

LDC Report		19/04/2010
Officer		Application Number
Fergus Freeney		2010/1096/P
Application Address		Drawing Numbers
6 Railey Mews, London, NW5 2PA		Refer to decision notice
PO 3/4	Area Team Signature	Authorised Officer Signature
Proposal		
Lawful Development Certificate sought for the continued use of existing mews house as a single dwellinghouse (class C3).		
Recommendation: Refer to Draft Decision Notice		
Assessment		
<p>The building is a two storey mews building within a terrace that fronts onto Railey Mews.</p> <p>The applicant seeks to demonstrate the lawfulness of the existing use of the property as a single dwelling house (C3 Use Class). The applicant has submitted the following information in support of their application.</p> <ul style="list-style-type: none"> Letter from Francois Drake, dated 6th July 2009, confirming that prior to 1973 a Mr Alexander Mrvos was a tenant of 6 Railey Mews until 2002 when he was rehoused by the council. Statutory declaration from Francois Drake, dated 8th Jan 2010, confirming that the above letter was a true history and description of the usage of 6 Railey Mews Statutory declaration from Brian Lord (the applicant and current owner of the property), dated 26th November 2009, confirming that in the time leading up to his purchase of 6 and 7 Railey Mews on 20th May 2009, that number 7 Railey Mews (adjacent property to the application site) was tenanted by Mr Francois Drake and that Mr Drake had advised him that he had been a tenant of 7 Railey Mews for the previous 42 years. <p>It should be noted that the neighbouring property, 7 Railey Mews is under the ownership of the applicant and was recently granted a certificate of lawful use as a single family dwelling house (2009/5396/P).</p> <p>Under Section 191 of the Town and Country Planning Act 1991, In terms of assessment the onus of proof in a lawful development certificate application lies with the applicant. The relevant</p>		

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'.

Having reviewed the information provided it is considered that there is insufficient evidence to support to application for certificate of lawful use. It appears that the property has been vacant 2002 and therefore information has not been provided to show that the property has been in continued use as single family dwelling house for more than four years prior to this application being made.

Although case law has established that it is possible for a dormant use to be an existing use it appears that any established use of this property has been lost through abandonment. Abandonment is a legal concept used to describe the circumstances in which the rights to resume a use may be lost because the use has ceased. The test for abandonment is whether a reasonable man with the knowledge of all the circumstances would conclude that there had been an abandonment, based on the following criteria:

- (i) the physical condition of the building;
- (ii) the length of time the building had been used for dwelling purposes;
- (iii) whether the building had been used for other purposes; and
- (iv) the owner's intentions

Taking each point in term: (i) the building is described as a dangerous structure on the application drawings and in the planning statement and extensive restoration of the building is required. The building is described as having a leaking roof, rotting floor and roof timbers and plants growing inside; (ii) the building has been vacant, according to the submitted documents, for approximately 7-8 years depending on when in 2002 it was vacated; (iii) according to the submitted documents the building has not been used for any other purposes; (iv) the current owner purchased the property in May 2009 but it appears that the previous owner showed no intention of using the property or carrying out restoration works. Therefore given the length of time the building has been vacant and the need for extensive restoration it is considered that the property has been abandoned and that planning permission is required for any use of the building.

Given that insufficient evidence has been submitted to confirm that 6 Railey Mews has been in continuous residential use for a period of four years or more prior to this application, and the building is considered to have been abandoned **the certificate should be refused.**

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