

<b>LDC (Existing) Report</b>		<b>Application number</b>	2014/5403/P
<b>Officer</b>		<b>Expiry date</b>	
Obote Hope		27/10/2014	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
21 Harrington Square London NW1 2JJ			
<b>Conservation Area</b>		<b>Article 4</b>	
Kentish Town		N/A	
<b>Proposal</b>			
Use of basement, first, second and third as a House in Multiple Occupation (HMO) containing 16 non self-contained rooms with shared facilities.			
<b>Recommendation</b>		<b>Grant Certificate of Lawfulness</b>	
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<b>Site description</b>			
<p>The application site comprises of a four storey property with basement located east of the former square, the site is located within a row of 10 houses (namely numbers 15-24 consecutive). The properties were constructed around 1842-48 using grey brick, no 21 is painted with stuccoed ground floor, the roof is constructed using slate material.</p> <p>The site is located within the Camden Town Conservation Area.</p>			
<b>Planning History</b>			
<p><b>2009/3539/P</b> - External alterations including the replacement of ground floor window on the front elevation and the erection of new fencing in the garden to hotel (Class C1). <b>Refused 04/08/2010.</b></p> <p><b>2009/3542/L:</b> External alterations including the replacement of ground floor window on the front elevation and the erection of new fencing in the garden to hotel (Class C1). <b>Refused 04/08/2010.</b></p> <p><b>P9601331:</b> Application for a Certificate of Lawfulness for the existing use of the building as a Bed and Breakfast/Boarding house. <b>Granted 05/07/1996.</b></p> <p>It would appear that the above planning permission (P9601331) was issued as confirmation that the site was used as a Breakfast/Boarding house. However, the long term occupancy of the tenants' as stipulated in Exhibit MAW/01 dated 20 August 2014 provides evidence that housing benefits were being claimed.</p>			
<b>Proposal</b>			
<p>The application seeks to demonstrate that the basement, ground, first, second and third floor levels of the building have existed as 16 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.</p>			

## **Assessment**

### **Existing Use Class**

The following evidence has been submitted to support the application:

- Witness Statement from Highbury Corner Magistrate Court dated 20 August 2014 Ref MAW/01 detailing benefit claims from 2003-2011;
- Witness Statement from Highbury Corner Magistrate Court dated 23 July 2012 Ref MAW/02 from London Rent Assessment Panel;
- Witness Statement from Highbury Corner Magistrate Court dated 20<sup>th</sup> July 2012 Ref MAW/03 from HM Courts & Tribunals refusing the right to appeal;
- Witness Statement from Highbury Corner Magistrate Court dated 20 August 2014 Ref MAW/04 detailing the property title ;
- Witness Statement from Highbury Corner Magistrate Court dated 20 August 2014 Ref MAW/05 on a sworn statement detailing the use of the property as a HMO over the last decade;
- 3 x letters from Mike Warren confirming the use as HMO over the last decade.

### **Council's evidence**

- from Highbury Corner Magistrate Court signed by Mike Warren that stipulates that a minimum of 6 residents who resides at the property from May 2004 to June 2014;
- Table showing council tax benefits from multi claimants from 2003 to 2011.
- Witness Statement that demonstrates that rooms 2,3,6,10,11 and 16 could accommodated 1 person if the showers were removed and rooms 4,5,8,12,14,15 and 17 were simply too small to be let.

The submitted plans were annotated to demonstrate that the basement, ground, first, second and third floors contains with shared bathroom facilities at first and second floor landing level. The property is divided into 16 non self-contained flats; the basement contains 4 Bedsits (Rooms 15, 16, 17 and 18) with shared kitchen area for flats 15, 16, 17. However, room 18 has a separate bathroom enclosure; The ground floor contains a substantial dining room/lounge with kitchen and bathroom facilities that is used as communal floorspace; the first floor contains 4 bedsit (Rooms 2 – 5) with shared kitchen and bathroom facilities; the second floor consist of 4 bedsits ( Rooms 6, 7, 8 and 9); the third floor layout is similar to the second that contains 4 bedsits (Rooms 10, 11, 12 and 14) with a shared toilet the second floor is divided into 4 bedsits, room 6-9 with small kitchenette and shared toilet; All the rooms contained a mix of sleeping facilities, being predominately single beds with tea and coffee and shower facilities each containing a small sink.

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 not 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 16 bedsit rooms mainly consist of 1 x bed HMO with the exception of a few property with larger floorspaces. The evidence submitted indicates that housing benefits were being paid on a regular basis between the years of 2003 – 2014. Notwithstanding, the definitive use of a bed and breakfast with the C1 use class, namely, due to the length of stay, the manner in which prospective guest are processed before they the signed in .i.e. deposits from a credit/debit card, prove of address from a passport/driving licence. In this case, the evidence suggests the property was used to provide accommodation for homeless people not requiring formal documentations for “prove of stay”. Furthermore, the signed documentations provided with this application provides conclusive evidence that majority of the occupiers were at some stage were helped with housing benefits payments.

**Conclusion:**

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’ the basement, first, second and third floor levels have existed as an HMO (Sui Generis) for a period of more than 10 years as required under the Act. Furthermore, the Council’s evidence, with particular regard to the buildings planning history, does not contradict or undermine the applicant’s version of events.

On the basis of the evidence submitted from Mike Warren through Sworn Statements from Highbury Corner Magistrate Court it is possible to determine, on the balance of probability that the site is being used as 16 x non self-contained residential units as part of an HMO for a continuous period of 10 or more years.

**Recommendation:**

Grant Certificate of Existing Use or Development