

Delegated Report		Analysis sheet	Expiry Date:	13/11/2023
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Alex Kresovic			2023/3894/P	
Application Address			Drawing Numbers	
1 Lymington Road London NW6 1HX			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Use of flats at first and second floors, which are numbered 3, 5, 6, 7, 9, 11, 13, and 14 as self-contained units (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 three-storey semi-detached residential property (two full storeys with accommodation in the roof) which is sub-divided into 13 flats, including a mix of studios and one-bedroom units. The application relates to the flats at first and second floors, which are numbered 3, 5, 6, 7, 9, 11, 13, and 14.

The subject site is located within the West End Lane Conservation Area but is not a listed building.

Relevant History

APPLICATION SITE:

2007/5710/P - Erection of a two-storey extension to provide four additional bed sit units. **REFUSED 31/03/2008.**

2014/3945/P - Erection of upper mansard slope front and rear dormer roof extensions to provide 2 additional bedrooms to Flat 14. **REFUSED 02/09/2014.**

2022/2241/P - Erection of a rear roof dormer window and one front rooflight. **GRANTED 21/11/2022.**

2023/3119/P - Demolition of existing ground floor rear extension and construction of new single storey rear extension, alterations to side fenestrations, reconfiguration, and amalgamation of existing ground floor flats to provide 2 x studio flats and 1 x 2-bedroom flat and associated works. **UNDER ASSESSMENT.**

Assessment

Background

The certificate seeks to demonstrate that on the balance of probability that flats at first and second floors, which are numbered 3, 5, 6, 7, 9, 11, 13, and 14 of 1 Lymington Road, London, NW6 1HX 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. Lease Agreements for the individual flats for a four-year period
2. Tenant Deposit Certificates for the individual flats for a four-year period
3. Emails from tenants to the property management company regarding their flats
4. EPCs from September 2019
5. Electrical Installation Condition Reports dated January 2018
6. Letters regarding rent increases in the period
7. Company name change letters dated June 2022
8. Council tax information
9. Statutory Declarations from Property Manager and a Director of Quintet Investments
10. Site Location Plan (Block Plan), Existing Site Plan and Existing Plans

Council's evidence

The Council does not have any evidence to contradict or undermine the applicant's version of events.

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 at first and second floors, which are numbered 3, 5, 6, 7, 9, 11, 13, and 14 of 1 Lymington Road, London, NW6 1HX as self-contained flats (Use Class C3). 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 four years, before the date of the application – in other words since at least 18 September 2019 ("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 flats at first and second floors, which are numbered 3, 5, 6, 7, 9, 11, 13, and 14 of 1 Lymington Road, London, NW6 1HX 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 at first and second floors, which are numbered 3, 5, 6, 7, 9, 11, 13, and 14 of 1 Lymington Road, London, NW6 1HX 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