

LDC (Existing) Report		Application number	2013/0521/P
Officer		Expiry date	
David Peres Da Costa		29/03/2013	
Application Address		Authorised Officer Signature	
260 D Kilburn High Road London NW6 2BY			
Conservation Area		Article 4	
No		No	
Proposal			
Erection (retrospective) of self contained residential flat at rear first floor level.			
Recommendation:		Grant lawful development certificate	

The application site is located on the east side of Kilburn High Road

The application relates to a single storey building that has been erected at first floor level at the rear of a parade of shops on Kilburn High Road.

The building is not listed and is not located in a Conservation Area.

The application seeks to demonstrate that a self-contained residential flat has existed at rear first floor level for a period of 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 existing residential unit 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:

- **An invoice from McDaid Construction** (Invoice No. 01/08) shows that the applicant's company - Noman Property Investments Ltd. – purchased materials and labour to complete repair works to the wall and roof to the rear of the application property as of 15/01/2008.
- **An invoice from McDaid Construction** (Invoice No. 02/08) shows that the applicant's company purchased additional materials and labour to complete repair works to the wall and roof to the rear of the application property as of 28/01/2008.
- **A sales advice and collection note from B&Q** (Order No. 33457504) shows that the applicant's company purchased necessary fixtures and fittings for a residential unit as of 04/05/2008.
- **A letter from British Gas** (Customer Reference No. 850027620989) clearly indicates that a new gas account was set up for the applicant at the application site as of 02/06/2008.
- **A letter from British Gas** (Customer Reference No. 850027749665) clearly indicates that a new electricity account was set up for the applicant at the application site as of 16/06/2008.

- **A landlord/home owner gas safety record** (Serial No. R0165977) shows that the UK Gas Care Ltd. carried out an inspection for a residential unit at the application site that is owned by the applicant's company as of 02/08/2008.
- **A tenancy agreement** (dated 01/08/2008) clearly shows that a Miss Mitali A Vyas rented the application site as a residential flat for a fixed term of 12 months from 01/08/2008 to 31/07/2009.
- **A tenancy agreement** (dated 05/08/2009) clearly shows that a Mr Panayot Kirilov Asenov and a Ms Nikolina Yordnova Asenova rented the application site as a residential flat for a fixed term of 6 months from 05/08/2009 to 04/02/2010. The household inventory attached to the tenancy agreement clearly indicates that the application site was used as a residential flat.
- **A tenancy agreement** (dated 05/02/2010) clearly shows that the Mr Panayot Kirilov Asenov and the Ms Nikolina Yordnova Asenova extended the contract by a fixed term of 6 months from 05/02/2010 to 04/08/2010.
- **A tenancy agreement** (dated 05/08/2010) clearly shows that the Mr Panayot Kirilov Asenov and the Ms Nikolina Yordnova Asenova extended the contract by a fixed term of 6 months from 05/08/2010 to 04/02/2011.
- **A tenancy agreement** (dated 05/02/2011) clearly shows that the Mr Panayot Kirilov Asenov and the Ms Nikolina Yordnova Asenova extended the contract by a fixed term of 6 months from 05/02/2011 to 04/08/2011.
- **A tenancy agreement** (dated 05/02/2011) clearly shows that the Mr Panayot Kirilov Asenov and the Ms Nikolina Yordnova Asenova extended the contract by a fixed term of 6 months from 05/08/2011 to 04/02/2012.
- **A tenancy agreement** (dated 05/02/2012) clearly shows that the Mr Panayot Kirilov Asenov and the Ms Nikolina Yordnova Asenova extended the contract by a fixed term of 6 months from 05/02/2012 to 04/08/2012.
- **A tenancy agreement** (dated 05/08/2012) clearly shows that the Mr Panayot Kirilov Asenov and the Ms Nikolina Yordnova Asenova extended the contract by a fixed term of 6 months from 05/08/2012 to 04/02/2013. The tenancy agreement confirms that the application site is currently used as a residential flat.

The applicant has also submitted the following plans:

- A site location plan outlining the application site
- A ground floor plan showing the communal staircase
- A first floor plan showing the layout of the flat

Council's Evidence

There is no relevant planning history.

There is a current enforcement case (EN11/0186) on the subject site. The alleged breach of control is: *Unauthorised new dwelling at rear 1st floor level (Flat D, 260 Kilburn High Road). According to photos on file (see 262 Kilburn High Rd in photo library) it may date from 2008.* The record was created 1/3/2011 after the officer assessing this lawful development certificate application (2013/0521/P) raised the issue. The enforcement officer has advised that the offender has submitted evidence to him that he could not fault and we have nothing to contradict so please proceed and grant.

Council tax have confirmed that the liability for Council Tax for 260D Kilburn High Road started on 21/06/2011. This information does not, of itself, contradict the evidence provided by the applicant.

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 self contained flat at rear first floor level has existed and been 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: Grant lawful development certificate.