

<b>LDC (Existing) Report</b>		<b>Application number</b>	2024/5471/P
<b>Officer</b>		<b>Expiry date</b>	
Tony Young		31/01/2025	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
273 Eversholt Street London NW1 1BA			
<b>Conservation Area</b>		<b>Article 4 Direction</b>	
Camden Town		Yes (basement and land use)	
<b>Proposal</b>			
Use of basement and part ground floor as a single residential unit (Class C3)			
<b>Recommendation:</b>		<b>Refuse Certificate</b>	

### 1. Introduction

- 1.1. The application site comprises a 4-storey mid-terrace building located on the south-western side of Eversholt Street, near the junctions with Crowndale Road to the north-east and Camden High Street to the north-west.
- 1.2. The building is located in an area of the street generally comprising of commercial units at ground floor level with residential accommodation on the floors above.



Image 1 – existing ground floor front elevation at application site

- 1.3. The site is not listed and is located within the Camden Town Conservation Area.
- 1.4. 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).
- 1.5. The application therefore seeks to demonstrate that, on the balance of probability, the use

of basement and part ground floor as a single residential unit (Class C3) began before 25/04/2024 and has continuously been in use for at least 4 years prior to the date this application was submitted, such that a retention of the use would not require planning permission.

## 2. Applicant's evidence

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

- Cover Letter from SM Planning dated 05/12/2024, asserting that the relevant basement and part of the ground floor has been in use as a single residential flat for a period of more than 10 years, prior to the date of the application.
- Application form with declaration completed and signed by SM Planning dated 05/12/2024, asserting that the use of the relevant floor areas as a single residential flat began on 22/11/2012.
- Appendix 1 - Statutory Declaration from Mitra Barasagh (worked and operated shop premises at application site) dated 22/11/2024, asserting that Farhad Shahidlany has been living in the basement and the back of the ground floor at the application site for at least 12 years and that these areas have been used solely as a C3 use Class dwelling throughout this period of time.
- Appendix 2 - Statutory Declaration from Farhad Shahidlany (occupier of basement and ground floor) dated 26/09/2024, asserting that he resides in the basement and ground floor at the application site and has been paying business rates throughout his lease with the landlord.
- Appendix 3 - Statement of Truth from Amy Nguyun (employee at HB Clinic at application site since 2017) certified 21/02/2024, attested witnessing Farhad Shahidlany (occupier) residing in the basement at the application site and sleeping there as work provides a direct view of the only entry and exit into and out of the property.

2.2. The applicant has also submitted the following drawings:

- Site location plan (unnumbered) outlining the application site in red
- Existing lower ground and ground floor plans (ref. E-0001) showing the existing layout.

## 3. Council's Evidence

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

- **880309** - The display of: 1) Fret cut lettering at fascia level illuminated from above by spotlights 2) Illuminated menu board 3) Projecting sign with illuminated neon lettering measuring 850mm by 600mm attached to northern pilaster. Appeal allowed dated 01/12/1988 (APP/X5210/H/88/1096)
- **8701414** - Retention of a new shopfront and an extract duct at the rear. Planning permission granted 20/10/1988
- **8600530** - Conversion of upper 4 floors into 2 self-contained 1-person flats and 1 self-contained 4-person maisonette including the enlargement of the existing attic floor. Planning permission granted 11/06/1986

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

- **EN18/0151** - Change of use from hairdressers/retail (A1) to beauty clinic (Sui Generis). No breach found. Case closed 20/03/2018
- **EN12/0423** - Change of use from restaurant to hair salon. Kitchen moved to basement. No breach found. Case closed 12/09/2012

- **EN97115** - Change of use from Residential Flat to office use. Use ceased. No further action. Case closed 30/06/1998

3.3. There is the following additional information relevant to the application:

- **Council's Land and Property Gazetteer (LPG)** has no record of any residential accommodation at basement and ground floor levels. The LPG indicates that there are 3 residential units located on the upper floors at the application site (Flats 1, 2 and 3).
- **Business Rates Valuation** – there is a current business rates valuation effective from 01/04/2023 to present listed on the Valuation Office Agency (VOA) website for the relevant floor areas at the application site (namely, *Bst & Gnd Fs 273, Eversholt Street, London, NW1 1BA*). The previous business rates valuation for the relevant floor areas is also listed as being effective from 01/04/2017 to 31/03/2023.
- **Council Tax Valuation** - there is no record of a Council Tax valuation on the VOA website for a residential unit at basement and ground floor levels. There is a Council Tax valuation for *Flat 3 at 273 Eversholt Street, London, NW1 1BA* effective 01/09/2021.
- **Tripadvisor Customer Reviews** (see Appendix A) – shows 2 customer online reviews dated 20/01/2022 and 18/04/2021 respectively in relation to takeaway food purchased from '*Sizzling China*', *273 Eversholt Street, London NW1 1BA*.
- **Google Customer Reviews** (see Appendix B) – shows 26 customer online reviews variously dated from between 9 months and 4 years ago in relation to takeaway food purchased from '*Sizzling China*', *273 Eversholt Street, London*.
- **Council's Food Safety Team** - the last food hygiene inspection at the application site took place on 30/12/2019 confirming the use of the basement and part ground floor as a food takeaway ('Sizzling China') at the time. On 20/01/2021, the Food Safety Team received information that the food business was still trading; however, due to Covid restrictions they were unable to enter the application site.
- **Site visit** (dated 15/01/2025) - the Planning Case Officer carried out a site visit attended by the applicant (Jordan Silverstone) and viewed the basement and part rear ground floor areas of the property, including the external rear yard. All rooms were gutted, and as such, there was no clear physical evidence internally to indicate the existing (or previous) use of the relevant floor areas.
- **Site photographs** (Appendix C) – the Planning Case Officer witnessed during the site visit a round hole or opening in a rear external wall. Comparison with a photograph taken by a Council Planning Site Inspector in 2012 confirms that this was the position of a flue associated with food preparation at the application site and has since been removed.
- **Google Map photographs** (Appendix D) – images captured between July 2019 and August 2024 (Photos 1-5) showing an advertisement sign ('Express Chinese Takeaway') in situ throughout this period. An image captured in March 2018 (Photo 6) shows the application site absent of any signage relating to a food takeaway.

#### 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 Cover Letter from SM Planning dated 05/12/2024 provided as part of the application submission, concludes that on the balance of probability, the basement and rear part of the ground floor of the application site was substantially complete and been continuously in use as a residential dwelling (C3 Use Class) for at least 10 years prior to the date this application was submitted, and as such, the dwelling has become lawful through the passage of time.
- 4.3. However, the supporting evidence provided by the applicant is not considered by the Council to be sufficiently precise and unambiguous to demonstrate the assertion made within the application, on the balance of probability. Furthermore, the Council also has evidence which contradicts and undermines the applicant's version of events.
- 4.4. The applicant's supporting evidence has been provided in the form of 2 statutory declarations and a statement of truth. A statutory declaration from Mitra Barasagh (Appendix 1) dated 22/11/2024 asserts that Farhad Shahidlany has been living in the basement and the back of the ground floor (C3 use Class dwelling) at the application site for at least 12 years.
- 4.5. A statutory declaration from Farhad Shahidlany (Appendix 2) dated 26/09/2024 asserts that he currently resides in the basement and ground floor at the application site. However, no start date or period of time is specified for this residential occupation. This evidence, therefore, is not precise and is ambiguous in regard to the requisite time period necessary for a certificate of lawfulness to be granted, and as such, is afforded limited weight in the assessment in that respect.
- 4.6. A statement of truth from Amy Nguyun (Appendix 3) certified 21/02/2024 attests witnessing Farhad Shahidlany since 2017 residing in the basement at the application site and sleeping there. This appears to be on the basis that Amy Nguyun's work at HB Clinic (located at front ground floor level at the application site) provides a direct view of the only entry and exit into and out of the relevant part of the property. As such, while the statement confirms that Amy Nguyun has seen Farhad Shahidlany coming and going, using external stairs in a front lightwell to access the basement entrance door below, and vice versa, this is not considered by the Council to provide sufficiently precise evidence in regard to the actual use of the relevant parts of the application site; residential or otherwise.
- 4.7. Moving to the Council's evidence, it is firstly noted that the Valuation Office Agency (VOA) records referred to above indicate that a commercial use has operated continuously in the relevant basement and ground floor areas since at least 2017. It is noted that the applicant's own evidence appears to support this position given that Farhad Shahidlany confirms in his statement of declaration (Appendix 2) that, '*I have been paying business rates throughout my lease with the landlord*'.
- 4.8. This is contrary to all evidence provided in the application submission and casts strong doubt on the overall application assertion that the relevant floor areas have continuously been in use as a residential dwelling (C3 Use Class) for at least 10 years prior to the date the application was submitted.
- 4.9. Additionally, it is noted that there is no record of a Council Tax valuation on the VOA website for a residential unit at basement and ground floor levels at the application site, so again conflicting with the application assertion that a residential use is in existence in the relevant areas at the subject property.
- 4.10. Furthermore, the Council's Food Safety Team confirm that they carried out a

routine food hygiene inspection at the application site on 30/12/2019, confirming an active use at the time of the basement and part ground floor as a food takeaway ('Sizzling China'). The Food Safety Team also received information on 20/01/2021 in connection with a food business trading at the application site. Due to Covid-19 restrictions at the time, the team were unable to enter the application site, but nevertheless, the indications were that the premises was still operating at that time as a food takeaway, contrary to the application assertion.

- 4.11. This view is consistent with more recent evidence provided by numerous online customer reviews posted on Tripadvisor and Google which also strongly suggest an active commercial use operating at the property in connection with a food takeaway service during at least the last 4 years.
- 4.12. Tripadvisor Customer Reviews (see Council's evidence - Appendix A) show 2 customer online reviews posted dated 20/01/2022 and 18/04/2021 respectively in relation to takeaway food purchased from 'Sizzling China', 273 Eversholt Street, London NW1 1BA. Google Customer Reviews (see Council's evidence - Appendix B) show 26 customer online reviews posted on various dates from between 9 months and 4 years ago in relation to takeaway food purchased from 'Sizzling China', 273 Eversholt Street, London.
- 4.13. A recently active commercial use is also indicated by online street view images on Google Map (see Council's evidence - Appendix D). Images captured between July 2019 and August 2024 (Photos 1-5) clearly show an advertisement sign ('Express Chinese Takeaway') in situ throughout this period, consistent with a use connected with the sale of takeaway food as described by customers in the online reviews referred to above.
- 4.14. An arranged site visit by the planning officer on 15/01/2025 (accompanied by the applicant, Jordan Silverstone) confirmed that the advertisement sign was no longer being displayed at the front of the premises. The sign was removed at some time after August 2024 when the most recent Google Map image was taken.
- 4.15. The internal parts of the basement and part ground floor were also viewed by the planning officer during the site visit. The officer witnessed all areas as being completely gutted. As such, there was no visible physical evidence present consistent with a residential use as asserted by the applicant. Farhad Shahidlany had stated in his statement of declaration (Appendix 2) dated 26/09/2024 (and submitted as part of the application submission received on 06/12/2024) that he currently resides in the basement and ground floor. However, there was no indication that anybody was living in these areas of the property. Overall, the existing use of the relevant floor areas was not clear or conclusive.
- 4.16. Inspection of the external rear yard allowed the planning officer to witness a round hole or opening in an external wall at the rear of the property. Comparison with a photograph taking by a Council Planning Site Inspector in 2012 confirmed that this was the position of a flue associated with food preparation at the application site (Appendix C). In this regard, the Council questions the likelihood that the resultant hole would remain open to the weather and other elements for any significant period of time, particularly under circumstances where a residential use might be present.
- 4.17. Rather, the existence of the opening would appear to be suggestive of a more recent alteration involving the removal of the flue known in the past to be associated with food operations at the application site. This would be consistent with the recent removal of the advertisement sign at the front of the property, as well as, the food takeaway operation having now ceased trading from the property (noting that the relevant floor areas are now gutted and the last online customer review was 9 months

ago).

4.18. Overall, therefore, based on the assessment above and the conflicting evidence provided by the Council which contradicts and undermines the applicant's version of events, the Council affords limited weight in the assessment to the evidence provided by the applicant.

4.19. Finally, it is noted generally that conversion of properties into a residential unit requires approval under the Building Regulations. The Council's Building Control records show no record of any works typically required to facilitate a residential use on the relevant floor areas at the application site. Additionally, the Council's Street Naming and Numbering Team 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. On the basis of the above assessment, it is considered by the Council that the information provided by the applicant is limited and not sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use of basement and part ground floor as a single residential unit (Class C3) began before 25/04/2024 and has continuously been in use for at least 4 years prior to the date this application was submitted, such that a retention of the use would not require planning permission.

5.2. Furthermore, the Council has evidence which contradicts and undermines the applicant's version of events as outlined above.

5.3. As such, the applicant's claims are not supported by the Council and the application for a Certificate of Lawfulness is therefore recommended for refusal.

## **6. Recommendation: Refuse Certificate of Lawfulness**