

<b>LDC (Proposed) Report</b>		<b>Application number</b>	2025/0343/P
<b>Officer</b>		<b>Expiry date</b>	
Sarah White		24/03/2025	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
106 Gloucester Avenue London NW1 8HX			
<b>Conservation Area</b>		<b>Relevant article 4</b>	
Primrose Hill Conservation Area		None relevant	
<b>Proposal</b>			
Change of use of the ground, first and second floors from a small HMO (Class C4) to a single-family dwelling (Class C3) and amalgamation with the existing 1-bed flat at third floor to create one single family dwelling over ground, first, second and third floors (Class C3).			
<b>Recommendation:</b>		<b>Refuse Lawful Development Certificate</b>	

## 1. Site Description

1.1. The application property is located on the northern side of Gloucester Avenue at No.106 and comprises a 4-storey plus roof space property which has been subdivided into flats. The site is located within the Primrose Hill Conservation Area.

## 2. Proposal

2.1. This application seeks to confirm that the change of use of the ground, first and second floors from a small HMO (Class C4) to a single-family dwelling (Class C3) and the subsequent amalgamation of this new single-family dwelling with the existing 1-bed flat at third floor to create one single family dwelling over ground, first, second and third floors (Class C3) is lawful such that planning permission would not be required.

## 3. Planning History

- 3.1. 2011/6189/P – Replacement of 3 timber casement windows in rear ground floor, rear first floor and in ground floor extension with timber framed double glazed sash windows to existing HMO (Sui Generis). **Granted** 02/05/2012.
- 3.2. 9100891 – Erection of a mansard roof extension at 3rd floor level in association with the formation of 1 x 3-bedroom maisonette at 2nd and 3rd floor levels and 1 x1 bedroom flat at 3rd floor level plus the erection of a 3-storey at 106, 107 and 108 Gloucester Avenue. **Granted** 31/10/1991.
- 3.3. 9003041 – The erection of a mansard roof to provide 2 two-bedroom self-contained flats at 106 and 108 Gloucester Avenue as shown on drawing no. 27989/01. **Granted** on 27/09/1990.

## 4. Consultation

- 4.1. 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.
- 4.2. Notwithstanding this, it is Council practice to allow a short period of time for local residents and amenity groups to comment should they choose to do so. As such, the details of the application were made available online for a period time prior to determination.

- 4.3. During this period, an objection was received from the Primrose Hill Conservation Area Advisory Committee (CAAC) on the grounds that the loss of several small units which provide affordable living options is not supported.
- 4.4. Whilst the above concerns are noted, they are not a consideration in this type of application, where purely legal issues are involved in its determination.

## 5. Legislation

5.1. S192 of the Town and Country Planning Act 1990 ("Act") states that any person may apply to the local planning authority to ascertain whether any proposed use of buildings or land would be lawful. If the local planning authority are provided with information satisfying them that the use described in the application would be lawful, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

5.2. Schedule 1, Part C of the Town and Country Planning (Use Classes) Order 1987 (as amended) defines Use Class C3 as follows:

*Use of a dwellinghouse (as a sole or main residence or occupied for more than 183 days in a calendar year) by -*

- a) a single person or by people to be regarded as forming a single household;*
- b) not more than six residents living together as a single household where care is provided for residents; or*
- c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).*

5.3. Use Class C4 is defined as "Use of a dwellinghouse by not more than six residents as a "house in multiple occupation". This involves small, shared houses occupied between three and six unrelated individuals, as their only or main residence, who share basic amenities, such as a kitchen or bathroom.

5.4. Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) allows for the change of use from a dwellinghouse (Use Class C3) to an HMO (Use Class C4) and vice versa providing the following criteria are met:

*Permitted development:*

*L. Development consisting of a change of use of a building—*

- a) from a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule;*
- b) from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.*

*Development not permitted:*

*L.1 Development is not permitted by Class L if it would result in the use—*

- a) as two or more separate dwellinghouses falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order of any building previously used as a single dwellinghouse falling within Class C4 (houses in multiple occupation) of that Schedule; or*
- b) as two or more separate dwellinghouses falling within Class C4 (houses in multiple occupation) of that Schedule of any building previously used as a single dwellinghouse falling within Class C3 (dwellinghouses) of that Schedule.*

5.5. Article 2 of the GPDO defines dwellinghouses as follows:

*"dwellinghouse", except in Part 3 of Schedule 2 to this Order (change of use), does not include a building containing one or more flats, or a flat contained within such a building.*

5.6. This makes it clear that permitted development rights under Class L for change in use from a dwellinghouse (Use Class C3) to an HMO (Use Class C4) applies to buildings containing one or

more flats, such as the application site.

## **6. Applicant's Evidence**

6.1. The Applicant has submitted the following information in support of the application:

- Site Location Plan (300-EX-010-01)
- Existing Floor Plans (300-EX-110-00)
- Proposed Floor Plans (300-10-110-00)
- Historic Plan (28289\_02A)
- Cover Letter (prepared by Mutiny, received 26/01/2025)

## **7. Assessment**

7.1. The Cover Letter submitted with the application outlines that the property includes 6 bedsits and has been operating as a small C4 HMO, however no further evidence has been provided to support this claim or demonstrate that this has been the continuous lawful use of the property for at least 10 years. According to Council's HMO licencing records, the property has been licensed as an HMO since 2007 with the most recent HMO license expiring on 13 March 2024. The expired HMO license restricts the maximum occupancy of the property to 11 people (which would be a Sui Generis use); however, it notes that 6 occupants were living at the property at the time that this license was issued.

7.2. Notwithstanding the above, it was noted at the site visit conducted by the Planning Officer on 05/02/2025 that the third floor flat did not have independent external access and could only be accessed via the communal staircase from the ground floor level, requiring occupants to pass through the shared space of the non-self-contained units to access the flat. Therefore, the third floor flat would not be considered to operate as its own planning unit, but rather a combined planning unit with the HMO unit below. This would result in a planning unit which comprises six non-self-contained units and one self-contained unit and therefore is a Sui Generis use. Additionally, it is noted that the occupancy of this unit is also included within the total occupancy limit for the HMO license, further demonstrating the operation of the ground, first, second and third floors as one planning unit.

7.3. In light of the evidence held by Council, the ground, first, second and third floors of the property are deemed to be operating as one planning unit in use as Sui Generis HMO. The change of use from a Sui Generis HMO to a C3 single family dwellinghouse would be considered development in accordance with Section 55 of the Town and Country Planning Act 1990 (as amended) and would therefore require planning permission.

## **8. Conclusion**

8.1. Due to the shared access arrangements, the ground, first, second and third floors are deemed to be operating as one planning unit in Sui Generis Use. Therefore, the proposed development would be a material change of use which requires planning permission.

8.2. Therefore, it is recommended that the Certificate of Lawful Development (Proposed) is refused.