

<b>LDC (Existing) Report</b>		<b>Application number</b>	2013/6854/P
<b>Officer</b>		<b>Expiry date</b>	
David Peres Da Costa		27/12/2013	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
116 Fortune Green Road London NW6 1DH			
<b>Conservation Area</b>		<b>Article 4</b>	
No		No	
<b>Proposal</b>			
Use as 2x studio flats at rear ground floor and first floor and 2x one bedroom flats at first and second floor level (Class C3).			
<b>Recommendation:</b>		Grant lawful development certificate	

The application site is located on the east side of Fortune Green Road (close to the junction with Ingham Road).

The application relates to a three storey terrace property with a retail unit at ground floor level.

The building is not listed and nor is it located within a Conservation Area.

The application seeks to demonstrate that the use as two studio flats (at ground floor and first floor) and two one bedroom flats (at first and second floor) has existed for 4 years or more such that the continued use would not require planning permission.

The applicant is required to demonstrate, on balance of probability that the use as residential flats has existed for a period of 4 or more years.

### **Applicant's Evidence**

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

- Copy of VOA record showing that the ground floor flat was registered for council tax from 01/04/2005; and that Flat 1, 2 and 3 were registered for council tax from 18/10/2006
- Copy of tenancy agreement between Kybon Limited and Shimshon Torn-Hibler dated 1<sup>st</sup> September 2008 for ground floor flat.
- Copy of tenancy agreement between Kybon Limited and Matthew Belous dated 16<sup>th</sup> February 2008 for flat 1- half landing
- Copy of tenancy agreement between Kybon Limited and Samir Maqedonci and Karin Nyqvist dated 29<sup>th</sup> September 2008 for flat 2 – first floor
- Copy of tenancy agreement between Kybon Limited and David Silverman dated 25<sup>th</sup> October 2008 for flat 3 – top floor flat

- Copy of tenancy agreement between Kybon Limited and Shimshon Torn-Hibler dated 1<sup>st</sup> September 2013 for ground floor flat.

The applicant has also submitted the following plans:

- Floor plans (Ground floor, 1<sup>st</sup> floor and 2<sup>nd</sup> floor plan) with a site location plan outlining the application site

### **Council's Evidence**

There is no enforcement action or relevant planning history for the subject site.

Council tax have confirmed that the liability for Council Tax for flat 1,2 and 3 commenced on 18/10/2006 and liability for the ground floor flat (rear) began on 1/5/05. It has been in payment continuously since then.

A site visit to the property was undertaken on the 15<sup>th</sup> November 2013. The officer was satisfied that the studio flat at first floor and two 1 bedroom flats (at first and second floor level) had been occupied for residential use for some time. It was noted that the ground floor flat did not appear to be occupied. Subsequently the applicant has provided a current tenancy agreement for this particular flat as additional evidence.

### **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 information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' that the two studio flats (at ground floor and first floor) and two one bedroom flats (at first and second floor) have existed in residential use 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**