

<b>LDC (Existing) Report</b>		<b>Application number</b>	2025/1089/P
<b>Officer</b>		<b>Expiry date</b>	
Tony Young		08/05/2025	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
Flat Lower Ground Floor Front 42 Malden Road London NW5 3HG			
<b>Conservation Area</b>		<b>Article 4</b>	
West Kentish Town		Basements	
<b>Proposal</b>			
Use as self-contained flat at lower ground floor (front) level (Class C3).			
<b>Recommendation</b>		<b>Issue Certificate</b>	
<p><b>Introduction</b></p> <p>The application site comprises a 3-storey (with lower ground floor) residential building located on the eastern side of Malden Road, on the corner junction with Marsden Street.</p> <p>The site is not listed and is it located within the West Kentish Town Conservation 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 self-contained flat at lower ground floor (front) level (Class C3) began at least four years before 25/04/2024, such that a retention of the use would not require planning permission.</p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following <u>documents</u> in support of the application:</p> <ul style="list-style-type: none"> <li>• <u>London Borough of Camden Letter</u> (ref. PSH/006933) dated 05/11/2013, requesting information from the owner/occupier of the subject unit (Basement Flat, 42 Malden Road London NW5 3HG) by the Private Sector Housing Team.</li> <li>• <u>Lease Agreements</u> (x3) between Mr Jeremy Hartnell (applicant and landlord) and Euro Stars Housing and Accommodation Ltd. (tenant) dated variously (22/01/2015, 22/01/2018 and 22/01/2021), in relation to Basement Flat, 42 Malden Road London NW5 3HG.</li> <li>• <u>Maintenance Invoice</u> (Euro Stars Housing and Accommodation Ltd.) dated 24/08/2015, in regard to works carried out to Basement Flat, 42 Malden Road London NW5 3HG.</li> <li>• Payment mandate from Crawford &amp; Company Adjusters (UK) Ltd. dated 2019, in regard to use of facilities during building works carried out to Basement Flat, 42 Malden Road London NW5 3HG.</li> <li>• <u>Insurance Policy Document</u> between AXA Insurance and Mr Jeremy Hartnell (applicant) dated 29/11/2022, in regard to Basement Flat, 42 Malden Road London NW5 3HG.</li> <li>• <u>Certified copy lease of Common Parts</u> between Leszek Feliks Gliniecki and 42 Malden Road Ltd. dated 28/05/1982, in relation to and showing the separate areas of the property.</li> </ul>			

The applicant has also submitted the following drawings:

- Unnumbered site location and location plans - identifying the application site in red.
- Unnumbered existing drawings dated 28/02/2025 – showing basement and ground (part) floor plans

### **Council's Evidence**

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

- **9100301** - Removal of pavement lights and erection of railings around new light well. Planning permission granted 03/07/1991
- **8802260** - Change of use of front of basement from office to bedsit. Planning permission refused 05/08/1988
- **8401666** - Renewal of temporary permission for change of use of part of basement to office use. Planning permission granted 28/11/1984
- **G10/12/12/31356R** - Change of use of the ground floor from retail shop to form a three-bedroom maisonette in conjunction with the use of the rear part of the basement for residential purposes and alterations to the front elevation at ground floor level. Planning permission granted 18/12/1980
- **G10/12/12/27993** - Change of use of the basement to office use and of the first and second floors to provide two self-contained flats. Planning permission granted for a limited period dated 01/05/1979

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

- **EN14/0144** – Use of basement as sub-standard residential accommodation. Immune from enforcement action given passage of time. Case closed 04/02/2014

There is the following additional information relevant to the subject site:

- Council Tax Valuation for band B property (Flat LGnd Flr Front 42, Malden Road London NW5 3HG) effective 30/04/2009 (Local authority reference number: 5153116)

### **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 evidence provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the use as a self-contained residential flat at lower ground floor (front) level has been in existence at least four years before 25/04/2024, and has remained as such, for a continuous period until the present time.

This position is supported by Council Tax Valuation records which confirm the use as a self-contained residential flat at lower ground floor (front) level since at least 2009. Further, enforcement record (ref. EN14/0144) also confirms the existing residential use of the relevant floor area at basement level in 2014, following an investigation into alleged sub-standard accommodation. In planning terms, the matter was considered to be immune from enforcement action given the passage of time that had passed since the use had begun and the case was subsequently closed on 04/02/2014 with no further action to be taken.

All of the above 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 as a self-contained flat at lower ground floor (front) level (Class C3) 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**