

<b>LDC Report</b>		06/12/2012
<b>Officer</b>		<b>Application Number</b>
John Nicholls		2012/4921/P
<b>Application Address</b>		<b>Recommendation</b>
98 Kingsgate Road London NW6 2JG		Grant
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
Use as two self contained flats (Class C3), incorporating a ground floor rear extension and dormer to rear roofslope.		
<b>Assessment</b>		
<p>The application site is located on the western side of Kingsgate Road directly opposite the junction with Cotleigh Road.</p> <p>The application relates to a house which has been subdivided into two self-contained flats and has also had a rear ground floor extension and rear roof dormer added.</p> <p>The building is not listed and is not located in any Conservation Area.</p> <p>The application seeks to demonstrate that both the flats and extensions have existed 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 and associated extensions have existed for a period of 4 or more years.</p> <p><b>Applicant's Evidence Change of Use to 2 flats</b></p> <p>The applicant has submitted the following information in support of the application:</p> <p><u>3 bed upper floors flat</u></p> <ul style="list-style-type: none"> <li>3 year fixed term tenancy agreement through Camden's Private Renting scheme for the period 20/6/2008 – 20/6/2011</li> <li>1 year tenancy agreement for the period 28/4/2010 – 27/4/2011</li> </ul> <p><u>2 bed ground floor flat</u></p> <ul style="list-style-type: none"> <li>3 year fixed term tenancy agreement through Camden's Private Renting scheme for the period 28/4/2009 – 28/4/2012</li> </ul>		

- Letter from the National Grid Gas PLC dated 28<sup>th</sup> March 2008 with a quote for adding a new gas service to the property.
- Corgi gas safety certificate for 98a Kingsgate Road dated 29<sup>th</sup> May 2008.
- Affidavit signed by the property owner who claimed the property was purchased in August 2007 and works were undertaken to divide the property and build the extensions. These were complete on or around 1<sup>st</sup> February 2008.

The applicant has also submitted the following plans:

- A site location plan outlining the application site.
- Pre-existing layout and post subdivision and extension works layout.
- Aerial photograph dated 15<sup>th</sup> April 2008 showing the dormer roof in place.

## **Council's Evidence**

### Planning history

**2008/0185/P** - Change of use and works of conversion of a single family dwelling house into two self contained flats and the erection of a rear extension at ground floor level – (minded to approve) but failed to sign S106 so withdrawn 19/1/2009

**2010/6734/P** - Retrospective planning application for change of use of a single dwelling house into two self contained flats and the erection of a rear extension at ground floor level including a dormer to roof slope – Withdrawn - 09/02/2011

Council tax has confirmed that the liability for Council Tax in relation to both Flats A and B, started on 12/5/2008. It has been in payment continuously since then.

A site visit to the property was undertaken on the 16/11/2012. The officer was satisfied that the unit had been occupied for residential use for some time. Both properties were occupied.

- One aerial photograph from 2007 showing no dormer window on the rear roof slope.
- One aerial photograph from 2010 showing the rear dormer in place.

## **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 property has existed as two residential flats (2 bed ground floor and 3 bed upper floor maisonette) 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.

Furthermore, the Council is also satisfied that the building works (dormer window and rear ground floor extension) were completed before 15<sup>th</sup> April 2008.

**Recommendation: Approve**

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