

LDC (Existing) Report		Application number	2014/6918/P
Officer		Expiry date	
Obote Hope		31/12/2014	
Application Address		Authorised Officer Signature	
200 A Finchley Road London NW3 6BX			
Conservation Area		Article 4	
Yes		No	
Proposal			
Use of the rear of the ground floor as 1 x studio flat, first floor as 1 x1Bed and 1 x 2Bed, second floor as 1 x1Bed and 1 x 2Bed and third floors as 1 x studio flat and 2 x 1Bed a total of 8 self-contained residential units.			
Recommendation:		Grant lawful development certificate	

The site is a double fronted unit located within the ground floor of a three storey building on the eastern side of Finchley Road.

The surrounding area is mainly commercial in character and is not in a conservation area.

The application relates to the use of the ground, first, second and third floor of the property as 8 self-contained flats, that consist of 2 x studio flats numbered as flats ground floor studio flat , Flats 1, 2, 3, 4, 5 (third floor studio) 6 and 7:

- Ground Floor is a studio flat.
- Flat 1 is a 1 x 1Bed self-contained flat at first floor level.
- Flat 2 is a 1 x 2Bed self-contained flat at first floor level.
- Flat 3 is 1 x 2Bed self-contained flat at second floor level.
- Flat 4 is 1 X 1Bed self-contained flat at second floor level.
- Flat 5 is 1 x 1Bed studio flat at third floor level.
- Flat 6 is 1 x 1Bed self-contained flat at third floor level.
- Flat 7 is 1 x 1Bed self-contained flat at third floor level.

The application seeks to demonstrate that the use of the ground, first, second and third floor of the property as 8 self-contained flats has existed 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 self-contained residential units have existed for a period of 4 or more years.

Applicant's Evidence

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

- Sign affidavit dated 31st October 2014 from Darren Yanover. Confirming the property is divided into 8 Flats since 2002;
- Sign affidavit dated 28th October 2014 from Stephen Usiskin. Confirming the property is divided into 8 Flats since 2002;
- Tenancy Agreement dated 21st August 2010 to August 2014 for the ground floor studio;
- Tenancy Agreement dated 28th May 2010 to 27th November 2010 for flat 1 first floor;
- Tenancy Agreement dated 22nd February 2010 to 21st August 2010 for flat 2 first floor;
- Tenancy Agreement dated 16th October 2010 to 15 July 2010 for flat 3, first floor
- Tenancy Agreement dated 16th October 2010 to 15 July 2010 for flat 2 first floor
- Tenancy Agreement dated 29th October 2010 to 28th February 2011 for flat 4 second floor
- Tenancy Agreement dated 1st June 2010 to 30th November 2010 for flat 5, Third floor
- Tenancy Agreement dated 4th December 2009 to 3rd June 2010 for flat 6, Third floor;
- Tenancy Agreement dated 28th February 2010 to 27th August 2014 for flat 7 Third Floor floor
- Council Tax back payment record letter dated 07/01/2009, for flat 1 – 5
- British Gas bills earliest dated from 2007-2013

The applicant has also submitted the following plans:

- A site location plan outlining the application site
- Existing, lower ground, ground first, second and third floor plans
- Elevation and Section Drawings dated 21/01/2010 of the ground floor

Council's Evidence

2010/0876/P PP for: for the Change of use from retail shop (Class A1) to Dental/Facial practice (Class D1) with minor alterations to shopfront. Refused on **07/10/2010**

2010/3316/P PP for: Construction of a new mansard roof extension, 2-storey rear extension to the existing basement and ground floor maisonette and conversion of the property from a maisonette and 2 flats to form a maisonette at ground and basement floors with 3 flats on each of the first, second and third floors. Granted on **29/10/2005**

The officer was satisfied that the property had been occupied as self-contained residential flats for some time. All of the flats are currently occupied.

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. Furthermore, the VOA website confirms that the units are divided into 8 Flats.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the property has been in use as 8 self-contained flats, 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:

Grant lawful development certificate