

<b>LDC (Existing) Report</b>		<b>Application number</b>	2023/4923/P
<b>Officer</b>		<b>Expiry date</b>	
Tony Young		09/04/2024	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
49 Cotleigh Road London NW6 2NN			
<b>Conservation Area</b>		<b>Article 4</b>	
No		Article 4 Direction (basements)	
<b>Proposal</b>			
Use as 6 x separate residential flats (Class C3).			
<b>Recommendation</b>		<b>Issue Certificate</b>	
<b>Introduction</b>			
<p>The application site comprises a 2-storey terraced property with dormer roof extension at the rear, located on the south side of Cotleigh Road, close to its junction with Kingsgate Road to the west.</p> <p>The host building is not listed and is not located within a conservation area. The property is located within the Kilburn Neighbourhood Forum Area.</p> <p>An Article 4 Direction is in place which prevents alterations to be carried out to a basement or lightwell without the necessary planning permission.</p> <p>The application seeks to demonstrate that, on the balance of probability, the use of application site as 6 x separate, self-contained residential flats began, and has continued as such, for a continuous period of at least four years before the date of the application, such that their retention would not require planning permission.</p>			
<b>Responses</b>			
<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. No comments have been received.</p>			
<b>Applicant's Evidence</b>			
<p>The applicant has submitted the following documents/information in support of the application:</p> <ul style="list-style-type: none"> <li>• <u>Cover letter</u> from DRK Planning Ltd. (agent) dated 17/11/2023, asserting that the application site has been in use as 6 x separate, self-contained residential flats for at least four years before the relevant date. The following evidence is referred to in support of this assertion:</li> <li>• <u>Statutory declaration from Farid Gourji Shamash</u> (former director of managing agents – Metropole Properties Ltd. / Metropole Property Rental Ltd.) dated 04/03/2024, including various plans, written correspondence, tenancy and insurance agreements, rent and bank statements, Council Tax and license records, statutory declarations, valuation reports, benefits and utilities information and photographs (Exhibits F1 to F16).</li> </ul>			

Declaration and exhibits asserting that the application site has been in continuous use as 6 x separate self-contained flats for at least 4 years or more before the date of the application;

- Statutory declaration from Andrew O'Neill (occupant/tenant) dated 03/04/2023 with tenancy agreements, benefit information and floor plans (Exhibits A1 to A3). Declaration and exhibits asserting that he has occupied Flat 2 at the application site as a self-contained flat since 2010 and that 6 x separate self-contained flats have been occupied as such during that time;
- Statutory declaration from Mohammad Ali (part-time handyman) dated 03/04/2023, asserting that he has carried out general maintenance works since 2013 at the application site, and more particularly, works to Flats 4, 5 and 6 between 2019 and 2020, and that 6 x separate self-contained flats have been occupied as such throughout his time working at the property;
- Statutory declaration from Sara Tesfu (tenant/occupier) dated 03/04/2023 with tenancy agreements and floor plans (Exhibits T1 to T3). Declaration and exhibits asserting that he has occupied Flat 1 at the application site as a self-contained flat since 2011 and that 6 x separate self-contained flats have been occupied as such during that time;
- Statutory declaration from Margaret Taha (manager / Metropole Property Rental Ltd.) dated 04/03/2024 with various plans, written correspondence, tenancy and insurance agreements, rent and bank statements, petty cash voucher, Council Tax and license records, statutory declarations, valuation reports, benefits and utilities information and photographs (Exhibits MT1 to MT15). Declaration and exhibits asserting that 6 x separate self-contained flats have been occupied as such for a continuous period for at least 4 years covering the relevant period.

The applicant has also submitted the following drawings:

- Unnumbered site location plan - showing the boundary of the application site outlined in red;
- Unnumbered existing ground and 1<sup>st</sup> floor plans / 2<sup>nd</sup> floor plan (ref. 1802-BR-00-01) (also submitted as Exhibits A3, FS2, T3 and MT1 attached to various statutory declarations) – showing the relevant 6 x self-contained flats in question to be Flats 1 and 2 (ground floor level); Flats 3 and 4 (1<sup>st</sup> floor level); and Flats 5 and 6 (2<sup>nd</sup> floor level).

### **Council's Evidence**

There is the following planning history relevant to the subject site:

- **2007/1429/P** - Excavation to provide basement accommodation with rear lightwell and erection of a single-storey rear extension at ground floor level all in connection with change of use of single-family dwellinghouse to 3 self-contained flats (1 x 3 bedroom and 2 x 1 bedroom). Planning permission granted 09/11/2007 subject to Section 106 agreement (car-free housing)

There is the following enforcement history relevant to the subject site:

- **EN07/0384** - Single family dwelling converted to 6 self contained flats (4 x studios) & (2 x 1 beds). Appeal against enforcement notice allowed 15/03/2011. Notice quashed and case closed

Council Tax records:

- Council tax valuation for band A property (Flat 1 at 49 Cotleigh Road London NW6 2NN) effective 03/05/2007 (Local authority reference number: 5142737)
- Council tax valuation for band A property (Flat 2 at 49 Cotleigh Road London NW6 2NN) effective 03/05/2007 (Local authority reference number: 5142738)
- Council tax valuation for band A property (Flat 3 at 49 Cotleigh Road London NW6 2NN) effective 03/05/2007 (Local authority reference number: 5142739)
- Council tax valuation for band A property (Flat 4 at 49 Cotleigh Road London NW6 2NN)

effective 03/05/2007 (Local authority reference number: 5142740)

- Council tax valuation for band A property (Flat 5 at 49 Cotleigh Road London NW6 2NN) effective 03/05/2007 (Local authority reference number: 5142741)
- Council tax valuation for band A property (Flat 6 at 49 Cotleigh Road London NW6 2NN) effective 03/05/2007 (Local authority reference number: 5142742)

### **Assessment**

In regard to applications for a Certificate of Lawfulness, 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 (National Planning Practice guidance). The relevant test is the 'balance of probability', and authorities are advised that if they have no evidence of their own, nor any from others, to contradict or otherwise make the applicant's version of events less probable, 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.

It is considered that the information provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of application site as 6 x separate, self-contained residential flats began at least four years before the date of the application and has continued as such, for a continuous period until the present time.

Relevant planning and enforcement history is consistent with this position, supported by Council Tax records which confirm 6 x separate tax valuation bands for Flats 1 to 6 at the application site since 03/05/2007. This being the case, and given the fact that the Council does not have any evidence to contradict or undermine the applicant's version of events, the use of application site as 6 x separate, self-contained residential flats is lawful and would not require planning permission.

As such, it is recommended that a Certificate of Lawfulness be granted.

**RECOMMENDATION: Grant Certificate of Lawfulness**