

LDC Report		15/04/2010
Officer		Application Number
Elaine Quigley		2010/1131/P
Application Address		Drawing Numbers
17 College Crescent, London, NW3 5LL		Refer to draft decision notice
PO 3/4	Area Team Signature	Authorised Officer Signature
Proposal		
Conversion of 9 non self-contained residential units (9 bedsits with shared bathrooms) (HMO) at first, second and third floor level to 9 self-contained studio flats (Class C3).		
Recommendation: Refer to Draft Decision Notice		
Assessment		
<p>Site The application site is 17 College Crescent which is located on the east side of the street between its junctions with Buckland Crescent and Belsize Park. The building comprises basement, ground and 3 upper floors. The basement and ground floor are in use as 2 self-contained flats and the upper floors are in use as an HMO with 9 non-self contained units who share bathrooms. The building is not listed, but is located within the Belsize Park conservation area.</p> <p>Planning History</p> <p>9501440 Planning permission was refused on 25/01/96 for Conversion of first, second and third floors into three self-contained one-bed flats, and the reconstruction of existing four storey rear extension in an enlarged form to provide 5 storey rear extension.</p> <p>The application was refused on the grounds that it would result in the loss of existing residential accommodation of a type which the Council considered should be retained in this area. It was also considered that the rear extension by reason for its bulk and height would harm the conservation area.</p> <p>PW9605126 Planning permission was refused on 05/03/97 for conversion of first and second floors from non-self contained accommodation into two self contained flats, together with the erection of a four storey extension.</p> <p>The application was refused on the grounds that it would result in the loss of existing residential accommodation of a type which the Council considered should be retained in this area. It was also considered that the rear extension by reason for its bulk and height would harm the conservation area. An appeal was lodged against the decision and was dismissed on 17/11/97.</p>		

2009/4916/P

Certificate of lawfulness for proposed use was refused on 23/12/2009 for the conversion of 9 non self-contained residential units (9 bedsits with shared bathrooms) (HMO) and two self-contained flats (Class C3) to 9 self-contained studio flats and 1 self-contained flat (Class C3).

It was refused for the following reason:

The proposed works of conversion from Housing in Multiple Occupation (HMO) to self-contained residential flats would result in a material change of use of the building. The proposed change of use is considered to fall within the 'meaning of development' as defined by the Town and Country Planning Act 1990.

The main changes between the current LDC and the previously refused LDC application relate to the floor plans:

- Two self-contained flats on the basement and ground floors have been retained
- Retention of current layout in terms of numbers of bedrooms on each of the upper floors

The following information has also been submitted in support of the application:

- A covering letter from the agent advising that the number of rooms on each of the three upper floors is retained as existing and the existing mix and number of units stays as 9 individual letting rooms (bed-sitting rooms)
- Two extracts from Journal of Planning and Environmental Law (JPEL) have been submitted where Inspectors concluded that the conversion of bed-sitting rooms into self-contained rooms did not constitute a material change of use (details are provided below).
- Plans and decision notice for a certificate of lawful use relating to a property in the London Borough of Westminster involving a change of use from bed-sitting room units (HMO) to 16 self-contained rooms (studios).

Following advice from the Council's legal department in respect to the additional information that has been submitted it has been concluded that:

- The certificate of lawful use from Westminster is not relevant to this application as it is for the use of the property as a HMO and proposed use as 16 rooms for residential occupation and does not relate to the change of use from non-self contained to self-contained units.
- The decision cited in the Stanford Avenue case is a decision in an appeal against the refusal of planning permission for the conversion of eight bed sitting units comprising one planning unit to self-contained residential units. It is a historic decision (1990) that states that planning permission is not required but on the facts as considered in relation to the application for a certificate of lawfulness there is a material change of use because the pattern of occupation of each individual unit would be altered as well as how the building in which the units are located operates.
- Finally the decision cited in Melrose Avenue is an appeal against an enforcement notice and sets a precedent for the definition of "self-contained unit" and that despite accommodation being self contained this does not mean that the unit containing such units cannot be used for multiple occupation.

The fact that both the existing and proposed use are broadly residential in character should not lead us to conclude that no material change of use is occurring. What is material is the actual use to which the building would in practice be put to, if it can be anticipated that there would be practical and tangible difference in the way a building would be used it would be proper to conclude that a material change of use was involved. The view of the Council has consistently been that the change from an HMO (Sui Generis) to self-contained flats is a material change of use, as is clearly evident from the planning history of this property and indeed its own UDP policies. In this case the building containing 9 units is sui generis (falling outside of the limit of 6 units as detailed in the amendments to the Use Classes Order and General Permitted Development Order). Therefore there are no permitted development rights to

convert these to self-contained units and therefore express planning permission would be required to self-contain them. The planning enforcement team have served numerous notices against alleged breaches of planning control where HMOs have been converted into self-contained flats. Planning applications have consistently been refused by the Council. On the basis of this it is considered that the proposal involves a material change of use and therefore the certificate of lawfulness should be refused.

Third party objections

A letter has been received from Belsize Residents Association advising that there is no objection to the conversion providing the rental levels are maintained for existing HMO tenants. Other issues were raised regarding unsatisfactory site layout involving car parking and front boundary wall. As the application is a LDC which is a matter of fact and degree objections from third parties cannot be taken into consideration

It is considered that the additional evidence in the form of the appeal decisions does not alter the fact that the essence of what is being proposed is not lawful as it is a change of use of an HMO to 9 individual planning units (as differentiated from residential units).

Planning permission would be required to convert the accommodation to self contained flats. Policy H6 of the Unitary Development Plan 2006 states that the Council will not grant planning permission for a change of use or conversion that would result in the loss of housing in multiple occupation of an acceptable standard unless it is replaced by permanently available affordable housing.

Recommendation: Refuse certificate.

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