

<b>LDC Report</b>	20/02/2015
<b>Officer</b>	<b>Application Number</b>
Neil Luxton	2014/7393/P
<b>Application Address</b>	<b>Recommendation</b>
35 Estelle Road London NW3 2JX	Grant the Lawful Development Certificate
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Use of property as a single family dwelling house	
<b>Assessment</b>	
<p><b>Applicant's Evidence</b></p> <p>Statutory declarations (x5) have been provided by the applicant and by friends of the same see decision notice for full list). The declarations describe consistently that the applicant and his family have lived in the building in a manner that has been akin to a single family dwelling since late 2009. They have used floorplans of the building to demonstrate how their observations have lead them independently to consider and declare that the building is and has been a single dwelling since late 2009.</p> <p>Statements from utility providers – Thames Water and British Gas have confirmed that they have only supplied their services (water, gas and electricity) to one account at the property since late 2009 and that the metres that previously served the other flats in connection with at the property are redundant and have been since that time.</p> <p>Officer Delegated report from 2009 relating to the conversion of the property from three flats to two (re: 2009/5481/P). This application was refused but during the consideration of it a site visit was undertaken by the case officer. He observed that the property was being inhabited in the manner of a single dwelling.</p> <p>Invoice and billing details for works to building during 2009 to unify its floorspace into one unit.</p> <p>Explanation of specific references within billing details.</p> <p>Site Location Plan;</p> <p>Floor Plan showing current layout of building</p>	

Council tax – billing details and an explanation of the same.

### **Council's Evidence**

Enforcement evidence- the applicant has alluded to the Council's records which show that an enforcement investigation was undertaken in the summer of 2009 by the Council which showed that no breach was found and the case closed at the beginning of September 2009.

Council Tax- the records have shown that three bills are being paid still but these are all being paid by the same payee who is the applicant for this LDC and resident of the property. They have stated that they were advised to not alter the billing arrangements until such time as a planning permission had been granted to justify it.

Officer site visits –in 2009 in connection with a planning application, Jonathan Markwell (planning officer) recorded in his delegated report that the property appeared to be occupied in the manner of a single dwelling. The officer walked the building from ground to top floor and this confirmed that the layout indicated in the applicant's submitted floorplan was correct.

A site visit in 2015 showed that there was one doorbell and address on the entrance, no internal divisions within the building; no locks within the building, no second entrance door/gate to the building that suggested a sub-division, and one unified garden space.

### **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 Council tax records do not show that more than one person is paying the bills at the property and so it cannot be deduced from these that the property is being used as three flats, simply that three accounts exist at the property as a historic legacy.

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 occupied as a single family dwellinghouse for in excess of four years before the date of the application (27.11.14) as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

### **Recommendation:**

Grant the Lawful Development Certificate (existing )