

LDC Report		11/10/2012	
Officer		Application Number	
Nicola Tulley		2012/4293/P	
Application Address		Recommendation	
Basement Flat 24 Holmdale Road London NW6 1BL		Approve	
1st Signature		2nd Signature (if refusal)	
Proposal			
Use of studio at basement level as a self contained flat (class C3).			
Assessment			
<p>The application site a two storey 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.</p> <p>The application seeks to demonstrate that the self contained basement accommodation (Use Class C3) 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 balance of probability that the existing residential unit has existed for a period of 4 or more years.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> 12 statements (9 signed) confirming their occupancy of number 24 Holmdale Road between the following periods: <ul style="list-style-type: none"> *October 2000 to October 2003 *September 2000 to October 2004 *January 2011 to present day *February 2009 to present day 			

*March 2008 to present day

*December 2011 to present day

*January 2011 to present day

*April 2011 to present day

*September 2006 to September 2008

*September 2001 to November 2002

*July 2007 to December 2011

*March 2007 to March 2008

- 24 tenancy agreements dated from 10th November 2002 to 8th December 2012
- 3x affidavits from:

*Owner: the content states that the property was bought on 19th February 1992 and the owner moved out in September 2000 where internal alterations were made to the property. The basement was let separately and the upper floors were let to 6 tenants, where the Council's housing department licensed the property as a HMO in August 2008. In July 2009, in response to the Council's licensing requirements, the owner proposed that the basement studio tenant be permitted the use of the ground floor kitchen and that the residents on the upper floors could use the basement w/c. This resulted in all tenants being included on one tenancy agreement since February 2009. This arrangement was never implemented and the two parts of the building continued in separate occupancy.

*Occupier of basement flat: confirmed residence since March 2005 to present day. On first occupation the residence comprised of a bedsitting room, a small kitchen, a bathroom and w/c. The occupant recalls that around July 2009 the landlord proposed that they use the ground floor kitchen and that the tenants on the upper floors use their w/c. This did not however get put into practice due to tenant preferences.

*Occupier of upper floor accommodation: Occupied a bedroom with girlfriend between September 2000 and October 2004. Throughout occupation they shared the kitchen and shower room on the second floor with one of the other tenants. They recalled that during this time the other three tenants of the property shared the ground floor kitchen and first floor bathroom. In addition, they recall that the basement tenant had no use of any facilities of the upper floors.

- Quote from 'C.C.T Design & Build for estimate works to "strip out and refurbish basement flat" dated 18/10/02. Quote from Capita McLarens water damage claim.
- Licensing of the application site:
 - * Application for HMO licence (sent recorded delivery 12/09/2007)
 - *Letter to Environmental Health Team dated 27th January 2008 from owner stating the impracticality of installing hand wash basins in bedrooms.
 - *Letter from tenants dated 12th November 2008 objecting to the installation of hand wash basins

*Decision of the leasehold valuation tribunal on appeal under part 3 of schedule 5 to the Housing Act 2004. Decision: the condition requiring the installation of wash basin shall not be imposed (provision of downstairs cloakroom).

*Letter from owner to Environmental Health dated 19th July 2009 regarding change in living conditions of Number 24 Holmdale. The tenants have proposed an alternative solution to the cloakroom to avoid changing layout of the house. The tenant in the basement studio will be sharing the ground floor kitchen. In return, tenants on the upper floors would share the basement w/c and hand wash basin.

*Letter from Environmental Health acknowledging receipt of above letter.

*Letter from Environmental Health dated 24th May 2012 after site inspection of the property. This indicated a change in the terms of the licence dated 22nd August 2008 to 21st August 2013 – whereby the maximum number of permitted persons on upper floors changed from 10 to 5 in view that there is no separate w/c with hand wash basin (no access to basement facilities).

The applicant has also submitted the following plans:

- A site location plan outlining the application site: 12027/1
- Existing floor plans: 12027/2
- Supporting statement

Council's Evidence

Desk top research

Council Tax records list the building as one property: 24 Holmdale Road tax band G. There is no record of the basement as a separate unit.

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

Environmental Health

Officers confirm that the property was a licensed HMO in 2008 and have described the accommodation as: a un-self-contained studio in the basement (with the kitchenette, bathroom and WC) and 6 bedsitting rooms, 2 shared bathrooms and two kitchens on the floors above. The WC in the basement is available for use by the occupants living upstairs.

The Council had issued a draft license with conditions 2007/8. One of these conditions was contested by the owner which was the installation of hand wash basins in the bedsitting rooms by reason that it would compromise the character of the Victorian property. The case was taken to a Residential Property Tribunal in 2008 and it was decided unnecessary to install extra facilities given the provision of the basement cloakroom (bathroom) for all the occupants in the property.

Environmental Health officers note that the basement has a kitchenette (which does not comply with the

Council's standards for a kitchen due to its size and layout) a WC and bathroom. There is no one hour fire separation between the ground and basement. There is a staircase between the basement and the ground floor and the door at the top of the stairs is left open for other occupants from the upstairs floor(s) to use the personal hygiene facility as a part of the licence conditions.

Site inspection

A site visit to the property was undertaken on the 9th October 2012. The tenants on the ground, first, and second floors have vacated, post formal notice to leave the premises August 2012. The basement flat has been occupied by one tenant since 2005 to date. There is existing door access between ground and basement levels which would have allowed tenants on the upper floors to utilise the basement bathroom facilities and basement tenant to use the larger kitchen. This door was locked at the time of site inspection and at basement level the stairway was partially blocked for storage.

It is clear from the evidence above that the owner stated that the tenants could share facilities (kitchen at ground level and bathroom at basement level) to comply with the licensing terms set by the Council. However, it does not appear to have been used this way, in that the basement studio tenant has never used the facilities on upper floors and vice versa.

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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