

LDC Report		06/12/2010
Officer Connie Petrou		Application Number 2010/5059/P
Application Address Flat 1 18 Leighton Place London NW5 2QL		Drawing Numbers See decision notice
PO 3/4	Area Team Signature	Authorised Officer Signature
Proposal		
Retention of ground floor in residential use in connection with existing 1 st floor residential unit (Class C3).		
Recommendation: Refer to Draft Decision Notice		
Assessment		
<p>The subject site relates to a 4 storey building divided into a ground and 1st floor self contained unit and a separate residential unit at 2nd floor and roof level. The application relates to the ground floor only. The property is located at the end of a cul-de-sac on the north side of Leighton Place. The area comprises a mix of commercial and residential uses. The property is not located in Conservation nor is it a listed building.</p> <p>The application seeks to demonstrate that the ground floor has been in residential use in connection with the residential accommodation at first floor level, 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 accommodation has existed for a period of 4 or more years.</p>		
<u>Applicant's Evidence</u>		
<p>The applicant has submitted the following plans:</p> <ul style="list-style-type: none"> A site location plan outlining the application site Existing floorplans related to the ground and first floor <p>4 affidavits have also been submitted, one from the applicant, and the other 3 from neighbours. A letter from British Gas has also been provided which indicates that there are only 2 gas meters in the property one relates to the ground floor flat (ground and 1st floor) and the second to the top floor flat (3rd floor and roof space).</p>		
<u>Council's Evidence</u>		
Council's records indicate that business rates had been paid on the property since 2003.		

Planning History:

Planning permission granted 5.10.95- Ref: 9400801- The retention of the change of use of the first, second and third floors from industrial (B1) to two residential units(one 3-bedroom and one 3/4-bedroom flats) as shown on drawing nos. 754/3 & 4.

Planning permission refused 27.4.00 ref PE9900808- retention of rear extension;
appeal allowed 13.2.01.

Building Control :

Building Control Ref. A94/2/0722 (24/06/1996): Conversion into 2 maisonettes

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 affidavits state that the ground floor element of the maisonette has been in residential use and fully self contained since the owner moved into the property in July 1997. The applicant’s affidavit states that, although the building had B1 use on the ground floor and the owner moved in with the intention of her partner working from home on the ground floor, in effect they did not use the ground floor as such and the ground floor has been used residentially ever since. Furthermore she confirms that the 2 floors were definitely used as a single unit since 2002.

The letter from British Gas states that there are only two gas meters in the property and these relate to two separate units. The letter does not specify how long the gas meters have existed in this arrangement and therefore only limited weight can be attached to this evidence.

The Council’s records indicate that business rates have been continuously paid on the ground floor since 2003. The applicant has confirmed in writing that she was informed, when she had enquired many years ago, that she should continue to pay business rates. No written evidence from the Council had been provided to support this claim.

Planning permission was granted in 1995 (Ref: 9400801) for the change of use of upper floors to two separate residential units and the retention of the ground floor as B1. The application plan indicates that the internal stairs linking the ground floor and 1st floor did not exist when the application was made. However it is noted from the plans relating to the planning permission granted on appeal in 2001 that the ground floor is referred to as a “living area”.

Conclusion

The information provided is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the ground floor of the unit has existed in residential use in conjunction with the 1st floor 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.

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