

<b>LDC Report</b>		08/07/2010
<b>Officer</b>		<b>Application Number</b>
Amanda Peck		2010/2671/P
<b>Application Address</b>		<b>Drawing Numbers</b>
65 Dartmouth Park Road London NW5 1SL		Refer to decision notice
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>Authorised Officer Signature</b>
<b>Proposal</b>		
Change of use of upper ground, 1 <sup>st</sup> and 2nd floors from a House in Multiple Occupation (Class C4) to a residential dwelling (Class C3).		
<b>Recommendation: Grant</b>		
<b>Assessment</b>		
<b>Site description</b> The application site is a four storey semi detached property within the Dartmouth Park Conservation Area. Current use is a s/c basement flat and a HMO on ground, 1 <sup>st</sup> and 2 <sup>nd</sup> floors with 6 bedrooms, 3 kitchens and 3 bathrooms.		
<b>Planning History</b> No planning or enforcement history		
<b>Proposal</b> The applicant is seeking confirmation that a proposed change of use from C4 (HMO) Use Class to C3 (Dwellinghouse) Use Class is permitted development.		
<b>Assessment</b> <u>Existing Use Class</u> The following evidence has been submitted to support the application: <ul style="list-style-type: none"> <li>- Covering letter dated 12 May 2010 – stating that the basement has been in use as a s/c residential unit since 1992 and a lease for the unit was created in 1997. The upper floor has been in use as a HMO with 6 rooms and shared facilities since 1995 and the property is on the Council's HMO register.</li> <li>- Existing floor plans showing a 1 bedroom s/c unit in the basement and on the upper floors 6 bedrooms, 3 bathrooms and 3 kitchens.</li> <li>- Proposed floor plans showing a 1 bedroom s/c unit in the basement and a residential unit to the upper floors (layout not specified)</li> <li>- Copy of the freehold deeds for the entire property – stating that Aldo Mazzali has owned the freehold since 19.6.85 and there is a leasehold interest for the basement unit since 25.9.97.</li> <li>- Copy of the leasehold deeds for the basement unit – stating that Aldo Mazzali has owned</li> </ul>		

the leasehold of the basement flat since 25.9.97. The associated plan specifically excludes the main entrance staircase from the lease.

- Statutory declaration of Mr Aldo Mazzali dated 7 May 2010 – this states that Aldo Mazzali has owned the freehold since 19.6.85 and has lived in the basement flat since spring 1993. The rooms in the unit to the upper floors have been let as bedsits from October 1995 to March 2009 and have been let to a maximum of 6 people at any one time. The tenants left in March 2009 and the upper floors have been vacant since then. Between 2008 and 2009 there was an 8 month period where the property was rated as a HMO and on 11 September 2009 it was changed and rated as one residential unit.

An officer site visit carried out on 6.7.2010 confirmed that there is a separate access to the basement unit from the side alleyway and to the entrance for the upper floors there are 6 separate door bells. This implies that the residents of the upper floors have not been living together as a single household. It has also been confirmed from council records that the property was registered as a HMO (category A bedsit, private rented landlord) between 25.7.2008 and 17.8.2009.

In terms of assessment the onus of proof in a lawful development certificate application lies with the applicant. The relevant test of the evidence on such matters is 'the balance of probability', the applicant is not required to discharge the stricter, criminal burden of proof, namely 'beyond all reasonable doubt'. The local planning authorities are advised that, if they have no evidence of their own to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous. 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.

On the balance of probability it is considered that, based on the evidence submitted, the unit to the upper floors of the property has been lawfully in a C4 Use Class most probably for at least 10 years since October 1995 according to the applicant's affidavit and certainly since July 2008 when it was registered as a HMO, because there have been up to 6 tenants in the property living as separate households with shared cooking and bathroom facilities.

#### Change of Use

Under the Town and Country Planning (Use Classes) (amendment) (England) Order 2010 and the Town and Country Planning (General Permitted Development) (amendment) (England) Order 2010, a change of use from C4 Use Class to C3 Use Class is considered to be permitted development and does not require formal planning consent.

**Recommendation: Grant Certificate of Existing Lawful Development**

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