

LDC Report		29/02/2008
Officer		Application Number
Sara Whelan		2008/0143/P
Application Address		Drawing Numbers
110 Fitzjohns Avenue London NW3 6NT		Please see draft decision notice
PO 3/4	Area Team Signature	Authorised Officer Signature
Proposal		
Existing residential use (Class C3) as 10 self-contained flats.		
Recommendation: Refer to Draft Decision Notice		
Assessment		
<p>This application has been submitted to formalise the existing use of 110 Fitzjohns Avenue as 10 self contained flats. Statutory Declarations, building material receipts and tenancy agreements have been submitted as part of the application. These documents seek to prove that the operations (to convert the building into 10 self contained flats) were substantially completed more than four years before the date of this application.</p> <p>The building is spread over three storeys and has a raised ground floor, basement and dormers in the roof. The building is noted as making a positive contribution to the Fitzjohns/Netherhall Conservation Area. The lawful use of the building is residential (Class C3). When originally built in the 1870s it would have been occupied as a single family dwelling house. Today the existing building comprises Flat A (studio) and Flat B (studio) at basement level, Flat 1 (studio) and Flat 2 (1 bed-room) on ground floor, Flat 4 (1 bed-room) and Flat 5 (studio) at first floor, Flat 7 (1 bed-room) and Flat 8 (1 bed-room) at second floor and Flat 10 (studio) and Flat 11 (studio) at third floor. The flats have a communal garden and refuse storage to the front. There is an internal communal staircase providing access to the individual flats.</p> <p>The submitted information confirming that the building has been used as 10 self contained flats for over 4 years has been listed below in chronological order;</p>		
Date	Type of evidence	Flat number
August 2003 – present day	Statutory Declaration from Phoenix European property services limited that building used as 10 self contained flats	Flat A Flat 1 Flat 5

September 2003 – present day	Statutory Declaration from 'Studios and 1 beds letting agency' that building used as 10 self contained flats	Flat A Flat 1 Flat 2 Flat 4 Flat 8 Flat 10
01/05/03	Statutory declaration from Goldcrest Group Ltd that the building has been used as 10 self contained flats since May 2003	All 10 flats
21/05/03	Receipt of works to building	Entire building
27/05/03	Receipt of works to building	Entire building
2/06/03	Receipt of works to building	Entire building
11/11/03 – 9/11/04	Tenancy agreement	Flat 8
27/09/05 – 25/09/06	Tenancy agreement	Flat 1
8/10/04 – 6/10/05	Tenancy agreement	Flat 10
16/02/04 – 15/08/04	Tenancy agreement	Flat 1
04/07/05 – 03/01/06	Tenancy agreement	Flat 5
18/02/08 – 17/08/08	Tenancy agreement	Flat A
16/07/2004	E mail re keys	Flat 8
30/09/04	E mail re hand over dates	Flat 10

There are many more signed tenancy agreements relating to the 10 flats ranging from May 2003 and present day. The information provided and declarations submitted are considered to be true and provides evidence that the building has been used as 10 self contained flats since August 2003. The declarations have been signed and declared true by virtue of the Statutory Declaration Act 1935.

The operations to convert the building into 10 self contained flats were carried out in May 2003, this is supported by receipts of building works illustrating when works took place and statutory declarations from two letting agencies confirming that they started to let the 10 self contained flats in August 2003.

The building has continued to function as 10 self contained flats since August 2003. This has been confirmed by a variety of tenancy agreements throughout this period and relating to all 10 dwellings and statutory declarations confirming that the 10 self contained units are still in use. In addition a site visit has been completed on 12 February 2008 to all of the 10 self contained units.

A search of the council tax valuation list has been completed. The most recent records are from 1993 and appear to be out of date. The building is listed as having four separate units known as Flat 1A, Flat 1B, Flat 2 and Rooms 1st, 2nd and 3rd. Camden's Council tax department has been made aware of this discrepancy and a property inspector will complete a site visit to amend the amount of dwellings within the building. Although the records from the council tax valuation list are incorrect a Council Tax Officer has confirmed that the onus is on the developer to inform the Council. However, the Council does perform spot checks on new developments but did not complete a site visit when 110 Fitzjohns Avenue was converted into 10 dwellings. Therefore the council tax records from 1993 are not considered to provide evidence contrary to that provided by the applicant.

It is considered that the variety of information provided and completion of a site visit has left the

council in no doubt that the building has been used as 10 separate self contained residential units for over 4 years. The Council Tax department will complete a site visit and update their records. A certificate of lawful existing use should be issued.

Footnote: Under S55 of the Act the subdivision of a building to separate self-contained flats is a material change of use in each part of the building that is now a separate dwelling, and that change is protected by the 4 year rule. That is each individual flat can be said to be lawful. However, it is also a material change in the use of the whole building and a subdivision of the planning unit that is not protected by the 4 year rule. That is the use of the whole building as 10 flats can be said to be unlawful. It would not be appropriate to seek to circumvent the 4 year rule by taking enforcement action against the use of the whole building, and the owner(s) would be within their rights to make individual applications for certificates of lawfulness for each of the 10 flats, which would preclude enforcement action. Although certificates for each of the flats would have a sounder legal basis than a certificate for the whole building, the Council has previously issued a number of certificates for the use of other buildings as a number of self-contained flats, therefore it would be unreasonable and inconsistent to refuse the current application.