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| LDC Report | 24/10/2014 |
| Officer | Application Numbers |
| Katrine Dean | 2014/5505/P 2014/5506/P |
| Application Address | Recommendation |
| 11 Belsize Crescent London NW3 5QY | Approve |
| 1st Signature | 2nd Signature (if refusal) |
| | |
| Proposal | |
| Change of use of five flats to single dwellinghouse - 2014/5505/P Lawful use of existing roof terrace – 2014/5506/P | |
| Assessment | |
| <p>The application site is located at 11 Belsize Crescent and relates to a five storey mid-terraced building, which had been previously converted into flats; one on each floor. The property also has a haphazard roof terrace, which is accessed through the top floor window at the rear and via a set of timber steps. It is bounded by chain wire and had seats on it at the time of the site visit.</p> <p>The building is not listed and is located in the Belsize Park Conservation Area.</p> <p>Application 2014/5505/P relates to all five flats and seeks to demonstrate that the entire building, including the five flats have been used as a single dwellinghouse by the same family for a period of 4 years or more and such that the continued use would not require planning permission.</p> <p>Application 2014/5506/P relates to the roof terrace and seeks a lawful development certificate for the existing use of the terrace, which had been formed for the millennium and utilised since then.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing residential unit has existed for a period of 4 or more years and that the roof terrace has been used as such for a period of 10 years or more.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> An evidence file covering the details of the applicant's acquisition of all properties and the leasehold of the building and construction of the roof terrace, as well as the necessary supporting documentation including statutory declarations from: Barry Cousins (owner); Bobby Barwick; Carolyne Brown; Stephen Coogan; Patrick Fuller; James David Pashley; and Julie Selby, confirming that the building has been used a single dwelling by Barry Cousins and his late partner for over four years and also that the terrace was constructed for the millennium and has been utilised as such since then. | |

The applicant has also submitted the following plans:

- A site location plan outlining the application site;
- Second floor plan;
- Basement (Lower Ground Floor) plan;
- First floor plan;
- Third floor plan;
- Raised ground floor;
- Roof plan showing the terrace; and
- Photographs of the basement and the terrace.

Council's Evidence

There is no relevant planning history or enforcement action on the subject site.

Council tax have confirmed that the liability for Council Tax has been paid by Barry Cousins, his brother A Cousins and a company which was set up to assist with the purchase of the flats Optnat Ltd since before 2007. Pages 5 – 7 of the evidence file explain that the reasons for different names appearing on the Council Tax record were to assist in financing the purchase of the flats by Barry Cousins. The Council Tax has been in payment continuously since then.

A site visit to the property was undertaken on the 16/10/2014. The officer was satisfied that the unit had been occupied for residential use for some time. Although a number of kitchens and bathrooms remain on several floors of the house, there are no doors dividing the flats and the house is read a single dwellinghouse internally. The roof terrace was also visited, and although the structure was unsafe, it appears that it had been in situ for some time.

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’ the building has been used as a single dwellinghouse for at least the last four years, as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Recommendation: Approve