

LDC (Existing) Report		Application number	2013/6855/P
Officer		Expiry date	
David Peres Da Costa		27/12/2013	
Application Address		Authorised Officer Signature	
118 Fortune Green Road London NW6 1DH			
Conservation Area		Article 4	
No		No	
Proposal			
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).			
Recommendation:		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 end of 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 22/03/2006; and that Flat 1 (first floor), 2 (first floor) and 3 (second floor) were registered for council tax from 21/04/2009
- Copy of tenancy agreement between Kybon Limited and Rebecca Jackson dated 1st August 2008 for ground floor flat.
- Copy of tenancy agreement between Kybon Limited and Rachel Kershaw dated 1st June 2009 for flat 1
- Copy of tenancy agreement between Kybon Limited and Abbie Guilding and Thomas Puskailer dated 30th May 2009 for flat 2

- Copy of tenancy agreement between Kybon Limited and Zoe Shaw, Gemma Noyce and Katherine Conway dated 26th July 2008 for top floor flat

The applicant has also submitted the following plans:

- Floor plans (Ground floor, 1st floor and 2nd 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 started on 21/4/09 and that liability for the ground floor flat (rear) began 22/3/06. It has been in payment continuously since then.

A site visit to the property was undertaken on the 15th November 2013. The officer was satisfied that the two studio flats (at ground and first floor) and two 1 bedroom flats (at first and second floor level) had been occupied for residential use for some time.

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