LDC Report 31/12/2012

Officer	Application Number
John Nicholls	2012/5583/P
Application Address	Recommendation
3 Herbert Street	Grant Certificate
London	
NW5 4HA	
1 st Signature	2 nd Signature (if refusal)

Proposal

The use of the connected external shed as a kitchen incidental to the enjoyment to the use of the house incorporating a new rear window.

Assessment

The application site is located on the southern side of Herbert Street close to the junction with Queens Crescent.

The application relates to a rear shed extension which has been connected to the main rear elevation and changed into a kitchen incidental to the property as a single family dwelling, along with the insertion of a window on the rear elevation of the shed. The building is not listed and is not located in the any Conservation Area.

The application seeks to demonstrate that kitchen and window have existed within the shed and used as part of the house 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:

- Cover letter from the planning agent with attached photographs of the former kitchen (the rear ground floor room) being used as a dining room. (By implication the kitchen is already fitted in the shed). The letter also states that the shed was built for more than 10 years.
- Two undated photographs showing the kitchen in the structure attached to the rear of the property.
- A copy of a letter dated 13th June 2008 from Camden's Gospel Oak District Housing Office (Claire Roberts) following up a first letter dated 3rd June 2008 requesting that the

lean to enclosing the boiler is removed from the rear of the property.

The applicant has also submitted the following plans:

- A site location plan outlining the application site.
- Existing and pre-existing plans showing the shed structure when it was attached to the property and since it has become a kitchen with new rear window.

Council's Evidence

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

Council Tax has confirmed that the liability for Council Tax on the property as a single dwelling started in 1993. It has been in payment continuously since then.

A site visit to the property was undertaken on the 7th December 2012. The officer was satisfied that the unit had been occupied for residential use for some time. The property was occupied.

Camden Council owns the Freehold on the property and the occupier who has submitted the application is a tenant. According to the District Housing Office, the shed structure is unauthorised, but the Council were only alerted to this when they visited the property to inspect the old boiler in the relocated kitchen in 2010. They have requested that the unauthorised structure be removed by the tenant since then and to date he has not complied with this request.

A memo on the DHO file dated 1st November 1994, by the Estate Officer Mrs M Smith, makes note of a meeting with the tenant where discussions took place over alteration work where the tenant wished to remove a partition between the front and rear room and build an extension to house the kitchen. There are also photographs showing the tenant next to the structure dated 9th December 2011.

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, and the letter from the District Housing Office dated June 2008 is reasonable enough evidence, along with site visit photographs taken by the case officer and other photographs submitted by the applicant to verify that the structure has been in place for more than 4 years, and by implication the kitchen has been located within the structure for at least that length of time.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the lower ground floor unit has existed in

residential use for a period of more than 4 years as required under the Act. Furthermore, the	۱e
Council's evidence does not contradict or undermine the applicant's version of events.	

Recommendation: Approve

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