

<b>LDC (Existing) Report</b>		<b>Application number</b>	2024/3784/P
<b>Officer</b>		<b>Expiry date</b>	
Tony Young		31/10/2024	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
262B Kilburn High Road London NW6 2BY			
<b>Conservation Area</b>		<b>Article 4</b>	
No		Yes (basement and land use)	
<b>Proposal</b>			
Use as single residential unit at (part rear) 1st floor level (Class C3).			
<b>Recommendation</b>		<b>Issue Certificate</b>	
<b>Introduction</b>			
<p>The application site comprises a 3-storey mid-terrace building with roof extension located on the eastern side of Kilburn High Road and backing on to Espalier Gardens to the rear. The building is located in an area of the high street generally comprising of commercial units at ground floor level with residential accommodation on floors above.</p> <p>The site is not listed nor is it located within a conservation area. The site is situated within the Kilburn Neighbourhood Area.</p> <p>As from 25/04/2024, the period for which a potential breach of planning for residential dwellings and changes is exempt from enforcement has increased from four to ten years within England, as amended by the Levelling-up and Regeneration Act 2023 (LURA).</p> <p>The application therefore seeks to demonstrate that, on the balance of probability, the use as a single residential unit at (part rear) 1st floor level began at least four years before 25/04/2024, such that a retention of the use would not require planning permission.</p>			
<b>Applicant's Evidence</b>			
The applicant has submitted the following <u>documents</u> in support of the application:			
<ul style="list-style-type: none"> <li>• Council Tax Band Record (screenshot) (ref. 5160883), confirming record of residential unit at application site (B, 262 Kilburn High Road London NW6 2BY) with effect from 21/06/2011</li> <li>• Assured Shorthold Tenancy Agreements, variously dated between 2005 and 2023 (unsigned) in relation to Flat 262B Kilburn High Road</li> <li>• Rent Statement from CJON Properties (ref. S-2495) dated 13/11/2014, relating to 262B Kilburn High Road</li> <li>• Energy Statement from OPUS Energy (invoice no. 23172541) dated 21/03/2018, relating to Flat 262 Kilburn High Road</li> <li>• Level Protection Plan Statement (screenshot) from Zurich Assurance plc (ref. 257247-4OW-DYS) dated 17/05/2024, relating to 262B Kilburn High Road</li> <li>• Photograph (entrance door to 262B Kilburn High Road)</li> <li>• Photograph (HM Revenue &amp; Customs envelope for address at 262B Kilburn High Road)</li> </ul>			
The applicant has also submitted the following <u>drawings</u> :			

- Site location plan (unnumbered), outlining the application site in red
- Existing 1<sup>st</sup> floor plan (ref. A101 rev A), providing an extract floor plan at the rear of the application site and showing the existing layout of 262B Kilburn High Road
- Existing site plan and photographs (ref. A102), annotated to show the existing access and living arrangements at the site

### Council's Evidence

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

- **2022/4493/P** (no. 262) - Acoustic report and odour assessment required by condition (i) of appeal decision APP/X5210/C/21/3273198 (relating to enforcement notice EN20/0761 issued 5/03/2021) allowed 27/06/2022 (for the installation of extraction flue on the rear elevation of the two-storey rear addition). Approval of details granted 11/09/2023
- **PW9902867** (no. 262) – Change of use of the ground floor (and rear mezzanine level) from retail (within Class A1), including the erection of a ventilation duct at the rear and the repositioning of a fire staircase on the rear elevation. Refused planning permission dated 07/12/1999 / Appeal allowed (T/APP/X5210/A/00/1037244/P8) dated 05/05/2000
- **8500936** (no. 262) - Change of use and works of conversion to form three self-contained flats. Planning permission granted 19/08/1985
- **8500165** (no. 262) – Change of use of the ground floor from retail to offices. Planning permission granted 01/04/1985

There is the following planning enforcement history relevant to the proposal at the subject site:

- **EN23/0771** – Extractor at rear. No breach. Case closed 27/10/2023
- **EN20/0761** – Installation of extraction flue on the rear elevation of the two-storey rear addition. Enforcement notice issued 05/03/2021 / Appeal allowed (APP/X5210/C/21/3273198) dated 27/06/2022
- **EN08/0707** - Insertion of windows at 1st floor, rear of building. Not expedient to pursue. Case closed 25/01/2013

There is the following additional information relevant to the site:

- Council Tax Valuation for band C property (B, 262 Kilburn High Road London NW6 2BY) effective 21/06/2011 (Local authority reference number: 5160883)

### 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.

Overall, 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 as a single residential unit at (part rear) 1st floor level began at least four years before 25/04/2024, and has continued as such, for a continuous period until the present time.

Council evidence includes confirmation by a Enforcement Planning Officer in a case findings report in 2012 (ref. EN08/0707) in regard to Flat 262B that '*Although this is still not immune from enforcement action it is considered that all extensions and windows have been in place for over 4 years*'. Additionally, Council Tax Valuation records confirm Flat 262B to be within band

C, effective from 21/06/2011 (Local authority reference number: 5160883).

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 (part rear) 1st floor level as a single residential unit 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**