

LDC (Existing) Report	28/02/2014
Officer	Application Number
Tessa Craig	2014/1043/P
Application Address	Recommendation
8 Agamemnon Road London NW6 1DY	Issue Certificate of Lawfulness
1st Signature	2nd Signature (if refusal)
Proposal	
Flat 8 at 8 Agamemnon Road has been continuously used as self-contained flat for more than 4 years.	
Assessment	
<p>The application site is located on the west side of Agamemnon Road and comprises a 3 storey terraced house close to its junction with Achilles Road. The application site is not located within a Conservation Area, nor is it a Listed building. The property was previously used as a homeless hostel and more recently as a House in Multiple Occupation (HMO).</p> <p>The submitted plans show that Flat 8, 8 Agamemnon Road relates to a flat in the middle of the property on the second floor. (Highlighted in green on drawing no 8AG/NW6/001(8)).</p> <p>The application seeks to demonstrate that Flat 8 has existed as a self-contained flat for a period of 4 years or more such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing residential unit has existed for a period of 4 or more years.</p>	
Planning History	
A search of Council's Planning records revealed the following applications:	
2013/0135/P- Change of use from a 7 unit HMO (sui Generis) and 2 self-contained studio flats (C3) to dwelling house (Class C3), and associated erection of ground floor side and rear extension. Refused, 04/03/2013.	
2008/3369/P- Application for certificate of lawfulness of existing use as a self-contained studio flat (Class C3). Refused, 25/09/2008. Reason for refusal- <i>The applicant has provided insufficient evidence to prove in accordance with Section 191 of the Town and Country Planning Act 1990 that on the balance of probability the lawful use of the property is as a Class C3 Self Contained Flat.</i>	

2004/4435/P- The change of use from a hostel to an 18-bed house in multiple occupancy (HMO). Granted, 17/02/2006. However a Section 106 Agreement relating to the application was never signed by the applicant and the permission was subsequently withdrawn by the Council in February 2006. Authorised use of the property is therefore not an HMO.

Applicant's Evidence

The applicant has submitted the following information in support of the application:

- Affidavit of Mr Gopal Krishan Gupta owner of 8 Agamemnon Road;
- Council Tax record for Flat 8 showing effect from 2006;
- Letter from Anthony's property services confirming Flat 8 as self-contained studio flat rented for over four years and managed by Anthony's;
- Tenancy agreements for the periods of:
 - 23 August 2009 to 22 February 2010;
 - 17 April 2010 to 16 October 2010;
 - 17 October 2010 to 16 October 2011;
 - 16 October 2011 to 15 April 2012;
 - 16 April 2012 to 15 October 2012;
 - 17 November 2012 to 16 May 2013;
 - 17 May 2013 to 16 November 2013;
 - 17 November 2013 to 16 May 2014.

The applicant has also submitted the following plans:

- A site location plan outlining the application site;
- The floor plan for the second floor - drawing no 8AG/NW6/001(8)

Council's Evidence

As listed in the planning history above, a certificate of lawfulness was previously sought for Flat 8 along with the other 8 flats in the building. There was a site visit conducted which disproved use as a self-contained flat in 2004 and electoral information and affidavits from neighbours did not relate to Flat 8. The applicant failed to demonstrate the property was continuously occupied as a self-contained flat for 4 continuous years.

Council tax has confirmed that the liability for Council Tax started on 26/01/2006. It has been in payment continuously since then.

Assessment

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 (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, 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.

The Council does not have any evidence to contradict or undermine the applicant's version of events. The evidence submitted by the applicant confirms the use as a self-contained flat since at least 2006.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' Flat 8 has existed as a self-contained flat for a period of more than 4 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Recommendation: Approve