

LDC (Existing) Report		Application number	2024/3254/P
Officer		Expiry date	
Tony Young		02/10/2024	
Application Address		Authorised Officer Signature	
Flats Ground Floor & Lower Ground Floor 221 Belsize Road London NW6 4AA			
Conservation Area		Article 4 Direction	
n/a		Basements	
Proposal			
Use of 3-bed flat over ground and lower ground floors as 2 x separate self-contained (1-bed) residential flats.			
Recommendation:	Refuse Certificate of Lawfulness and Warning of Enforcement Action to be Taken		

1. Introduction

- 1.1. The application site comprises a residential building located on the south side of Belsize Road, towards the western end, near to the junction with Kilburn Vale. Directly south of the site and to the rear is the railway platform to Kilburn High Road Overground Station and adjacent railway lines.
- 1.2. The site is not listed, nor is it located within a conservation area. The property is situated within the Kilburn Neighbourhood Area.
- 1.3. The application seeks to demonstrate that, on the balance of probability, the use of a 3-bed flat over ground and lower ground floor levels as 2 x separate self-contained (1-bed) residential flats is lawful and the continued use would not require planning permission.
- 1.4. In order to satisfy the above, the applicant is required to demonstrate that, on the balance of probability, the existing layout and use of the building has been in situ and in continuous use for a period of at least 4 years (where an unapproved change of use has occurred) or that the change of use was permitted under the provisions of the General Permitted Development Order 2015 (as amended). As this application was submitted on the 04/08/2024, the relevant 4 year period would be from 04/08/2020.

2. Applicant's evidence

2.1. The applicant has submitted the following documents in support of the application:

- Various dated tenancy agreements (ground floor), in support of the assertion that the existing ground floor has been occupied as a separate residential unit from 15/01/2020 to the date of the application submission on 04/08/2024.
- Various dated tenancy agreements (lower ground floor), in support of the assertion that the existing lower ground floor has been occupied as a separate residential unit since 10/12/2019 to the date of the application submission on 04/08/2024.
- Tenancy agreement (no. 211 Belsize Road) dated from 09/03/2022 [*this is noted by the Council as referring to the ground floor of a different site*]

2.2. The applicant has also submitted the following drawings:

- Site location plan (unnumbered) outlining the application site in red
- Existing lower ground floor plan (ref. 647/PL/01)
- Existing ground floor plan (ref. 647/PL/02)

3. Council's Evidence

3.1. There is the following planning application history relevant to the proposal at the subject site:

- **2022/2349/P** - Enlargement of front lightwell and installation of new door and external stairs from basement to ground floor. Planning permission granted 10/01/2023
- **2013/3953/P** (Land Adjoining 221) - Erection of first, second floor and roof level extension to existing single-storey building and modifications to ground floor including alterations to front building line to create front garden, installation of new front boundary wall, and alterations to windows and doors all in connection with change of use of from retail (Class A1) to office/storage use (Class B1) at ground floor level, and to provide 2 x 1-bed flats (Class C3) at first and second floor levels. Planning permission granted subject to a Section 106 legal agreement dated 15/10/2014
- **2005/3004/P** - Erection of a 3-storey extension to the front of the existing 3-storey building, in part to enlarge the flats in the existing building and in part for use as a independent 3-bedroom single dwellinghouse. Planning permission refused dated 12/09/2005
- **PWX0202217** - Change of use of basement and ground floors from maisonette to 2 x 1-bedroom flats, plus provision of 2 lightwells and new access staircase, as a variation to planning permission (PW9902038R1) granted on 16/6/99 for the change of use from house to flat and maisonette. Planning permission granted 02/07/2002
- **PW9902038R1** - Change of use from a single dwellinghouse to one self-contained flat and one self-contained maisonette and the provision of a new basement light well at the front. Planning permission granted 16/06/1999
- **PW9702420R1** - Change of use from B1 (Offices) to dwelling house. Planning permission granted 09/10/1997
- **9005176** - Erection of three storey extension at front of existing building with shop unit on ground floor and one car parking space. Planning permission refused and appeal dismissed 14/01/1991
- **9005177** - Erection of three storey extension at front of existing building with shop unit on ground floor and one car parking space. Planning permission refused 05/12/1990

3.2. There is the following planning enforcement history relevant for the subject site:

- **EN18/0108** - building works to ground floor and basement. No breach found – extent of works and internal nature to an existing maisonette would not require planning permission. Case closed 06/03/2018
- **EN18/0589** - Two self contained flats created in the ground floor and basement. Breach ceased. Case closed 26/03/2019

3.3. There is the following additional public information relevant to the site:

- **Council Tax Valuation** for band E property (Flat Ground Floor, 221 Belsize Road London NW6 4AA) effective 15/07/2022 (Local authority reference number: 5200492)
- **Council Tax Valuation** for band A property (The Flat Lower Ground, The Railway Cottage, 221 Belsize Road London NW6 4AA) effective 15/06/2022 (Local authority reference number: 5200493).

- **Council Tax Valuation** (Maisonette Lower Ground & Ground Floors, The Railway Cottage, 221 Belsize Road London NW6 4AA) band deleted, effective date unspecified (Local authority reference number: 5130464).

4. Assessment

- 4.1. 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.
- 4.2. The supporting evidence provided by the applicant is not considered by the Council to be sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of a 3-bed flat over ground and lower ground floors as 2 x separate self-contained (1-bed) residential flats began at least four years before the date of the application, such that a retention of the use would not require planning permission. The Council also has evidence which contradicts and undermines the applicant's version of events.
- 4.3. While the various dated tenancy agreements submitted by the applicant by way of evidence refer to the ground floor and lower ground floor of the application site, they do not specifically refer to separate flats or any self-containment of these areas. The applicant also provided an additional tenancy agreement which is noted as relating to the ground floor of a different site in Belsize Road (no. 211). As such, overall, the applicant's evidence is afforded limited weight in the assessment, particularly in light of Council evidence.
- 4.4. Moving to the Council's evidence, it is firstly noted that the Council's most recent records indicate that the property in question is in use as an unlicensed House in Multiple Occupation (HMO) with the two relevant floor areas (ground and lower ground floors) functioning as a single maisonette unit. There is also an additional unit on the upper floors. This position was confirmed during a site visit by a Planning Site Inspector in October 2018 in relation to an enforcement investigation (ref. EN18/0589 – see planning enforcement history section above for further details).
- 4.5. Since then, more recent Council Tax Valuation records confirm a separation of the unit (Maisonette Lower Ground & Ground Floors) into two distinct ground floor and lower ground floor flats. However, the records state this change to be effective from 15/07/2022 (Local authority reference number: 5200492) and 15/06/2022 (Local authority reference number: 5200493) respectively. As such, the period of time specified falls short of the requisite 4 year period relevant to this current application and necessary to grant a certificate.
- 4.6. Moving to further Council evidence, it is important to consider a recent planning application (ref. 2022/2349/P) received on 30/05/2022 for works at the application site; namely, for the enlargement of front lightwell and installation of new door and external stairs from basement to ground floor. It is noted that the drawings and supporting information (which were provided by the same applicant (and agent) as the current Lawful Development Certificate application being considered here in this report), contradict the assertion that the ground and lower ground floors have been used as 2 x separate self-contained (1-bed) residential flats for at least four years before the date of

the current application.

- 4.7. As part of the previous application submission (ref. 2022/2349/P), it is firstly noted that all approved drawings are entitled, '*Lower Ground and Ground Floor Flat, 221 Belsize Road London NW6 4AA*' specifying a single unit without separation on 30/05/2022 when that earlier application was received by the Council.
- 4.8. The associated existing and proposed ground floor plans (ref. 609/PL/03 and 04 Rev C respectively) also include specific annotation which refers to a single entrance door, stated as being '*Entrance to Lower Ground & Ground Floor Flat*' (see Image 1 below).

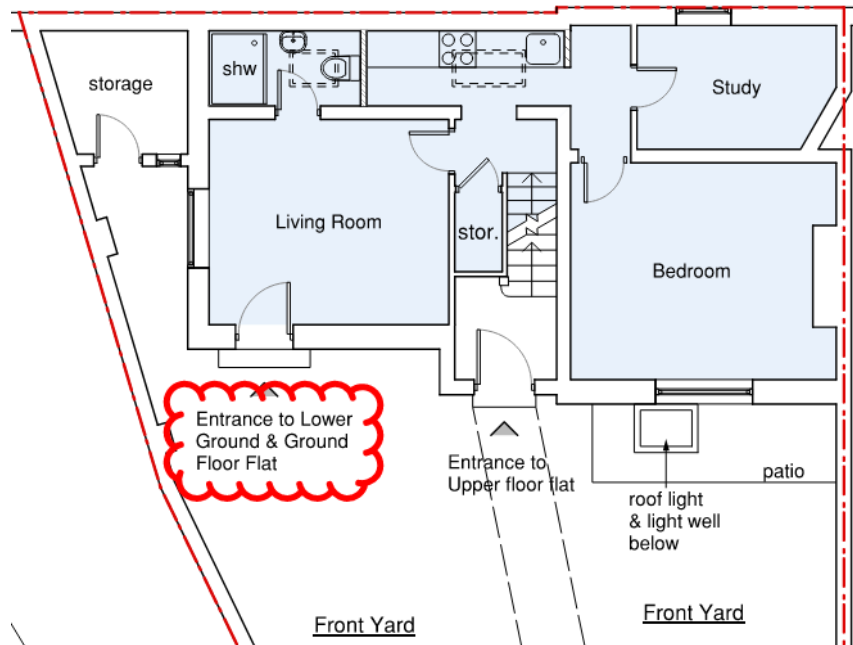


Image 1 – existing ground floor plan ref. 609/PL/03 (extract)

- 4.9. Again, the drawings clearly refer to a distinct unit over both floor levels accessed by a single entrance door. Additionally, these drawings also show this entrance door as passing through a ground floor living room, and as such, are strongly suggestive of a single unit given the unlikelihood that the door would provide an access route into and out of a separate flat at lower ground or basement level.
- 4.10. Furthermore, a Basement Impact Assessment from GeoSmart (ref. 77654R2) also included as part of the previous application submission in 2022 and forming part of the approved documents (ref. 2022/2349/P), states on page 7:
- 'The Site is currently used within a residential capacity as a three-storey semi-detached residential property. The building comprises two flats, with the lower flat comprising the ground and lower ground floors'.*
- 4.11. The report continues further on page 7:
- 'At present, the basement comprises a bedroom and bathroom, and is accessed via a set of internal stairs leading to the ground floor. Further living and sleeping accommodation is present on the ground floor'.*
- 4.12. The report, therefore, explicitly describes the existing residential living arrangement in 2022 as comprising a single flat over ground and lower ground floors with the basement accessed by internal stairs; this being contrary to the applicant's assertion as set-out in the current application submission.
- 4.13. It is noted again that the applicant (and agent) for both the previous planning application (ref. 2022/2349/P) and the current Lawful Development Certificate

application being considered here in this report are the same. A declaration was signed by the applicant on the application forms in both cases asserting that the information provided was true. However, a comparison of the applicant's own information as provided in both submissions (and as highlighted in Paragraphs 4.6 to 4.12 above) includes conflicting evidence and indicates a position which is clearly contradictory, so undermining the applicant's version of events.

4.14. Finally, it is noted generally that conversion of properties into flats requires approval under the Building Regulations. The Council's Building Control records show no record of the sub-division in question at the application site, nor any record of works required to facilitate this. Additionally, the Council's Street Naming and Numbering Team have confirmed that they have no record of an application having been made at any time to create any separate address(es) for the relevant parts of the subject property.

5. Conclusion

5.1. The conversion of the property into 2 x separate self-contained dwellings is not permitted under the provisions of the General Permitted Development Order 2015 (as amended). The works undertaken on site, therefore, are considered to be unauthorised.

5.2. On the basis of the above assessment, it is considered by the Council that the information provided by the applicant is not sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of a 3-bed flat over ground and lower ground floors as 2 x separate self-contained (1-bed) residential flats began at least four years before the date of the application.

5.3. Furthermore, the Council has evidence which contradicts and undermines the applicant's version of events. This evidence also strongly indicates that the development has occurred within the last 4 years.

5.4. As such, it is concluded that on the balance of probability (based upon the evidence provided), the applicant's claims are not supported and the unauthorised conversion works remain liable for enforcement action.

5.5. Given that the Council has related concerns that the existing units may offer sub-standard and potentially unsafe living accommodation, a retrospective planning application for the conversion of the property into 2 x separate units is not encouraged and these matters will instead be referred to the Council's Private Sector Housing and Planning Enforcement Teams for further investigation and any necessary formal action to be taken.

5.6. The applicant is, however, encouraged to enter into discussions with the Council to agree a suitable route forwards for the application site.

6. Recommendation: Refuse Certificate of Lawfulness and Warning of Enforcement Action to be Taken

6.1. Reason for Refusal: The applicant has provided insufficient evidence to demonstrate that, on the balance of probability, the ground and lower ground floors of the property were converted into 2 x self-contained residential flats (Use Class C3) at least four years prior to the submission of the application, nor that the use has remained continuous since this time, as required under the Act.