

<b>LDC Report</b>		19/06/2012	
<b>Officer</b>		<b>Application Number</b>	
Richard Black		2012/2326/P	
<b>Application Address</b>		<b>Recommendation</b>	
Flat 11 122 Fordwych Road London NW2 3PB		Grant Certificate of Lawful Development	
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b>			
Use of second floor as a self contained flat (Class C3).			
<p>The application was not notified in accordance with Section 191 of the Town &amp; Country Planning Act 1990. However an objection was submitted to the Council, which queries whether each flat meets adequate minimum standards for accommodation, safety, building quality and facilities for the flat to be classed and potentially sold as a separate dwelling. In addition, the objection notes that the building has been poorly managed with problems of rubbish and proliferation of television antenna and aerials and has concerns this may get worse if each flat is separately classified rather than the house being classed as an HMO.</p> <p>Response: This Lawful Development Certificate is an assessment of whether the use as a flat has existed for more than four years before the date of the application and is not an assessment of the planning merits of the use.</p>			
<b>Assessment</b>			
<p>The application relates to a two-storey detached property, located on the western side of Fordwych Road. The building is not listed and it is not located in any conservation area.</p> <p>The application seeks to demonstrate that the flat has existed for a period of 4 years or more such that the continued use would not require planning permission. 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> <ul style="list-style-type: none"> <li>An affidavit of Mr Norman Stephen Porritt director of Urban Lime Limited, who are responsible for the daily management of the flat during the period between 22/11/2003</li> </ul>			

and 13/06/2011; and

- Residential Tenancy Agreements (9 in total) dating from 16/10/2006.

The applicant has also submitted the following plans:

- Plan detailing the layout of the flat; and
- A floor plan of the entire house.

### **Council's Evidence**

- EN03/0567: Enforcement investigation in relation to the creation of flats at the subject site. Case was closed on 28/10/2010 and concluded that no action could be taken because they were created more than 4 years ago.
- In October 2007, Council Tax records were updated to register 11 self-contained flats at the subject site.

A site visit to the property was undertaken on 22/05/2012. The officer was satisfied that the property is laid-out as shown on the submitted plans.

### **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' 11 residential units have existed in the property 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**

### **DISCLAIMER**

Decision route to be decided by nominated members on Monday 18<sup>th</sup> June 2012. For further information please click [here](#).