

<b>LDC Report</b>	24/07/2014
<b>Officer</b>	<b>Application Number</b>
Sam Watts	2014/3291/P
<b>Application Address</b>	<b>Recommendation</b>
285-287 Finchley Road London NW3 6ND	Approve.
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Use of part lower ground, part ground, 1st, 2nd and 3rd floors of the building as 9 residential units (C3) and 15 Apart-Hotel units (C1).	
<b>Assessment</b>	
<p>The application site is located on the west side of Finchley Road.</p> <p>The application relates to the implementation of a planning permission (allowed on appeal) under reference number 2010/2233/P. There are nine residential flats (numbers 13, 18, 21a, b and c (three bedroom flat), 31, 32, 33, 34, 43, and 47) and 15 apart-hotel units (F11, F12, F14, F15, F16, F22, F24, F26, F28, F41, F42, F44, F45, F46, F48).</p> <p>The building is not listed nor within a conservation area.</p> <p>The application seeks to demonstrate that what was granted under planning reference number 2010/2233/P has been implemented.</p> <p>The applicant is required to demonstrate, on balance of probability that the planning permission has been implemented.</p> <p><b>Relevant history:</b></p> <p><b>PWX0103752:</b> Planning permission was <u>granted</u> on 28/03/03 for the erection of a first floor rear extension and conversion of first floor to 4 x 1-bedroom flats, together with the erection of a new second floor to provide 2 x 3-bedroom flats and a new third floor to provide 2 x 2-bedroom flats and associated works. This was subject to a legal agreement to secure the development as car-free and that it must be carried out concurrently with the permission PWX0103754R1 granted for 281-283 Finchley Road (see below).</p> <p><b>EN06/0307:</b> An enforcement investigation was opened on 25/04/06 following a complaint that the property which was originally intended to be 8 residential units was being used as 27 flats.</p>	

**2007/1231/P:** Planning permission was refused on 15/06/07 for change of use of basement and (part) ground floor from retail to 8 self-contained studios and first to third floor from 8 residential units (4 x 1-bedroom, 2 x 3-bedroom and 2 x 2-bedroom) to 19 self-contained flats (18 studios and 1 x 1-bedroom) (Retrospective). An enforcement notice was issued on 09/07/07 and took effect on 07/09/07. An appeal was lodged on 31/10/07 against the enforcement notice and was dismissed in November 2008 (see below).

**2007/2948/P:** An application was submitted on 15/06/07 for change of use of basement and (part) ground floor from retail to 4 x 1-bedroom self-contained flats and retention of rear basement level and third floors level as constructed. The Council resolved to grant planning permission subject to the completion of a section 106 agreement to secure the new units as car-free. This was withdrawn on 18/03/2009.

**2007/4826/P:** An application for the change of use of basement and (part) ground floor from retail to 8 self-contained studios and first to third floor from 8 residential units (4 x 1-bedroom, 2 x 3-bedroom and 2 x 2-bedroom) to 16 self-contained studio flats and 3 x non self-contained flats with shared kitchen (retrospective) was refused on 17/01/2008. An appeal was lodged which was dismissed in November 2008 (see below).

### **November 2008**

The Planning Inspectorate issued its decision on two appeals submitted in respect of this property. The first was against the unauthorised change of use of the basement, part ground floor, first, second and third floors as 27 self contained flats. The second appeal was against the Council's refusal of planning permission for the change of use of the property to 24 self contained flats and 3 non self-contained units and the retention of the building as constructed. **On both cases the appeals were dismissed and the enforcement notice was upheld with a compliance date of 07/07/2009.**

**2009/1266/P:** An application for use of part lower ground, part ground, 1st, 2nd and 3rd floors of the building as a (Class C1) 27 room Apart-Hotel was refused on 07/07/2009. **This decision was appealed but was dismissed.**

**2010/2233/P:** Change of use of part lower ground, part ground, 1st, 2nd and 3rd floors of the building from 'Nil use' to 9 residential units (Class C3) and 15 Apart-Hotel units (Class C1) was refused on 17/08/2010. **This decision was allowed on appeal.**

### **Applicant's Evidence**

The applicant has submitted the following information in support of the application:

- 1 year tenancy agreement for flat 13 for the period 16/05/2013 – 15/05/2014.
- 1 year tenancy agreement for flat 18 for the period 12/08/2012 – 11/08/2013.
- 6 month tenancy agreement for flat 18 for the period 12/02/2014 – 11/08/2014.
- 1 year tenancy agreement for flat 21 for the period 28/11/2014 – 28/11/2014.
- 1 year tenancy agreement for flat 32 for the period 26/09/2013 – 25/09/2014.
- 1 year tenancy agreement for flat 33 for the period 01/03/2014 – 28/02/2014.
- 1 year tenancy agreement for flat 34 for the period 31/08/2012 – 30/08/2013.
- 1 year tenancy agreement for flat 43 for the period 01/10/2013 – 01/10/2014.
- 1 year tenancy agreement for flat 31 for the period 13/04/2006 – 12/04/2007.
- 1 year tenancy agreement for flat 47 for the period 18/02/2014 – 17/04/2015.
- Holiday rental details for apart hotel units F15, F16, F22, F28, F44, and F45.

The applicant has also submitted the following plans:

- A site location plan outlining the application site.
- Existing floor plans of the site.

**Council's Evidence:**

The Valuation Office Agency website demonstrates that the liability for Council Tax started on 13.04.2011 for all flats except 47 and 43 (both which started on 30/11/2007). It has been in payment continuously since then.

A site visit to the property was undertaken on the 19.06.2014. The officer was satisfied that what was granted permission on appeal has been implemented.

**Assessment:**

The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate. 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.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' what was granted on appeal under planning reference 2010/2233/P has been implemented.

**Recommendation: Approve**