

Application by Engate Ltd

Lawful Development Certificate, 4 self-contained flats

Planning Report of DLA Town Planning Ltd

DLA Ref: 10/007

March 2010



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Application for a Lawful Development Certificate for an Existing Use by Engate Ltd
Provision of 4 Self-Contained Flats
No 132 Finchley Road, London, NW3 5HS

Planning Report of Rowland Sillito BA(Hons) DipTP, MRTPI

DLA Ref: 2010/007

March 2010

The evidence which I have prepared and provided for this application in this report is true and has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute and I confirm that the opinions expressed are my true and professional opinions.

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1.0 INTRODUCTION

1.1.0 This report relates to an application for a Lawful Development Certificate for the existing use of the upper ground floor and first floor At No 132 Finchley Road as 4, self-contained flats.

1.2.0 **Summary**

The report demonstrates that a Certificate can safely be issued, as the premises have been used as four self-contained flats for a continuous period of at least 4 years.

2.0 THE APPLICATION SITE

2.1 The application site comprises a 4-storey end of terrace building, which incorporates additional living accommodation in the roofspace. The ground floor has a Class A1 retail use and the upper floors have a residential use which comprises a mix of self-contained units and shared living accommodation. The site slopes upwards from front to rear, such that the second storey is at garden level.

2.2 Adjacent Uses

No 134 Finchley Road has a Class A3 restaurant use at ground floor level and residential uses above. Permission was granted in 2008 for a two-storey dwelling on land to the rear of Nos 132-142 Finchley Road.

2.3 Surrounding Area

The surrounding area has a mixed character, comprising residential, commercial and retail uses. The location is highly sustainable and the application site is within close proximity to Finchley Road underground station and a number of bus stops.

3.0 RELEVANT PLANNING HISTORY

3.1 There is no relevant planning history.

4.0 THE EXISTING USE

- 4.1** The upper ground floor and first floor of the premises are currently used as four, self-contained flats. The premises comprise the following:-

Flat 1 This studio apartment is located on the upper ground floor and contains separate kitchen and shower room facilities.

Flat 2 This studio apartment is located on the upper ground floor and contains separate kitchen and bathroom facilities.

Flat 3 This studio apartment is located on the first floor and contains separate kitchen and bathroom facilities.

Flat 4 This one-bedroom flat is located on the first floor and contains separate kitchen and bathroom facilities.

5.0 THE SUPPORTING EVIDENCE

5.1 The application is accompanied by a number of items of supporting evidence as summarised in the table below:

Ref No	Date	Item	Description
1	7.2.06 – 28.2.10	Invoices	To tenants of Flat 1
2	26.2.06 – 25.2.10	Invoices	To tenants of Flat 2
3	1.2.06 -28.2.10	Invoices	To tenants of Flat 3
4	1.2.06 – 16.3.10	Invoices	To tenants of Flat 4
5	17.3.10	Statutory declaration	Signed by Mr R Holloway
6	18.3.10	Statutory declaration	Signed by Mr E Vassilakas
7	July 2002	Drawing 1191/4	Upper ground floor survey
8	July 2002	Drawing 1191/6	First floor survey

5.2 Items 1-4

The invoices demonstrate a continuous occupancy of each of the four flats from early 2006 until present, i.e a period of over 4 years.

5.3 Items 5-6

The statutory declarations from Mr Robert Holloway ARB and Mr Epamanontas Vassilakas provide corroborating evidence that the premises have been occupied as self-contained flats for a period of at least four years. Mr Holloway has acted in connection with the property in his capacity as a professional architect since January 2006. He is registered with the Architects Registration Board (ARB), an independent body which ensures architects comply with its standards for conduct and practice. Mr Vassilakas has been employed to manage the premises since March 2003. Both witnesses therefore have detailed first-hand knowledge of the property and its internal layout.

5.4 **Items 7-8**

The survey drawings were produced by Newland Surveys (UK) Ltd in July 2002. These demonstrate that on that date the upper ground and first floor both comprised two self-contained flats. Each of the flats comprised their own kitchen and bath/shower facilities.

6.0 PLANNING CONSIDERATIONS

6.1.0 The evidence submitted with this application, and discussed in Section 5, demonstrates that:-

- 1) The upper ground floor and first floor have been fitted out as self-contained units since at least 2002.
- 2) The units on the upper ground floor and first floor have been occupied as self-contained flats for a continuous period of at least 4 years.

6.2.0 Planning Law

The Planning and Compensation Act 1991 introduced Certificates of Lawful Use for existing as well as proposed developments. In Circular 10/97 'Enforcing Planning Control', Paragraph 8.15 makes it clear that the relevant test of the evidence is the balance of probability.

"If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicants' 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 to justify the grant of a certificate on the balance of probability."

6.2.1 Section 171B (2) of the Town and Country Planning Act 1990 states that:

'Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.'

6.3.0 I consider that this application has demonstrated beyond reasonable doubt that the application premises have been occupied as 4 self-contained flats for a continuous period of at least 4 years. Furthermore, in the context of the above planning law, the relevant test is whether the applicant's evidence is sufficient on the balance of probability to issue a certificate.

7.0 CONCLUSIONS

- 7.1 The submitted evidence gives clear, precise and unambiguous information to support the application and therefore a certificate of lawful use is justified for the use of the upper ground floor and first floor as four independent self-contained units. Moreover as set out in paragraph 6.2 the test for the evidence is the balance of probabilities, which is satisfied.