while the above concerns are noted, they are not a consideration in this type of application where purely legal issues are</p>			

involved in its determination.

Notwithstanding this, it is noted that while there are a number of storage areas annotated on the existing basement and ground floor plans, there does not appear to be any reference to a 'cylinder store' as stated by the respondent. Additionally, in regard to building standards and spatial living conditions for residents at the property, it is confirmed that the Council's Private Sector Housing Team have been made aware of the application.

Applicant's Evidence

The applicant has submitted the following documents/information in support of the application:

- Planning Statement from Salisbury Jones Planning (agent) ref. SJP/06/06/2023 received 13/06/2023, asserting that the relevant parts of the property have been used as 18 studio flats continuously since 05/04/2019;
- 6 Statutory Declarations dated 31/05/2023 (from Daniel Elghanian, Jarek Zurek, Ricky Stone (Stones Residential Ltd), Mohamed Salman and Filipa da Cunha Thomas) and dated 05/06/2023 (from Denise Barbarino), asserting that the relevant parts of the property have been used as 18 studio flats continuously since 05/04/2019;
- Various Assured Short Tenancy Agreements, indicating occupancy during various periods between 2018 to the present date with respect to Flats C5 and F5;
- Email with photographs from Salisbury Jones Planning (agent) dated 31/08/2023, showing various external construction works (re. approval granted 22/04/2013 ref. 2012/6370/P) carried out and completed in May 2017, including the stated completion of internal works and occupation of the flats from 01/03/2018.

The applicant has also submitted the following drawings:

- Unnumbered site location plan
- Floor plans and elevation drawings numbered (HD-922/-)5000, 5001, 5002, 5003, 5004, 5005 rev B.

Council's Evidence

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

- **2012/6370/P** - Alterations to the front and rear roofslopes, including the increase in height and installation of rooflights to nos. 165 and 167 Haverstock Hill in connection with additional accommodation to existing Flats 5 & 6 (Class C3). Planning permission granted 07/05/2013
- **2015/3607/P** (Flat C) - Use as a House of Multiple Occupancy (HMO) (Class C4). Planning permission granted 16/07/2015
- **2015/2880/P** (Flat D) - Use as a House of Multiple Occupancy (HMO) (Class C4). Planning permission granted 16/07/2015
- **2015/3610/P** (Flat E) - Use as a House of Multiple Occupancy (HMO) (Class C4). Planning permission granted 16/07/2015
- **2015/3611/P** (Flat F) - Use as a House of Multiple Occupancy (HMO) (Class C4). Planning permission granted 16/07/2015
- **9005140** - Change of use of the whole of the 1st floor flat from residential to dental surgery use without compliance with conditions 1 and 2 of permission granted on 24-10-83 (ref 36727). Planning permission refused 23/07/1991
- **33597** - Continued use of two rooms on the first floor as a dental surgery (amendment to the personal permission). Planning permission granted 24/10/1983
- **20109** - Change of use of two rooms of the first floor flat to a dental surgery. Planning permission granted 23/02/1982

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

- **EN18/0045** - 18 self-contained 'studios' are being created. No breach found dated 07/02/2018

- **EN16/0845** - Current building works are contrary to approval (2012/6370/P) as seem to be for Class C4 use and lightwell glazing has been removed. No breach found dated 28/09/2016

Council Tax records:

- Council tax valuation for band C property (Flat 1st Floor Part 165A Haverstock Hill London NW3 4QT) effective 22/10/1999 (Local authority reference number: 5090820)
- Council tax valuation for band E property (165B Haverstock Hill London NW3 4QT) effective 01/04/2009 (Local authority reference number: 5090873)
- Council tax valuation for band G property (165C Haverstock Hill London NW3 4QT) (Local authority reference number: 5090902)
- Council tax valuation for band E property (165D Haverstock Hill London NW3 4QT) (Local authority reference number: 5090930)
- Council tax valuation for band D property (165E Haverstock Hill London NW3 4QT) effective 01/04/2009 (Local authority reference number: 003010165E0007)
- Council tax valuation for band E property (165F Haverstock Hill London NW3 4QT) (Local authority reference number: 5090959)

Additional information

- The Council's Geographic Information System (GISMO) provides aerial images from 2019 which show works having been carried out to the roof that are consistent with completed works as shown on existing roof plan drawing (ref. HD-922/5003) submitted by way of evidence by the applicant.
- Google Street View provides street images from July 2017 which show some angled views of works having been carried out to the roof that are consistent with completed works as shown on existing drawings 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 of the relevant part of building as 18 studio flats began at least four years before the date of this application. Relevant external building works to the roof associated with this use also appear to have been 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 of the relevant part of building as 18 studio flats would not require planning permission. As such, it is recommended that a Certificate of Lawfulness be granted.

RECOMMENDATION: Grant Certificate of Lawfulness