

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	10/10/2012
		N/A	<b>Consultation Expiry Date:</b>	N/A
<b>Officer</b>			<b>Application Number(s)</b>	
Craig Raybould			2012/4220/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
20 Wordsworth Place London NW5 4HG			Refer to decision notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
Use as a self-contained residential dwelling house (Class C3).				
<b>Recommendation(s):</b>		Grant the Certificate of Lawfulness (Existing)		

## Site Description

The application site is a two storey terrace property located close to the junction of Wandsworth Place and Southampton Road. The property was constructed in the mid 1990's and forms part of a purpose built development of sheltered accommodation. The surrounding area is residential in nature, particularly so on Wordsworth Place, where the road operates as a 'home-zone'.

## Relevant History

**9300822** – Planning permission was **granted** on 24/03/1994 for the conversion of the Priory into 12 private residential units and the erection of a five storey block of 18 flats and nine terrace houses to be used as sheltered accommodation with associated common rooms and a warden's flat with seventeen associated car parking spaces. Condition 5 attached to the consent requires that: *The residential dwellings shown in the terrace houses and end block hereby approved shall be used only for sheltered housing for the elderly and for no other purpose.*

## Assessment

### 1. Proposals

1.1 A Certificate of Lawfulness (Existing) (s.191 application) is sought for the use of the application site for residential purposes (Class C3).

1.2 The key planning considerations in assessing this application are:

- the relevant test for assessing the lawfulness of the use;
- the evidence presented in support of the claim of lawfulness.

### 2. Analysis

#### The relevant test

2.1 In assessing an application for a Certificate of Lawfulness (existing), the onus is on the applicant to demonstrate 'beyond reasonable doubt' that the works either do not require planning permission, benefit from permitted development rights, or are immune from enforcement action (Circular 10/97, Annex 8).

2.2 The applicant purports that the property has been resided in, as a residential premises (Class C3), continuously for more than 10 years and that this continuous breach of Condition 5 renders the use lawful.

2.3 As the use for which the change is sought is residential (Class C3) the relevant test of immunity from enforcement action (and therefore lawfulness) falls within section 171(B)2 of the 1990 Act and therefore any enforcement action must be taken within 4 years of the unauthorised residential use commencing (and not within 10 years as with other any other breach of condition or material change of use). This principle was upheld in the Courts in the case of *First Secretary Of State v (1) Arun District Council (2) Brown* [2006] EWCA Civ 1172.

2.4 In this instance, the onus is therefore on the appellant to demonstrate that the property has been continuously occupied as a residential premises (Class C3) for 4 or more years.

#### The evidence

2.5 The applicant has provided a portfolio of evidence in support of their claim. This evidence includes (not exclusive): A Land Registry Title dated 2/10/1997 naming the applicant as the freeholder of the property; various utility bills addressed to the applicant at the property address, including mobile phone and landline, insurance, electricity, water, dating from April 2000 to July 2012; Other bills

addressed to the applicant at the property address, including pension payments, service charges, ground rent, car-parking licenses and Council tax payments dating from 2002 to 2010

2.6 The evidence demonstrates, beyond reasonable doubt, that the applicant has resided in the property continuously for more than 4 years. The evidence suggests that the applicant has resided here in an independent manner normally associated with use a single family dwelling (Class C3) rather than as sheltered accommodation, where the property would be owned by a separate body who manages the building and associated bills and payment etc.

### **3. Recommendation**

3.1 Grant the Certificate of Lawfulness (existing).

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