


<b>LDC Report</b>	06/06/2023	
<b>Officer</b> Fast Track SC	<b>Application Number</b> 2023/0120/P	
<b>Application Address</b> Studio A Part Rear Ground Floor 533 Finchley Road London Camden NW3 7BG	<b>Recommendation</b> Refuse lawful development certificate(Existing)	
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b> Use of Studio A (at No. 533 Finchley Road) as a self-contained flat (Class C3)		
<b>Assessment</b>		
		
<p><b>Site location</b> The application site is located Studio A, Part Rear Ground Floor, 533 Finchley Road, London Camden, NW3 7BG. The building is not listed and is not located in a Conservation Area.</p> <p><b>Proposal</b> The application relates to the use of Studio A Part Rear Ground Floor as a self-contained residential dwelling (Class C3) for 4 years or more.</p> <p>The applicant seeks to demonstrate that Studio A Part Rear Ground Floor has existed and been</p>		

in use as self-contained unit (Class C3) for a period of 4 years or more such that the continued use would not require planning permission.

The applicant is required to demonstrate, on balance of probability that the existing residential unit has existed and been in use as a self-contained unit (Class C3) for a period of 4 years or more.

### **Applicant's Evidence**

The applicant has submitted the following information in support of the application:

- Site Location plan outlining the application site
- Ground Floor Plan outlining the dwelling
- Hussein Ali Nagrafi – Assured Shorthold Tenancy – 13/02/2017 – 12/02/2018
- Iraj Rezazadeh – Assured Shorthold Tenancy – 13/07/2020 – 17/07/2021
- Energy Performance Certificate - Valid until 9/01/2033
- Council Tax Band – 5188602 - A – 13/02/2017

### **Council's Evidence**

**HMO Licence - 052642-** Fortune Green Property Limited - Flats 1,2,3,4,5,6,7,8 - 24/10/2016 – 23/10/2021

### **Council Tax**

Property information for

**FLAT STUDIO PT REAR GND FLR A  
533, FINCHLEY ROAD, LONDON, NW3  
7BG**

<b>Local Authority</b>	<a href="#">Camden</a>
<b>Local authority reference number</b>	5188602
<b>Council Tax band</b>	A
<b>Improvement indicator</b>	No
<b>With effect from</b>	13 February 2017
<b>Mixed-use property</b>	No
<b>Court code</b>	None

Council Tax have confirmed that the liability for Council Tax 5188602 started on 13/02/2017. No evidence has been provided to demonstrate that Council Tax has been in payment since liability was assumed on 13/02/2017.

## Planning History

2015/5974/P - Certificate of Lawfulness - Use as 8 studios - **Granted 23/12/2015**

## Enforcement

EN10/0759 - Unauthorised use as 8 studio flats instead of 2 flats. – **Findings:** Operating lawfully as 2 self-contained flats – 30/7/2010

## Council's aerial photography

2022 – showing ground floor extension



2020 - showing ground floor extension





**2019- showing ground floor extension**



**2014 – showing no ground floor extension**



## 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 applicant seeks to demonstrate, on balance of probability that Studio A Part Rear Ground Floor, 533 Finchley Road, London, Camden, NW3 7BG has existed and been in use as a self-contained unit (Class C3) for a period of 4 years or more since 13/02/2017.

- The AST’s cover 2 years of tenancy ( between 13/02/2017 and 17/07/2021 ) which have a break of 2 years between them.

The AST’s do not demonstrate 4 years or more continuous use up unto the date of application 11/01/2023.

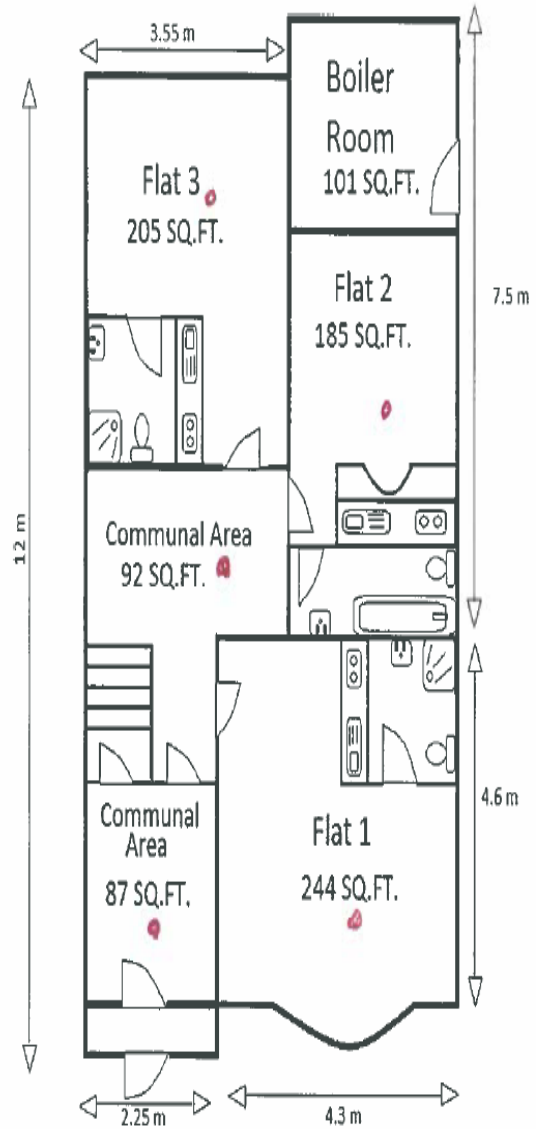
- The Energy performance certificate (EPC) only relates to a single flat it does not indicate which flat it relates to; it just says Ground Floor Flat, according to the floorplan there are 4 flats.
- The Ground floor plan provided by the applicant doesn’t match the one assigned to the

HMO licence. It appears that the boiler room (Studio A Part Rear Ground Floor), floor plans that were provided in support of the HMO licence has been increased in size. This is also evidenced by the Council's aerial photography which shows that the extension was built between 2014 and 2019.

- The applicant appears to have carried out an extension without permission. The increase in size would not be deemed as permitted development as the property is not a single family dwellinghouse and therefore does not benefit from residential permitted development rights.
- There is no evidence that an application was sought to carry out these works. However, as the extension appears to have been completed more than 4 years ago it is likely to be immune from enforcement action.
- The Ground Floor plan provided to the HMO team is 6.55m (W)x 12.1m(L) the floor plan provided for this application is 6.55m (W) x 17.7m(L)

<b>Ground Floor Plan – 2023/0120/P</b>	<b>HMO Licence – Ground Floor Plan</b>
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FLAT STUDIO PT REAR GND FLR A 533,  
FINCHLEY ROAD, LONDON, NW3 7BG



Ground Floor 533 Finchley Road

TOTAL AREA 914 SQ.FT APPROX.

The outcome of Enforcement action **EN10/0759** identifies the lawful use of 533 Finchley Road London, Camden, NW3 7BG as two flats which can be used as a two separate HMO's(Class C4). The licence provided by the HMO Team confirms that the site address operated as a HMO (Class C4) from the 24/10/2016 until 23/10/2021.

The information provided by the applicant is considered inconsistent and insufficient to demonstrate continuous use of Studio A Part Rear Ground Floor a self-contained flat. The evidence provided does not prove that Studio A has been in use as a self-contained flat for the stipulated 5 years.

The information provided by the applicant only covers 2 years of tenancy from 13/02/2017 to 17/07/2021 of which there is a period of 2 years of tenancy unaccounted for. No other evidence of utility bills or council tax payment records has been provided. Neither has the applicant offered an

explanation for the gap in evidence. In the absence of any such information, the evidence provided is considered inconsistent, ambiguous and imprecise, failing to demonstrate the continuous use of Studio A

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 'on the balance of probability' Studio A Part Rear Ground Floor was in continuous residential use for more than 4 years on the date of the application. Therefore, the application should be refused.

**Recommendation: Refuse.**