

LDC (Proposed) Report		Application number	2012/4236/P
Officer		Expiry date	
Sam Fowler		23/10/2012	
Application Address		Authorised Officer Signature	
24 Holmdale Road London NW6 1BL			
Conservation Area		Article 4	
N/A		N/A	
Proposal			
Proposed use of the ground, first and second floors (Use Class C4) as a single dwellinghouse (Use Class C3)			
Recommendation:		Approve	

Site description

The application site is a two storey building with basement terraced property located on Holmdale Road. The site is not within a designated area nor does it relate to a listed building. The roofspace has been converted to create additional habitable floorspace.

Planning History

The Site

2012/4293/P - Use of studio at basement level as a self contained flat (class C3). Approved 11/10/2012.

Other Relevant examples

128 Goldhurst Terrace:

2011/0463/P - Change of use from HMO (house in multiple occupation) (Class C4) at first and second floors to dwelling house (Class C3). Approved 28/03/2011

65 Dartmouth Park Road

2010/2671/P - Change of use of upper ground, 1st and 2nd floors from a House in Multiple Occupation (Class C4) to a residential dwelling unit (Class C3), approved 8/7/2010

The internal arrangements for both of these properties were similar to the internal arrangements of the site, subject to this application, in that there was a self-contained unit at basement level and the upper floors were used as a HMO comprising of six bedrooms.

Proposal

The applicant is firstly seeking confirmation that the ground floor, first floor and loft space are separate from the basement unit, and operate as Use Class C4, or House of Multiple Occupancy (HMO). The applicant is also seeking confirmation that a proposed change of use from C4 Use Class to C3 (Dwellinghouse) Use Class is permitted development.

Assessment

Existing Use Class as C4 (HMO)

The following evidence has been submitted to support the application:

- Tenancy agreements for the properties dating back to 10th August 2003.
- Written confirmations and statutory declarations from both the residents of the HMO part of the building, and from the occupiers of the basement studio flat, confirming that they have existed separately and for a period of longer than 4 years.

Council's own evidence

- Certificate of Lawfulness for the studio flat at basement level, Council reference: 2012/4923/P
- Council records show that the subject site has been registered as a HMO at least since the 22nd August 2008.
- Council records also show that a variation to the Licence for a House in Multiple Occupation was made in 2010.

In terms of assessment, the onus of proof in a Certificate of Lawfulness application lies with the applicant. The relevant test of the evidence on such matters is 'the balance of probability', the applicant is not required to discharge the stricter, criminal burden of proof, namely 'beyond all reasonable doubt'. The local planning authorities are advised that, if they have no evidence of their own to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous. 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 variation to the Licence for a House in Multiple Occupation indicated that there was a material change to the function of the building. The studio flat at basement level, historically separate from the HMO, would be included as part of the HMO and utilise shared facilities, so that the building could meet the necessary regulations for the proposed number of occupants within the whole building.

As part of the Certificate of Lawfulness, Council reference 2012/4293/P, it was determined that the user of studio flat in the basement never gave affect to the ability to utilise facilities within the HMO above. This was based on the evidence supplied by the applicant, as well as a site visit and subsequent investigation. Therefore the Certificate of Lawfulness stated that the studio flat at basement level is its own separate unit.

Therefore, by virtue of the Certificate of Lawfulness, the remainder of the building would also be it considered to be its own separate unit. Based on the evidence submitted by the applicant, and Council's own evidence, the remainder of the building is identified as a HMO (Land Use Class C4), as defined within the Housing Act 2004. In conclusion, the subject site to which this application pertains is its own separate residential unit, Use Class C4.

Change of Use

Under the Town and Country Planning (Use Classes) (amendment) (England) Order 2010 and the Town and Country Planning (General Permitted Development) (amendment) (England) Order 2010, a change of use from C4 Use Class to C3 Use Class is considered to be permitted development and does not require formal planning consent.

Recommendation: Grant Certificate of Proposed Lawful Development

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