

LDC Report		12/06/2012
Officer		Application Number
John Sheehy		2012/0981/P
Application Address		Recommendation
28 Priory Road LONDON NW6 4SJ		
1st Signature		2nd Signature (if refusal)
Proposal		
Use as 4 x self contained flats (Class C3).		
Assessment		
<p>The application relates to a 4-storey detached Victorian property, part of a group of 3 properties located on the east side of Priory Road (nos. 28-32), all of which were formerly within 1 ownership. The property is currently vacant.</p> <p>The building is not listed but is located in the Priory Road Conservation Area.</p> <p>The application seeks to demonstrate that the use as four flats has existed for a period of 4 years or more such that the continued use would not require planning permission.</p> <p>Assessment</p> <p>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, rather, an assessment of the factual evidence submitted by the applicant and that held by the Council (if any) is carried out to determine whether the legal requirements of demonstrating the existence of an established use have been satisfied.</p> <p><u>Planning History</u></p> <p>The following historic planning applications are relevant to the use of the building.</p> <p>July 1985 Planning permission granted for change of use to form eight self-contained flats including works of conversion and the erection of a part two/part four storey extension at the rear of No.28 the erection of a two storey extension at the rear of No.30 the formation of two rear first-floor roof-terraces, ref. 8500834.</p> <p>September 2005 Application for change of use, including works of conversion from 8 bedsits to 4 flats at first and second floor levels of property <u>withdrawn</u>, ref. 2005/3100/P.</p>		

May 2006 Planning permission granted for change of use and works of conversion from 5x flats on lower ground and ground floor levels and 8x bedsits on 1st & 2nd floor levels into 5x 1-bedroom flats, 1x 2-bedroom flat and 1x 3-bedroom flat, ref. 2005/4231/P.

January 2011 Planning application for alterations and extensions including installation of a spiral staircase to rear elevation; extension at rear first floor level; creation of roof terrace on existing rear first floor flat roof; replacement of windows on front elevation at lower ground, first and second floor level; alterations to windows/doors on rear elevation; installation of dormer window on rear roof slope, rooflights to front, side roofslopes and rear third floor level flat roof in connection with existing residential accommodation, withdrawn by the applicant, ref. 2011/5822/P.

There is no history of enforcement action on the application site.

Applicant's Evidence

The applicant has also submitted the following plans:

- A site location plan outlining the application site.

The applicant has submitted the following information in support of the application:

- Council tax records for the year 2012/ 2013 which are payable to 4 flats, one per floor;
- Photographs of the front entrances of the property – ground floor and basement;
- Statutory declaration by Gina Hooker, who managed the letting of the property with her husband for their son Dennis who was the freehold owner of 28 Priory Road from pre-1985 to 2011. The key points contained in the Statutory Declaration are as follows:
 - Basement floor: this was laid out as 2 flats from 1985-2011. One of these was occupied from 1985-2002 by a Mrs Lawson, subsequently by another resident, and from 2006-07 by a Dr Cummings. The other flat was vacant for the majority of the period 1985-2011;
 - Ground floor: one of the ground floor flats was occupied by her daughter Patricia Hooker from 1985-2007, after which it remained empty. The other flat was vacant for the period 1985-2011;
 - First floor: a Mrs Downing lived on this floor from 1985-95, using the floor as a self-contained flat. She cannot recall what happened after Mrs Downing moved out. The floor was empty from 2009-2011;
 - Second floor: Mrs. Hooker cannot recall how the floor was used prior to 2005. Mrs Jamie McNulty lived on the floor from 2005-2011, using the floor as a self-contained flat. After 2011 the floor was empty.
 - Works to the property were carried out in accordance with the 1985 permission.
- Statutory declaration by Dennis Hooker, freehold owner of 28 Priory Road from pre-1985 to 2011. The key points contained in the Statutory Declaration are as follows:
 - Basement floor: one of the flats was occupied from 1985-2002 by a Mrs Lawson, and from 2006-07 by a Dr Cummings. No information provided on whether the flat was occupied between these tenants. When Dr Cummings moved out both flats at this level were vacant;
 - Ground floor: one of the ground floor flats was occupied by his sister Patricia Hooker from 1985-2007, after which it remained empty. She never shared the floor with other tenants;

- First floor: a Mrs Downing lived on this floor from 1985-95, using the floor as a self-contained flat. Mr Andrea Verganti occupied the floor from 2007-2009 using the floor as a self-contained flat. Occasionally other tenants lived on the floor for 7-8 month periods, with all facilities behind a locked front door. The floor was empty from 2009-2011;
 - Second floor: from 1985-95 there was always a tenant living in this floor and using it as a self-contained flat. Mrs Jamie McNulty lived on the floor from 2005-2011, using the floor as a self-contained flat. After 2011 the floor was empty.
- Statutory declaration by Andrea Verganti, tenant of the first floor of 28 Priory Road from September 2007 to December 2009. The key points contained in the Statutory Declaration are as follows:
 - Basement floor: Dr Cummings moved out during Mr Verganti's stay at the property;
 - Ground floor: the floor was empty during Mr Verganti's stay at the property;
 - First floor: Mr Verganti occupied the floor from September 2007 December 2009. Occasionally other tenants lived on the floor but single occupancy was for at least 4 months during each year;
 - Second floor: Mrs Jamie McNulty lived on the floor during Mr Verganti's stay, using the floor as a self-contained flat.
 - Statutory declaration by David Harrigan, current owner of 28 Priory Road, and applicant. Mr Harrigan has no first-hand evidence of the occupation of the property prior to his purchase of it and the evidence provided in his Statutory Declaration is based on the existing layout of the property and research into the site history. The key points contained in his Statutory Declaration are as follows:
 - The property was vacant when purchased in November 2011;
 - The 1985 permission was implemented and completed;
 - There is physical evidence that there has been "unlawful conversion of the accommodation";
 - Evidence from the Electoral Roll shows that between 2000 and 2011 the number of people living at the property fluctuated between 2 and none.
 - Basement floor: a self-contained flat on this floor was occupied from 1985-2002 by a Mrs Lawson, and the same flat was occupied from 2006-07 by a Dr Cummings. No information provided on whether the flat was occupied between these tenancies. No evidence for use as a HMO for 10 years or more;
 - Ground floor: one of the ground floor flats was occupied by Patricia Hooker from 1985-2007, after which it remained empty. No evidence for use as HMO for 10 years or more;
 - First floor: a Mrs Downing lived on this floor from 1985-95, using the floor "in a self-contained capacity". No evidence for use as HMO for 10 years or more;
 - Second floor: Mrs Jamie McNulty lived on the floor from 2005-2011, using the floor "in a self-contained capacity". After 2011 the floor was empty. No evidence for use as HMO for 10 years or more.

The applicant states that the owners do not have log books or historical tenancy agreements or utility bills for the property and that these were destroyed on the death of Patricia Hooker in 2007.

Council's Evidence

The plans submitted with the 2005 application indicate an existing layout comprising a mix of self-contained and non-self-contained units (5 self-contained flats and 8 bedsit rooms). There is officer evidence from 2006 that a layout of 5 flats and bedsits was in place at the time of the officer site visit - the description of development identifies this as being the existing use. This corresponds with the earlier 2005 description of development which had a layout of bedsits on the upper floors and 5 flats below.

The Council's land use records indicate that the property contains 6 self-contained units – 3 x basement flats; 1 x ground floor flat; 1 x first floor flat; and 1 x second floor flat. The subdivision of the property into 6 units corresponds with the above evidence of the layout referring to 6 units on site. The description of development of the application points to the existence of 5 x self contained flats and 1 x bedsits. The 8 bedsits appear to have been considered as a single unit, i.e. a single large HMO.

Private Sector Housing colleagues have confirmed that the property included a registered HMO in 2005. As acknowledged in the officers' report for ref.2005/4231/P the HMO was registered in 2002. No evidence exists relating to how long this HMO use was in existence before the date of its registration or when the HMO use came to an end.

Based on evidence gathered in the course of a site visit, officers are satisfied that the rear extension granted permission in 1985 was constructed. However there is no evidence that the associated change of use to 4 self-contained residential units took place in the form shown on the approved drawings. Stripping work was well advanced at the time of the officer site visit and it was not possible to establish what the most recent internal layout was. In addition no photographic evidence of the internal layout has been submitted.

During the course of the site visit officers noted that the main door of the property at ground floor level had 3 doorbells. There were no nameplates or flat numbers beside the doorbells. The basement flat was accessed separately, via a door on the flank of the entrance staircase and had a single doorbell, again without a name or flat number.

Council Tax officers have confirmed that the liability for Council Tax has been as follows:

- Basement flat (x1) – banded from 01.04.93;
- Ground floor flat (x1) – banded from 13.07.95 at band C – but listed from 01.04.93 (- was band A);
- 1st floor flat (x1) – banded from 01.04.93;
- 2nd floor flat (x1) – banded from 01.04.93.

Council tax has been paid continuously on these units since the property was first banded.

Findings

Evidence from the applicant shows the property was laid out as 4 flats on the two lower floors for a continuous period of time in excess of 4 years. The officers reports from 2006 indicates that the layout was 5 flats over the lower 2 floors. Evidence from the applicant shows that these two floors were occupied as separate self-contained flats (x2) for a period of 4 years, though the periods of occupation were not at the same time.

The applicant's evidence indicates that there were vacant flats at basement (x1 or x2) and at ground floor (x1) which may never to have been occupied and may not have been laid out

internally for occupation - limited evidence was available on site as the building was largely stripped when officers carried out the site visit. The building is Victorian and was not purpose built as flats.

No information is provided within the 2006 officer report, or from another Council source, indicating that these units were occupied in 2006 or whether they were ever occupied. There is no planning permission for this layout at basement and ground floor levels so in order for this layout to be considered as lawful this would have to be based on at least 4 years of continuous occupation.

The applicant's evidence states that 4 years of continuous occupation of more than 1 self-contained flat at these levels did not occur.

The Council has no evidence to demonstrate that a second (or third) unit at ground or basement level was occupied for a 4-year period which is the required length of time in order to become lawful. The Council has no record of when the internal works to create these units were carried out or completed.

The Council's land use records state that 6 units are on site, however, when weighed against Council Tax records, planning history, evidence within the statutory declarations and photographic evidence "on balance" there is more weight behind the applicant's assertion that only a single unit is lawful at basement and ground floor.

The two upper floors were laid out as bedsits until recent stripping work was undertaken. The Statutory Declarations provided by the applicant state that the first and second floors were occupied as two separate self-contained flats by single occupiers for periods in excess of 4 years and not as HMOs. Ten years of continuous use are required for bedsits or HMOs to become immune to enforcement action. The Council does not have sufficient evidence to demonstrate 'on the balance of probability' that any HMO use that was carried out on site continued for 10 years or more.

For reasons set out above the applicant has not been able to provide utility bills, log-books or rental agreements covering this period of time. There are also long periods of time that are unaccounted for in all of the Statutory declarations.

However, it is clear that during the period 1985-2011 the building was very lightly used on a non-commercial basis and the letting was arranged by verbal agreement with an elderly couple who managed the property on behalf of their son who owned the property but lived elsewhere. The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' 4 self-contained residential units have existed 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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