

| | | |
|--|----------------------------|-------------------------------------|
| LDC Report | | 11/05/2010 |
| Officer | | Application Number |
| Connie Petrou | | 2010/1465/P |
| Application Address | | Drawing Numbers |
| 40 Gray's Inn Road London WC1X 8LR | | See decision notice |
| PO 3/4 | Area Team Signature | Authorised Officer Signature |
| | | |
| Proposal | | |
| Certificate of lawfulness for 2 x existing studio flats on the second and third floor levels and 1 x two bedroom self contained residential flat on the fourth floor level (Class C3). | | |
| Recommendation: Refer to Draft Decision Notice | | |
| Assessment | | |
| <p>The subject site relates to a 5 storey building with commercial uses at ground and first floor level. The application relates to the second, third and fourth floors. The property is located on east side of Grays Inn Road, close to the junction with Baldwins Garden. 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 2 x studio flats and 1 x 2 bedroom flat have existed on the 2nd, 3rd and 4th floors respectively, for a period of 4 years or more such that the continued use of the mix of accommodation would not require planning permission. The applicant is required to demonstrate, on balance of probability that the existing mix of residential accommodation has existed for a period of 4 or more years.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted tenancy agreements related to the 2nd, 3rd and 4th floor flats. The tenancy agreements date as far back as 2005, but they do not provide any evidence with regard to the existing mix of accommodation.</p> <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> A site location plan outlining the application site Existing floorplans related to all floors in the property <p>Council's Evidence</p> <p>Council's records indicate that Residential Council Tax was paid from the following dates:</p> <p>2nd floor – 16th August 05 3rd floor – 28th January 08 4th floor – 2nd April 07</p> | | |

PSX0204223/R1 (11/02/03) – Planning permission for change of use of second and third floors from offices (Class B1) to residential (Class C3) and retention of the fourth floor as residential (Class C3) involving the creation of 1-bedroom flat on second floor and one 3-bedroom maisonette on the third and fourth floors as shown on drawing numbers: GRAYS02, GRAYS03 and GRAYS10A

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’s residential tax records do not support the applicant’s evidence. In addition, because access to the property was not provided by the applicant it was not possible to even confirm that the mix of residential units does currently exist on site. The planning history records show that planning permission was granted for 2 units seven years ago, however it is not known if this consent was implemented. The information provided does not on its own substantiate the assertion that the residential mix of 2 x studio flats at 2nd and 3rd floors and 1 x 2 bedroom flat at 4th floor has existed for a continuous period of four years or more.

In order to satisfactorily demonstrate that the existing unit arrangement has been in continuous use for a period of four or more years, the applicant would need to provide additional evidence which could include statutory declarations or sworn affidavits and records such as utility bills being paid for the continuous four year period.

Other issues

The drawings show a terrace at roof level, no evidence has been provided with regard to this terrace and it is not referred to on the application forms. There is no record of any planning permission being granted for this roof terrace and an enforcement investigation has been commenced to look into this.

Conclusion

On the basis of the evidence submitted it is not possible to determine, on the balance of probability, that the existing accommodation mix have existed for a continuous period of 4 or more years.

Recommendation: Refuse

Disclaimer

This is an internet copy for information purposes. If you require a copy of the signed original please contact the Culture and Environment Department on (020) 7974 5613