

<b>LDC (Existing) Report</b>		<b>Application number</b>	2014/2189/P
<b>Officer</b>		<b>Expiry date</b>	
Obote Hope		23/06/2014	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
62 Falkland Road London NW5 2XA			
<b>Conservation Area</b>		<b>Article 4</b>	
Kentish Town		N/A	
<b>Proposal</b>			
The use of the first, second and third floor as 6 x 1Bed bedsits.			
<b>Recommendation:</b>		Refuse certificate	

#### Site description

The four storey terraced property located on the south side of Falkland Road. The property is currently in use as a House in Multiple Occupation (HMO) with 6 bedsitting rooms and shared shower and toilet facilities.

#### Planning History

**2008/2960/P** - Change of use and works to convert a House in Multiple Occupation (Sui Generis) containing 9 bedsit rooms into a single dwellinghouse (Class C3). **Refused**

**8701192**: Conversion from two non self-contained units to two 1-bedroom flats and two bedsits as shown on drawing nos.62FR/160/01-08 (inclusive). **Granted 07/01/1988.**

**8802480**: Change of use from residential dwelling house to provide hostel accommodation. **Granted 02/11/1988.**

**8802526**: Change of use from two maisonettes to seven person shared house and erection of a rear conservatory extension and extension to rear roof to accommodate additional toilet facilities as shown on drawing No.s 62 FR/160/14-25 (inclusive). **Granted 08/12/1988.**

It would appear that none of these permissions was implemented in full and no extensions took place the property is currently in use as a HMO. The property comprises 6 individual bedsitting rooms, each occupied at present by one person. The rooms have their own internal cooking facilities. The residents share three shower rooms with toilets, two of which have wash basins.

The property is currently a licensed HMO; however, the license stipulates that a maximum of five persons can live in the property in its current state. Under the Environmental Health Licensing requirements, 5 of the bedsits in their current form with internal kitchen facilities, are unsuitable for occupation. The owner of the property has been in correspondence with the Council's Environmental Health Team with regard to this matter. The applicant has stated that the property is not economically viable with only 5 occupants in 4 of the rooms.

Environmental Health have offered a number of options to alter the building in order to increase the occupancy up to 11 persons. The owner has subsequently submitted this application to convert the property back into a single-family dwelling.

### **Proposal**

The application seeks to demonstrate that the ground, first, second and third floor levels of the building have existed as 6 non self-contained units with shared washing and cooking facilities (HMO), for a period of 10 years or more such that the continued use would not require planning permission.

### **Assessment**

#### Existing Use Class

The following evidence has been submitted to support the application:

- Assured Shorthold Tenancy for room 3A dated Monday 9<sup>th</sup> September 2013 for a fixed term of 12 months expired 8<sup>th</sup> September 2014:
- Assured Shorthold Tenancy for room 2A dated Monday 4<sup>th</sup> October 2013 for a fixed term of 12 months expired 3<sup>rd</sup> October 2014.
- Assured Shorthold Tenancy for room 3B dated Sunday 15<sup>th</sup> September 2013 for a fixed term of 12 months expired 14<sup>th</sup> September 2014.
- Assured Shorthold Tenancy for room 4A for 8 months from Thursday 2<sup>nd</sup> September 2014 – 1<sup>st</sup> September 2014.
- Assured Shorthold Tenancy for room 2B dated Saturday 24<sup>th</sup> September 2011 for a fixed term of 12 months expired Sunday 23<sup>rd</sup> September 2012.
- Assured Shorthold Tenancy for room 4B dated Monday 9<sup>th</sup> September 2013 for a fixed term of 12 months expired 8<sup>th</sup> September 2014.
- The tenancy agreement is inclusive of council tax, broadband and water charges.
- A Land registry search dated February 2013 confirming ownership details.
- Floor plan showing the current layout of the property

#### Council's evidence

- The VOA website shows six council tax entries that were deleted and new entry as one property dated 01/09/2012
- 8802526: Change of use from two maisonettes to seven person shared house and erection of a rear conservatory extension and extension to rear roof to accommodate additional toilet facilities as shown on drawing No.s 62 FR/160/14-25 (inclusive).  
Granted 08/12/1988.
- 2008/2960/P - Change of use and works to convert a House in Multiple Occupation (Sui Generis) containing 9 bedsit rooms into a single dwellinghouse (Class C3).  
Refused

A site visit confirmed that the current layout is 6 Bedroom (HMO) (shown on submitted plans on the first, second and third floors with shared bathroom facilities at first and second floor landing level. The bedsit rooms contained a mix of sleeping facilities, being single or double beds with cooking facilities in each and a sink. It was clear from the site visit that the individuals currently occupying the property do not share it as a single household, there being no communal meeting space.

Other useful information that was not submitted as part of the application

- There is no submission of the License granted by The London Borough of Camden for a House in Multiple Occupation showing the start or expiry date.
- No Letter relating to transitional arrangement concerning certain Registered HMO's, from Camden's Environmental Health Team
- Certificate of Registration – London Borough of Camden (Registration of Houses in Multiple Occupation) Control Scheme 1999

In terms of assessment the onus of proof in a lawful development certificate application lies with the applicant. The relevant 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'. The local planning authorities are advised that, if they have no evidence of their own to contradict or otherwise make the applicant's 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. 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.

On the balance of probability it is considered that, based on the evidence submitted, the 6 bedsit rooms within the property have been lawfully. However, planning history suggest the use was within Sui-generis use, rather than probably for a maximum of 6 years (based on the application 2008/2960/P for the change of use), because there have been up to 6 tenants in the property living as separate households with shared cooking and bathroom facilities. Without consideration of the materiality of a change from HMO to self-contained units it is considered that insufficient evidence has been provided to establish the existing use of the property as a self-contained flat and a HMO for 6 or fewer people, as defined within the criteria of Class C4 under the newly amended Use Classes Order.

**Recommendation:** Refuse Certificate of Lawfulness for Existing Use or Development