

<b>LDC Report</b>	14/11/2014
<b>Officer</b>	<b>Application Number</b>
Carlos Martin	2014/6502/P
<b>Application Address</b>	<b>Recommendation</b>
113 West End Lane London NW6 2PA	Grant
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Use of basement, ground, first and part second floors as 12 flats (Class C3)	
<b>Assessment</b>	
<p>The application site is located on the western side of West End Lane. The building is not listed and is located in the South Hampstead Conservation Area. The site is a registered HMO. This application relates to the units a basement, ground, first and second floor levels. A further third floor comprises non self-contained accommodation with a shared kitchen at second floor level.</p> <p>The application relates to the established use of 12 residential units as class C3 residential, comprising 3 units at basement level, 3 units at ground floor and mezzanine levels, 3 units at first and mezzanine levels, and 3 units at second floor level. The application seeks to demonstrate that the units have existed in self-contained residential use for a period of 4 years or more such that the continued use would not require planning permission. The applicant is required to demonstrate, on balance of probability that the existing residential units have existed for a period of 4 or more years.</p>	
<b>Applicant's Evidence</b>	
The applicant has submitted the following information in support of the application:	
<ul style="list-style-type: none"> <li>• HMO Licence dated 7 September 2009;</li> <li>• HMO Licence dated 20 September 2011;</li> <li>• Variation to HMO Licence dated 18 October 2013;</li> <li>• Email from Alex Begun of Blix Properties dated 23 September 2008 and statutory declaration of Maurice Lawlee (Former Owner) dated 9 January 2008;</li> <li>• Statutory declaration of Alex Begun (Managing Agent) dated 29 August 2014;</li> <li>• Statutory declaration of Levan Khundadze (Managing Agent) dated 8 September 2014;</li> <li>• Statutory declaration of Sebastian Saigre (Managing Agent) dated 15 September 2014;</li> <li>• Statutory declaration of Marc Paul Tan (Managing Agent) dated 1 July 2014;</li> <li>• Statutory declaration of Simon Mumford (Estate Agent) dated 2 July 2014;</li> <li>• Paul Tan (Managing Agent) dated 1 July 2014;</li> <li>• Statutory declaration of Vytenis Putvis (Maintenance Engineer) dated 25 June 2014;</li> </ul>	

- Flat B1 (Basement rear-left studio) Council Tax summary, floorplan, photographs, leases, rent payment records.
- Flat B2 (Basement rear-right studio) Council Tax summary, floorplan, photographs, leases, rent payment records;
- Flat B3 (Basement front studio) Council Tax summary, floorplan, photographs, leases, rent payment records;
- Flat 1 (Ground floor rear-left studio) Council Tax summary, floorplan, photographs, leases, rent payment records;
- Flat 2 (Ground floor rear-right studio) Council Tax summary, floorplan, photographs, leases, rent payment records.
- Flat 3 (Ground floor front studio) Council Tax summary, floorplan, photographs, leases, rent payment records;
- Flat 21(First floor rear-left studio) Council Tax summary, floorplan, photographs, leases, rent payment records;
- Flat 22(Second floor rear-right studio) Council Tax summary, floorplan, photographs, leases, rent payment records;
- Flat 23 (Second floor front studio) Council Tax summary, floorplan, photographs, leases, rent payment records;
- Flat 31(Second floor rear-left studio) Council Tax summary, floorplan, photographs, leases, rent payment records;
- Flat 32(Second floor rear-right studio) Council Tax summary, floorplan, photographs, leases, rent payment records; and
- Flat 33 (Second floor front studio) Council Tax summary, floorplan, photographs, leases, rent payment records.

The applicant has also submitted the following plans:

- A site location plan outlining the application site;
- A floor plan of basement level;
- A floor plan of the ground floor and associated mezzanine;
- A floor plan of the first floor and its mezzanine; and
- A floor plan of the second floor.

### **Council's Evidence**

There is no relevant planning history or enforcement action on the subject site. A site visit to the property was undertaken on the 28/10/2014. The officer was satisfied that the units had been occupied for residential use for some time.

### **Assessment**

The certificate application relates to self-contained flats which lie within a larger unit with HMO accommodation above and with certain shared facilities – i.e. a shared staircase, a shared entrance from the exterior. The presence of the mix of Class C3 and HMO accommodation with these shared access facilities and the presence of one non self-contained room at second floor level) is a state of affairs which has existed for at least four years and is not proposed to change.

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 (Planning Practice Guidance ensuring effective enforcement March 2014). 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 units have existed in residential use for a period of more than 4 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

**Recommendation: Approve**