

<b>LDC Report</b>	17/04/2013
<b>Officer</b>	<b>Application Number</b>
Hilary Cuddy	2013/0977/P
<b>Application Address</b>	<b>Recommendation</b>
49 Maresfield Gardens London NW3 5TE	Grant Lawful Development Certificate
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Use of detached former garage as ancillary residential accommodation associated to flat 1, 49 Maresfield Gardens.	
<b>Assessment</b>	
<p>The application site is located on the western side of Maresfield Gardens. The property was built in the 1880's and has since been subdivided into self-contained flats. The property is not listed but is identified as making a positive contribution to the Fitzjons/Netherhall Conservation Area. The application relates to flat 1, which is located on the ground floor.</p> <p>The application seeks to demonstrate that the detached former garage has been used as ancillary residential accommodation, associated to flat 1, 49 Maresfield Gardens 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>	
<b>Applicant's Evidence</b>	
The applicant has submitted the following information in support of the application:	
<ul style="list-style-type: none"> <li>• A solemn declaration signed by the sales agent Mr Christopher Cooper of Benhams Ltd (trading as Benham and Reeves) confirming that the garage was in use as residential accommodation at the time of the sale of the property to the applicant in August 2008 and during visits leading up to the sale; and</li> <li>• A solemn declaration from the applicant confirming that the purchase of flat 1. 49 Maresfield Gardens was completed on 22 May 2009. At the time of purchase the unit was been used as a residential living space with various items of furniture, a shower room, lighting and heating. The unit at the time of purchase had a residential entrance door rather than a garage door. The statement confirms that to the applicant's knowledge the previous owner converted the unit into a residential living space 4 or 5 years prior. The</li> </ul>	

unit has been used as a residential living space since the purchase of the flat in 2009.

The applicant has also submitted the following plans:

- A site location plan outlining the application site; and
- Floor plans, identifying the detached accommodation as a studio.

### **Council's Evidence**

Relevant Planning History:

2012/6086/P: Use of detached former garage as ancillary residential accommodation associated to flat 1, 49 Maresfield Gardens. WITHDRAWN DECISION 10/01/2013. The applicant has stated that the application was withdrawn as further information was required from the sales agent from whom a solemn declaration was provided.

A site visit to the property was undertaken on the 6<sup>th</sup> March 2013. The officer was satisfied that the unit 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 Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the detached garage unit has 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**

