

LDC Report		16/09/2014	
Officer		Application Number	
Sam Watts		2014/4744/P	
Application Address		Recommendation	
35 Glenmore Road London NW3 4DA		Grant Certificate of Lawfulness.	
1st Signature		2nd Signature (if refusal)	
Proposal			
Continued use of first and second floor of property as C4 (HMO) use.			
Assessment			
<p>The application site is located on the east side of Glenmore Road.</p> <p>The application relates to an HMO in 35 Glenmore Road.</p> <p>The building is not listed and is located in the Belsize Park Conservation Area.</p> <p>The application seeks to demonstrate that the existing use of the first and second floor of the property is C4.</p> <p>The applicant is required to demonstrate, on balance of probability that the first and second floor of the property site currently have a C4 use.</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"> • 1 x HMO License issued by Camden Council for the period 30/03/2012 – 29/03/2017. • 1 x Photographic Schedule of Condition dated 26th March 2014. • 1 x assured shorthold tenancy agreement for flat 3 for the period 09/11/2009 – 09/04/2010. • 1 x assured shorthold tenancy agreement for flat 3 for the period 09/06/2010 – 08/12/2010. • 1 x tenancy agreement for flat 3 for the period 10/04/2011 – 09/04/2012. • 1 x tenancy agreement for flat 3 for the period 10/04/2012 – 09/04/2013. • 1 x assured shorthold tenancy agreement for flat 4 from 01/11/2009 – 01/11/2010. 			

- 1 x assured shorthold tenancy agreement for flat 5 from 16/05/2013 – 15/05/2014.
- 1 x rental agreement for flat 7 for the period 08/11/2008 – 07/11/2009.
- 1 x assured shorthold tenancy agreement for flat 7 for the period 08/11/2009 – 08/11/2010.
- 1 x tenancy agreement for flat 7 for the period 25/11/2011 – 24/11/2012.
- 1 x tenancy agreement for flat 7 for the period 12/03/2013 – 11/03/2014.
- 1 x tenancy agreement for flat 8 for the period 06/03/2012 – 01/04/2013.
- 1 x shorthold tenancy agreement for flat 8 for the period 29/10/09 – 29/03/2010.
- 1 x assured shorthold tenancy agreement for flat 8 for the period 29/05/2010 – 28/11/2010.
- 1 x tenancy agreement for the period 06/03/2012 – 01/04/2013
- 1 x covering letter

The applicant has also submitted the following plans:

- A site location plan outlining the application site
- Existing first floor plan
- Existing second floor plan

Council's Evidence:

Planning history:

2013/4948: Conversion of existing bedsit and self contained flat at ground floor and mezzanine levels to a 2-bed self- contained flat (Class C3). **Granted 24/09/2013**

Council tax have confirmed that the liability for Council Tax for number 35 started on 08/11/2008. It has been in payment continuously since then.

A site visit to the property was undertaken on the 12th August. The officer was satisfied that the unit was being used as an HMO under a C4 use class.

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.

It was originally believed that a certificate could not be granted, as the C4 use had not been in place for ten years. This was then passed on to the agent, who asked their legal team to respond.

The legal team at Rolfe Judd provided a legal response which stated:

“1. The above property comprised a residential flat (Class C3), which took up part of the ground floor, with a HMO use for the remainder of the building (part ground floor to second floor). That HMO contained 6 beds, was occupied by 6 or more persons and therefore its use did not fall within any Use Class.

2. In 2013, planning permission was granted for the change of use of the whole of the ground floor to form a two bedroom flat. That permission was implemented.

3. By reason of the works, the HMO unit now comprises first and second floor levels, contains 5 beds and is occupied (as a house in multiple occupation) by less than 6 people.

The HMO use has been consistent throughout. Use Class C4 relates to the “use of a dwelling house by not more than 6 residents as a ‘house in multiple occupation’”. The HMO unit now falls within Use Class C4.

The legal question is whether a certificate of lawfulness of existing use may be granted for the upper floors as a use within Class C4. It is clear that it can.

Section 191 of the Town and Country Planning Act 1990 allows an application to be made to the local planning authority to ascertain whether “any existing use of buildings” (amongst other matters) is lawful. Sub-section 191(2) states that a use is lawful if no enforcement action may be taken in respect of the use (whether because it did not involve development, require planning permission or because the time for enforcement action had expired or for any other reason) and there is no contravention of any requirement of any enforcement notice then in force. Sub-section 191(5) requires the certificate to describe the use, and in the case of any use falling within one of the classes specified in the Use Classes Order, to identify it by reference to that class.

From my reading of Camden’s email of 15 October 2014, there appears to be a fundamental misunderstanding in that the Council believes that a certificate of lawfulness of existing use can only be granted after ten years continuous use, following a substantial change to the use.

That is an incorrect interpretation of the law. As set out above, a certificate must be granted if the use applied for lawful – including because it did not involve development or require planning permission – irrespective of how long the use has been in place. There is no requirement for there to have been a substantial change to the use or for a 10 year period of use.

The changes to the HMO element of 35 Glenmore Road identified above did not require planning permission - the change from a 6 person to a 5 person HMO was not material. The use remains as a HMO. However, it is a function of the current drafting of the Use Classes Order that the relevant part of the property now forms part of Class C4.

The use of the upper floors of 35 Glenmore Road therefore falls firmly within the scope of a use for which a certificate of lawfulness for a Class C4 use should be granted under Section 191 TCPA 1990. I see no reason for the Council to refuse to grant the certificate.”

The Council’s legal team have reviewed their response and have deemed it to be acceptable and that a certificate can now therefore be granted.”

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 first and second floor of the property are under a HMO C4 Use Class. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Recommendation: Approve