

<b>LDC (Existing) Report</b>		<b>Application number</b>	2023/3727/P
<b>Officer</b>		<b>Expiry date</b>	
Fast Track Team - Geri		02/11/2023	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
62 Falkland Road London NW5 2XA			
<b>Conservation Area</b>		<b>Article 4</b>	
Kentish Town		Basements	
<b>Proposal</b>			
Regularisation of the former use of the property as House in Multiple Occupation (Class C4).			
<b>Recommendation:</b>		Grant lawful development certificate.	
<p><b>Site description</b></p> <p>The four-storey terraced property is located on the south side of Falkland Road.</p> <p>The site is located in the Kentish Town Conservation Area and Kentish Town Neighbourhood Plan area. It is noted as being a positive contributor in the Kentish Town Conservation Area Appraisal and Management Strategy 2011. It is however not listed.</p> <p>The property is currently in use as a single-family dwelling house and appears to have been used as such since September 2021.</p> <p><b>Proposal</b></p> <p>The application seeks to demonstrate that the property has been used as a House in Multiple Occupation (HMO) for 6 tenants (Class C4) in excess of 10 years up to September 2021. The house was sold in June 2021 and from this point appears to have been used as a single family dwelling. This use would not require planning permission if can be established that the former use was a Class C4 Small HMO. Permitted development rights allow for a change of use from a small HMO (C4) to a single family dwelling (C3).</p> <p><b>Responses</b></p> <p>Given the nature of certificate of lawfulness applications, and in particular that purely matters of legal fact are involved in their determination, the Council does not have a statutory duty to engage in a formal consultation process.</p> <p>Notwithstanding this, it is Council practice to allow a short period of time for our local residents and amenity groups to comment should they choose to do so. As such, the details of the application were made available online.</p>			

During this time, one comment from a concerned resident was received.

- 1) *"The property has a history of being rejected for change of use, the latest being the refusal of the above certificate in 2014 and the C4 class rejected at appeal based on evidence."*
  - Case officer's response:  
The appeal (2008/2960/P) dismissed on 20<sup>th</sup> October 2009 was for the change of use to convert an HMO (C4) into a single dwellinghouse (C3).
- 2) *"The owners state they informed Camden HMO department of their single use intention [...] they should contact HMO to revoke the licence."*
  - Case officer's response:  
As mentioned below, the licence was revoked on 16<sup>th</sup> August 2021.
- 3) *"The application for the extension, 2021/5802/P [...] was granted in the belief the property was an HMO."*
  - Case officer's response:  
The amended application form posted online and dated 31<sup>st</sup> May 2022 states that the property is an HMO (C4). This should have shown as single-family dwelling house (C3). However, the application was assessed on the ground of 'conservation & design and effects on amenity of neighbouring occupiers'. In this instance the use of the property would not have altered the acceptability of this proposal.
- 4) *"If the certificate is granted how does this affect the lawfulness of the extension, which is 2.5 meters longer than under permitted development. Would they be obliged to reapply for planning permission for the extension stating the buildings change of use?"*
  - Case officer's response:  
As mentioned above in point 3), a full assessment of the application was made and is not affected by this certificate.

## Planning History

**2023/3644/P** - Change of use from HMO (Sui Generis) to single dwelling house (Class C3).  
Currently under consideration

**2022/3176/P** - Details pursuant to condition 3 (internal or external blinds) of planning permission 2021/5802/P granted on 28 June 2022 for 'Erection of full width single storey rear extension'  
Granted 09/12/2022

**2021/5802/P** - Erection of full width single storey rear extension. Granted 28/06/2022

**2014/2189/P** - The use of the property as HMO for the provision of 6 x 1Bed flat on the first, second and third floors. Refused 30/06/2014

**2008/2960/P** - Change of use and works to convert a House in Multiple Occupation (Sui Generis) containing 9 bedsit rooms into a single dwellinghouse (Class C3). Refused 10/09/2008  
An appeal was submitted and dismissed on 20/10/2009

**8802526** - Change of use from two maisonettes to seven person shared house and erection of a rear conservatory extension and extension to rear roof to accommodate additional toilet

facilities. Granted 08/12/1988

**8802480** - Change of use from residential dwelling house to provide hostel accommodation. Granted 02/11/1988

**8701192** - Conversion from two non self-contained units to two 1-bedroom flats and two bedsits. Granted 07/01/1988

### **Enforcement history**

**EN23/0480** - Breach of Planning- unauthorised change of use from a 9-bed HMO to a single family dwelling house. Currently under investigation

**EN22/0908** - Breach of planning control 2021/5802/P. Case closed as not expedient 11/09/2023

**EN14/0669** - In use as C4 - lawful use as sui-generis HMO (LDC refused - 2014/2189/P). Case closed as no breach found 07/10/2014

### **Applicant's Evidence**

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

- Floor Plans showing the 6 bedrooms and ground floor with shared facilities from 2010 and spreadsheet of tenancies from previous owner from 2010 (x1 page)
- Email from Sarah Gilbert (former owner) to Richard Drew confirming the names of the six tenants for the six rooms dated 17<sup>th</sup> January 2014 and before the inspection from Camden took place on 4<sup>th</sup> February 2014.
- Occupancy table for room 2A for 2010-2021
- Occupancy table for room 2B for 2010-2021
- Occupancy table for room 3A for 2010-2021
- Occupancy table for room 3B for 2010-2021
- Occupancy table for room 4A for 2010-2021
- Occupancy table for room 4B for 2010-2021
- Statutory declaration from Nadia Ziri (applicant and current owner) dated 25<sup>th</sup> August 2023 confirming that she bought the property in June 2021 and that the remaining tenants vacated the property in September 2021.
- Statutory declaration from Laurence James Baggett (former owner) dated 1<sup>st</sup> September 2023 confirming that from 2010 to June 2021, the property had only been occupied by a maximum of six tenants.
- Statutory declaration from Daniel Painter (former tenant) dated 24<sup>th</sup> August 2023 confirming that he occupied room 2B from 2011 to 13<sup>th</sup> July 2021 and during this time, there were never more than six tenants in situ at the property.
- Extract of Tenancy Agreement for room 2A from Yoke M Koh dated 6<sup>th</sup> August 2005
- Extract of Tenancy Agreement for room 2A from Benedetta Pongiglioni commencing on 4<sup>th</sup> October 2013
- Extract of Tenancy Agreement for room 2A from Benedetta Pongiglioni commencing on 4<sup>th</sup> March 2015
- Extract of Tenancy Agreement for room 2A from Carnicella commencing on 5<sup>th</sup> August 2015

- Extract of Tenancy Agreement for room 2A from Carnicella commencing on 5<sup>th</sup> September 2016
- Extract of Tenancy Agreement for room 2A from McIntyre commencing on 31<sup>st</sup> August 2018
- Extract of Tenancy Agreement for room 2A from Perez commencing on 1<sup>st</sup> September 2019
- Extract of Tenancy Agreement for room 2A from Amiaz Narvaez commencing on 16<sup>th</sup> September 2020
- Extract of Tenancy Agreement for room 3A from Ivan Robert Farmer commencing on 1<sup>st</sup> March 2007
- Extract of Tenancy Agreement for room 3A from Thomas Barrow commencing on 5<sup>th</sup> September 2012
- Extract of Tenancy Agreement for room 3A from Thomas Hopkins commencing on 9<sup>th</sup> September 2013
- Extract of Tenancy Agreement for room 3A from Thomas Kexiong Yang commencing on 24<sup>th</sup> September 2014
- Extract of Tenancy Agreement for room 3A from Freddy Howarth commencing on 9<sup>th</sup> August 2015
- Extract of Tenancy Agreement for room 3A from Raschke commencing on 6<sup>th</sup> September 2016
- Extract of Tenancy Agreement for room 3A from Elliot Grey commencing on 12<sup>th</sup> August 2017
- Extract of Tenancy Agreement for room 3A from Kellerman commencing on 8<sup>th</sup> September 2020
- Extract of Tenancy Agreement for room 3B from Julie Pickard dated 3<sup>rd</sup> March 2000
- Extract of Tenancy Agreement for room 3B from Tom Reid commencing on 15<sup>th</sup> September 2012
- Extract of Tenancy Agreement for room 3B from Amelia Theo-Jones commencing on 15<sup>th</sup> September 2013
- Extract of Tenancy Agreement for room 3B from Vanessa Burini commencing on 21<sup>st</sup> September 2014
- Extract of Tenancy Agreement for room 3B from Burini commencing on 27<sup>th</sup> July 2015
- Extract of Tenancy Agreement for room 3B from Burini commencing on 20<sup>th</sup> September 2015
- Extract of Tenancy Agreement for room 3B from Burini commencing on 21<sup>st</sup> September 2016
- Extract of Tenancy Agreement for room 3B from Snaczke commencing on 12<sup>th</sup> February 2017
- Extract of Tenancy Agreement for room 3B from Snaczke commencing on 12<sup>th</sup> September 2018
- Extract of Tenancy Agreement for room 3B from Edler commencing on 8<sup>th</sup> September 2019
- Extract of Tenancy Agreement for room 3B from Mankeleviciute commencing on 17<sup>th</sup> October 2020
- Extract of Tenancy Agreement for room 4A from Laura Obon dated 16<sup>th</sup> September 2010
- Extract of Tenancy Agreement for room 4A from Svenja May commencing on 20<sup>th</sup> September 2013
- Extract of Tenancy Agreement for room 4A from Cedric Thomas commencing on 2<sup>nd</sup>

January 2014

- Extract of Tenancy Agreement for room 4A from Evans commencing on 5<sup>th</sup> September 2014
- Extract of Tenancy Agreement for room 4A from Evans commencing on 5<sup>th</sup> March 2015
- Extract of Tenancy Agreement for room 4A from Maywald commencing on 5<sup>th</sup> September 2015
- Extract of Tenancy Agreement for room 4A from Chatterjee commencing on 1<sup>st</sup> October 2016
- Extract of Tenancy Agreement for room 4A from Maul commencing on 1<sup>st</sup> September 2017
- Extract of Tenancy Agreement for room 4A from Maul commencing on 1<sup>st</sup> August 2018
- Extract of Tenancy Agreement for room 4A from Kellerman commencing on 22<sup>nd</sup> September 2019
- Extract of Tenancy Agreement for room 4A from Maul commencing on 18<sup>th</sup> October 2019
- Extract of Tenancy Agreement for room 4B from Kazumi Michishita commencing on 10<sup>th</sup> April 2007
- Extract of Tenancy Agreement for room 4B from Thomas Hopkins commencing 15<sup>th</sup> September 2012
- Extract of Tenancy Agreement for room 4B from Judith Nubold commencing on 9<sup>th</sup> September 2013
- Extract of Tenancy Agreement for room 4B from Jennifer Timmins commencing on 10<sup>th</sup> September 2014
- Extract of Tenancy Agreement for room 4B from Caroline Corbett Thompson commencing on 15<sup>th</sup> March 2015
- Extract of Tenancy Agreement for room 4B from Katarzyna Gambus commencing on 1<sup>st</sup> August 2015
- Extract of Tenancy Agreement for room 4B from Sophie Ward commencing on 1<sup>st</sup> October 2016
- Extract of Tenancy Agreement for room 4B from Ward commencing on 1<sup>st</sup> October 2019
- Extract of Tenancy Agreement for room 4B from Bahadur commencing on 1<sup>st</sup> September 2020

The applicant has also submitted:

- Site Location Plan
- Covering Letter from Heal Hooper Associates (x 8 pages) received on 7<sup>th</sup> September 2023

### **Council's evidence**

The Valuation Office Agency (VOA) website shows six council tax entries that were deleted and a new entry as one property dated 01/09/2012.

A Lawful Development Certificate (2014/2189/P) was refused on 30<sup>th</sup> June 2014 for "the use of the property as HMO for the use of the property as HMO for the provision of 6 x 1Bed flat on the first, second and third floors" because there was insufficient evidence at the time. The officer's delegated report states that "*a site visit confirmed that the current layout is 6 Bedroom (HMO) (shown on submitted plans on the first, second and third floors with shared bathroom facilities at*

*first and second floor landing level.” It goes on saying that “it was clear from the site visit that the individuals currently occupying the property do not share it as single household, there being no communal meeting space.” Finally, there is a sentence stating that “planning history suggest the use was within Sui-generis use [...] for a maximum of 6 years (based on the application 2008/2960/P for the change of use.”*

We have received the floor plan and the HMO licences (issued for all six rooms) for this property from our HMO Licensing Team:

- 10/09/2007-09/09/2012
- 15/07/2013-14/07/2018 – This shows 6 current occupiers in the property on 15<sup>th</sup> July 2013
- 09/10/2018-08/10/2023 – This shows 6 current occupiers in the property on 9<sup>th</sup> October 2018 (this licence was subsequently revoked on 16<sup>th</sup> August 2021 after the property was sold).

Our Council Tax records indicate that the property was an HMO and occupied by 6 tenants for the period 29<sup>th</sup> September 2013 to 29<sup>th</sup> June 2021.

### **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 Council does not have any evidence to contradict or undermine the applicant’s version of events. The information provided by the applicant is deemed to sufficiently demonstrate that ‘on the balance of probability’ the property had been in continuous use as a small HMO occupied by no more than 6 people for a period of 10 years as required under the Act. The applicant’s evidence, namely the statutory declarations and tenancy agreements, is sufficiently precise and unambiguous to justify the grant of a certificate. The Council’s evidence supports the case made by the applicant, this includes the HMO Licencing records, the planning history, previous site visits and Council Tax information.

**RECOMMENDATION:** Grant certificate of lawfulness