

Delegated Report		Analysis sheet	Expiry Date:	04/01/2024
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Alex Kresovic			2023/4796/P	
Application Address			Drawing Numbers	
2 Cloverleaf House, Flat 2 Queen's Crescent London NW5 4EP			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Use of flat 2 as a self contained unit (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 mid-19th Century three storey building which is sub-divided into 10 flats. The application relates to flat 2 only.

The site is located on the east side of Queen's Crescent on the corner with Marsden Street positioned in between Malden Road and Prince of Wales Road. The building was previously in use as a public house with ancillary accommodation on the upper floors.

The building is not listed or located within a Conservation Area.

Relevant History

APPLICATION SITE:

2010/6281/P - Change of use of existing public house (A4) to provide 8 self contained residential dwellings (5 x 2 bedroom flats, 3 x 1 bedroom flats) and 168m² of Office (B1) floorspace, erection of mansard roof extension and two storey rear extension with associated fenestration and external alterations. **Granted Subject to a Section 106 Legal Agreement 6 June 2011.**

2011/5074/P - Submission of details of the new fenestration (condition 2), railings and balustrade (condition 4), pursuant to planning permission dated 6/6/2011 (Ref. 2010/6281/P) for (Change of use of existing public house (A4) to provide 8 self contained residential dwellings (5 x 2 bedroom flats, 3 x 1 bedroom flats) and 168m² of Office (B1) floorspace, erection of mansard roof extension and two storey rear extension with associated fenestration and external alterations). **Granted 7 December 2011.**

Assessment

Background

The certificate seeks to demonstrate that on the balance of probability that flat 2 of 2 Cloverleaf House, London, NW5 4EP has 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 flat 2 since April 2012
2. Council tax – confirming the flat has been registered as a dwelling since 2012
3. Tenancy Deposit from 2013
4. Gas Safety Certificates from 2013
5. Streetview photos of the site from 2009

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 flat 2 of 2 Cloverleaf House, London, NW5 4EP has been in use 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 flat 2 of 2 Cloverleaf House, London, NW5 4EP has 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 flat 2 of 2 Cloverleaf House, London, NW5 4EP has 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