

Delegated Report		Analysis sheet		Expiry Date: 28/03/2024	
		N/A		Consultation Expiry Date: N/A	
Officer				Application Number(s)	
Alex Kresovic				2024/0411/P	
Application Address				Drawing Numbers	
10 Lymington Road London NW6 1HY				Refer to Draft Decision Notice	
PO 3/4		Area Team Signature		C&UD	
				Authorised Officer Signature	
Proposal(s)					
Use of flats 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 building (including lower ground floor and rooms in the roof) that has been subdivided into a total of 19 flats. This includes 5 flats at lower ground floor level, 5 flats at ground floor level, 5 flats at first floor level and 4 flats at second floor level.

The subject site is located within the West End Lane Conservation Area but is not a listed building. It is within the Fortune Green and West Hampstead Neighbourhood Plan area.

Relevant History

2019/6036/P - Erection of a single storey outbuilding in rear garden for ancillary residential purposes. **GRANTED 30 March 2020.**

2015/0398/P - Erection of a part single storey, part two storey rear extension to flats 1 and 2, installation of rooflights in the main roof to flat 3, and works to front and rear lightwells (class C3). **GRANTED 10 March 2015.**

2014/2426/P - Change of use of flat 4 from a self-contained flat (C3) to a self-contained 2 room HMO (C4). **GRANTED 17 April 2014.**

Assessment

Background

The certificate seeks to demonstrate that on the balance of probability that 19 flats at 10 Lymington Road, London, NW6 1HY 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. Energy Performance Certificates for each of the flats dated 20th of November 2017.
2. Valuation Office records of Council tax banding dated February 2015, December 2015 and January 2016.
3. Gas safety certificates for the buildings plant for the years 2018 – 2023.
4. Fire Plan for the flats dated July 2019.
5. Tenancy agreements for each of the flats from between 2019 and 2024.
6. Plans showing the existing internal layout of the building.

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 19 flats at 10 Lymington Road, London, NW6 1HY 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 01 February 2020 ("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 19 flats at 10 Lymington Road, London, NW6 1HY 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 19 flats at 10 Lymington Road, London, NW6 1HY 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