

LDC Report	Expiry Date: 06/12/2023
Officer Jaspreet Chana	Application Number 2023/4350/P
Application Address 7 Rosecroft Avenue London Camden NW3 7QA	Recommendation Refuse
Proposal	
Use of apartment 5a (at No.7 Rosecroft Avenue) as a duplex flat (Class C3)	
Assessment	
<p>The application site is located on the west side of Rosecroft Avenue. The application relates to the upper floors of the property. The building is not listed but is located within Redington and Froggnal Conservation Area.</p> <p>The application seeks to demonstrate that flat 5a at 7 Rosecroft Avenue has existed for a period of 4 years or more such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing residential unit has existed for a period of 4 or more years.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • Site Location Plan, • Tenancy Agreement dated 2013, • Tenancy short hold agreement dated 22/12/2022, • Existing and proposed floor plans and Elevations from application 2022/5181/P, • Electric floor plan A1020, • Electrical installation certificate dated 05/11/2013, • Building Regulations Certificate of Compliance dated 05/02/2023 	

Council's Evidence

Planning History:

7 Rosecroft Gardens –

9500003 - *Erection of a roof extension and dormer windows to create a new residential flat and the introduction of windows at basement level and a first floor balcony – Refuse 13/04/1995 – Appealed T/APP/X5210/A/95/258567/P5 & T/APP/X5210/E/95/812021/P5 – Allowed – 06/03/1996*

2022/5181/P - Change of use from office to 1 bed residential unit at 1st and 2nd floor with new dormer window to front elevation roof top – Pending decision.

Council Tax records:

Council Tax Officers have stated that the liability for Council Tax for flat 5 in 7 Rosecroft Avenue started on 01/04/1993. It has been in payment continuously, however flat 5A is not stated on the Council Tax website.

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 (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 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 form states there were 9 flats, and claims there was a tenth flat formed in 2013.
- There are only 9 flats shown on the council tax records, and no 5A. This directly contradicts the applicant’s claim.
- The ASTs don’t have names on them, aren’t signed, and don’t have anything to identify where in the building they physically apply to – they are just labelled 5A.
- The ASTs suggest that at two points in time (neither of which covers a four year period) there was one flat somewhere in the building - it does not show where the flat was or how many flats were in the building in total.
- The electrical certificates also only relate to a single flat again not indicating which flat.
- There is no corroborating evidence from other ASTs for the other flats that could help to form a picture of there being 10 flats.
- There are no electrical certificates for the other flats that could help establish that there were 10 flats over the four year period.
- The floorplans are inconsistent in layout – the flats are not labelled correctly to show where all the flats are located.

- The planning history includes a pending planning application. This refers to part of the building being in office use, which again is inconsistent with this certificate. It is unclear whether this is the same part of the building this certificate relates to or not.

The information provided by the applicant is considered inconsistent and insufficient to demonstrate continuous use of part of the building (flat 5A) as a self-contained duplex flat. The evidence provided does not prove that the building has been in use as 10 self-contained flats, or where flat 5A is in the building and that it has been used for four years. There are only 9 flats declared on the council tax and no mention of flat 5A this contradicts the applicant's claims. No other evidence of utility bills or tenancy agreements or council tax payment records has been provided. In the absence of any such information, the evidence provided is considered inconsistent, ambiguous and imprecise, failing to demonstrate the continuous use of flat 5A as a self-contained duplex flat.

The information provided by the applicant is deemed insufficient, inconsistent, ambiguous and imprecise. The evidence provided contradicts the council's evidence and the applicant has failed to demonstrate that flat 5A 'on the balance of probability' was in continuous residential use for more than 4 years on the date of the application. Therefore, the application should be refused.

Recommendation: Refuse