

<b>LDC Report</b>		16/11/2012	
<b>Officer</b>		<b>Application Number</b>	
John Nicholls		2012/4966/P	
<b>Application Address</b>		<b>Recommendation</b>	
234 Belsize Road London NW6 4BT		Approve Certificate	
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b>			
Use of the ground floor of the property as a single residence (class C3).			
<b>Assessment</b>			
<p>The application site is a mid-terrace property located on the northern side of Belsize Road close to the junction with Priory Road and Kilburn Priory.</p> <p>The application relates to a ground floor flat located in a former shop unit. The building is not listed and is located in the Priory Road Conservation Area.</p> <p>The application seeks to demonstrate that the use of the flat has 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 the balance of probability that the existing residential unit has existed for a period of 4 or more years.</p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>• 6 month tenancy agreement for the period 18<sup>th</sup> June 2008 – 18<sup>th</sup> December 2008</li> <li>• Copy of a letter from the Valuation Office Agency dated 23<sup>rd</sup> February 2009 stating that the Studio Flat was a new entry on the Valuation List effective from 8<sup>th</sup> May 2008.</li> <li>• 6 month tenancy agreement for the period 2<sup>nd</sup> August 2009 – 2<sup>nd</sup> January 2010 (for tenant Dzintra Kalnina)</li> <li>• Copy of Council tax reminder dated 21/5/2012 to Ms Dzintra Kalnina addressed to the Studio at 234 Belsize Road.</li> <li>• 1 year tenancy agreement for the period 28<sup>th</sup> May 2010 – 27<sup>th</sup> May 2011</li> <li>• 1 year tenancy agreement for the period 4<sup>th</sup> May 2011 – 3<sup>rd</sup> May 2012</li> </ul> <p>The applicant has stated that the most recent tenant is continuing on a month by month basis, but has not provided evidence to substantiate this.</p> <p>The applicant has also submitted the following plans:</p>			

- A site location plan outlining the application site
- Plan of the flat labelled 1:50 scale

### **Council's Evidence**

An enforcement investigation into the change of use was opened on 15<sup>th</sup> November 2011 (Ref: EN11/1046). The evidence produced included tenancy agreements back to February 2006. This was enough evidence for the Enforcement Team to close their investigation in February 2012.

Council Tax has confirmed that the liability for Council Tax started on 8<sup>th</sup> May 2008. It has been in payment continuously since then.

A site visit to the property was undertaken on the 29<sup>th</sup> October 2012. The officer was satisfied that the unit had been occupied for residential use for some time. The property was being lived in.

### **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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