

<b>LDC Report</b>		29/11/2012	
<b>Officer</b>		<b>Application Number</b>	
Rachel Miller		2012/4478/P	
<b>Application Address</b>		<b>Recommendation</b>	
Ames House 26 Netherhall Gardens London NW3 5TL		Grant	
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b>			
Use as 5 x self contained residential units (Class C3).			
<b>Assessment</b>			
<p>The application site is located on the east side of Netherhall Gardens. The application relates to a four storey building. The building is not listed and is located in the Fitzjohns Conservation Area.</p> <p>The application seeks to demonstrate that the use as five flats has existed for a period of 4 years or more such and 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 units have existed for a period of 4 or more years.</p>			
<b>Applicant's Evidence</b>			
<p>The applicant has submitted the following information in support of the application:</p> <p><u>Flat 1</u></p> <ul style="list-style-type: none"> <li>• 6 month tenancy agreement for the period 01/05/2004 – 01/11/2004</li> <li>• 6 month tenancy agreement for the period 21/09/2004 – 21/03/2005</li> <li>• 6 month tenancy agreement for the period 01/02/2005 – 01/08/2005</li> <li>• 6 month tenancy agreement for the period 01/06/2005 – 01/12/2005</li> <li>• 6 month tenancy agreement for the period 01/05/2007 – 01/11/2007</li> <li>• 6 month tenancy agreement for the period 01/11/2007 – 01/05/2008</li> <li>• 9 month tenancy agreement for the period 01/02/2008 – 01/11/2008</li> <li>• 3 month tenancy agreement for the period 01/08/2008 – 01/11/2008</li> <li>• 12 month tenancy agreement for the period 19/01/2009 – 19/01/2010</li> <li>• 12 month tenancy agreement for the period 26/04/2010 – 26/04/2011</li> <li>• 12 month tenancy agreement for the period 14/03/2011 – 14/03/2012</li> <li>• 12 month tenancy agreement for the period 01/08/2012 – 01/08/2013</li> <li>• Council Tax Valuation list for Flat 1 – Band B with effect from 20/10/2005 (updated 16/07/2012)</li> </ul>			

- Council Tax Bill for the period 01/04/2006 to 31/03/2007
- Council Tax Bill for the period 01/04/2007 to 31/03/2008
- Council Tax Bill for the period 01/04/2008 to 31/03/2009

#### Flat 2

- 12 month tenancy agreement for the period 08/05/2004 – 08/05/2005
- 12 month tenancy agreement for the period 01/08/2004 – 01/08/2004
- 5 month tenancy agreement for the period 01/12/2004 – 01/04/2005
- 12 month tenancy agreement for the period 01/05/2005 – 01/05/2006
- 12 month tenancy agreement for the period 01/05/2006 – 01/05/2007
- 6 month tenancy agreement for the period 18/11/2006 – 18/05/2007
- 3 month tenancy agreement for the period 01/02/2007 – 01/05/2007
- 6 month tenancy agreement for the period 01/05/2007 – 01/11/2007
- 12 month tenancy agreement for the period 01/11/2007 – 01/11/2008
- 12 month tenancy agreement for the period 01/11/2008 – 01/11/2009
- 4 month tenancy agreement for the period 01/07/2009 – 01/11/2009
- 12 month tenancy agreement for the period 22/11/2010 -22/11/2011
- 12 month tenancy agreement for the period 09/07/2011 – 09/07/2012
- Council Tax Valuation list for Flat 2 – Band G with effect from 20/10/2005 (updated 16/07/2012)
- Council Tax Bill for the period 20/10/2005 to 31/03/2006
- Council Tax Bill for the period 01/04/2006 to 31/03/2007
- Council Tax Bill for the period 01/04/2007 to 31/03/2008
- Council Tax Bill for the period 01/04/2008 to 31/03/2009
- Council Tax Bill for the period 01/04/2010 to 31/03/2011

#### Flat 3

- Council Tax Bill for the period 20/10/2005 to 28/02/2006
- Council Tax Valuation list for Flat 3 – Band G with effect from 20/10/2005 (updated 16/07/2012)
- 12 month tenancy agreement for the period 18/01/2012 – 18/01/2013
- 12 month tenancy agreement for the period 18/01/2011 – 18/01/2012
- 12 month tenancy agreement for the period 18/01/2010 – 17/01/2011
- 5 month tenancy agreement for the period 01/06/2009 – 01/11/2009
- 11 month tenancy agreement for the period 01/12/2008 – 01/11/2009
- 6 month tenancy agreement for the period 01/06/2008 – 01/06/2008
- 9 month tenancy agreement for the period 01/03/2008 – 01/11/2008
- 12 month tenancy agreement for the period 01/11/2007 – 01/11/2008
- 2 month tenancy agreement for the period 01/09/2007 – 01/11/2007
- 6 month tenancy agreement for the period 01/05/2007 – 01/11/2007
- 8 month tenancy agreement for the period 01/09/2006 – 01/05/2007
- 4 month tenancy agreement for the period 01/06/2006 – 01/10/2006
- 6 month tenancy agreement for the period 01/04/2006 – 01/10/2006
- 10 month tenancy agreement for the period 01/07/2005 – 01/05/2006
- 6 month tenancy agreement for the period 01/12/2004 – 01/06/2005
- 12 month tenancy agreement for the period 08/05/2004 – 07/05/2005
- 8 month tenancy agreement for the period 26/09/2004 – 26/05/2005

#### Flat 4

- 5 month tenancy agreement for the period 01/05/2004 – 01/10/2004

- 3 month tenancy agreement for the period 01/07/2004 – 01/10/2004
- 6 month tenancy agreement for the period 01/10/2004 – 01/04/2005
- 3 month tenancy agreement for the period 15/01/2005 – 15/04/2005
- 6 month tenancy agreement for the period 01/04/2005 – 01/10/2005
- 6 month tenancy agreement for the period 01/04/2006 – 01/10/2006
- 3 month tenancy agreement for the period 01/07/2006 – 01/10/2006
- 2 month tenancy agreement for the period 01/08/2006 – 01/10/2006
- 6 month tenancy agreement for the period 01/11/2006 – 01/05/2007
- 5 month tenancy agreement for the period 06/12/2006 – 06/05/2007
- 3 month tenancy agreement for the period 01/07/2007 – 01/10/2007
- 12 month tenancy agreement for the period 01/11/2007 – 01/11/2008
- 9 month tenancy agreement for the period 01/02/2008 – 01/11/2008
- 12 month tenancy agreement for the period 01/12/2008 – 01/12/2009
- 12 month tenancy agreement for the period 11/02/2009 – 11/02/2010
- 12 month tenancy agreement for the period 11/02/2010 – 11/02/2011
- 12 month tenancy agreement for the period 26/04/2010 – 26/04/2011
- 12 month tenancy agreement for the period 14/03/2011 – 14/03/2012
- 12 month tenancy agreement for the period 26/04/2011 – 26/04/2012
- 12 month tenancy agreement for the period 26/01/2012 – 26/01/2013
- Council Tax Valuation list for Flat 4 – Band G with effect from 20/10/2005 (updated 16/07/2012)
- Council Tax Bill for the period 20/10/2005 to 31/03/2006
- Council Tax Bill for the period 01/04/2006 to 31/03/2007
- Council Tax Bill for the period 01/04/2007 to 31/03/2008
- Council Tax Bill for the period 01/04/2008 to 01/04/2009

#### Flat 5

- 3 month tenancy agreement for the period 03/04/2004 – 02/07/2004
- 12 month tenancy agreement for the period 27/12/2004 – 26/12/2005
- 12 month tenancy agreement for the period 09/08/2008 – 08/08/2009
- 12 month tenancy agreement for the period 29/12/2008 – 28/12/2009
- Rent monitor for Flat 5 26 Netherhall Gardens.
- Housing benefit letter for the period 26/06/2006 to 28/01/2007
- Housing benefit letter for the period 25/02/2008 to 31/03/2008
- Council Tax Valuation list for Flat 5 – Band E with effect from 20/10/2005 (updated 16/07/2012)

The applicant has also submitted the following plans:

- A site location plan outlining the application site
- Survey drawings showing layout in 2004
- Survey drawings showing layout in 2012

#### **Council's Evidence**

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

Council tax records show that the liability for Council Tax for the five flats started on 20/10/2005. It has been in payment continuously since then.

A site visit to the property was undertaken on the 7<sup>th</sup> November 2012. The officer was satisfied that the site had been occupied for 5 residential units 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 lower ground floor 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**

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