

Delegated Report		Analysis sheet	Expiry Date:	07/12/2023
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Alex Kresovic			2023/4360/P	
Application Address			Drawing Numbers	
Flat Ground Floor 98 Gloucester Avenue London NW1 8HX			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Use of the ground floor flat for a continuous period of more than 4 years as a single dwelling house (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 site is occupied by a 3 storey plus basement and loft mid-terrace building on the north-eastern side of Gloucester Avenue. The building has an existing two storey lower ground floor rear extension and mansard roof extension.

The area is characterised by residential properties. The site is located in the Primrose Hill Conservation Area and, while not listed, the building on the site is identified in the Conservation Area Statement as making a positive contribution to the character and appearance of the Conservation Area.

Relevant History

APPLICATION SITE:

2014/3957/P - Erection of single storey first floor rear extension. – Granted 6 November 2014

Assessment

Background

The certificate seeks to demonstrate that on the balance of probability that the ground floor flat is a separate dwelling from the upper flat at 98 Gloucester Avenue, London, NW1 8HX and has been in use as self-contained flat (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 2016;
4. Tenancy Agreements for the ground floor flat from 2018;
5. Building Control Final Certificate dated 13.02.2015;
6. Land Registry document dated 15.06.2016; and
7. FDN 2014/3957/P dated 06.11.2014.

Council's evidence

Judging the evidence submitted and the history of the site, officers are satisfied that the ground floor flat is a separate dwelling from the upper flat at 98 Gloucester Avenue, London, NW1 8HX and has been in use as self-contained flat (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 Practice 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 the ground floor flat as self-contained flat (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 12 October 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 the ground floor flat is a separate dwelling from the upper flat at 98 Gloucester Avenue, London, NW1 8HX and has been in use as self-contained flat (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 the ground floor flat is a separate dwelling from the upper flat at 98 Gloucester Avenue, London, NW1 8HX and has been in use as self-contained flat (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