

LDC Report	05/05/2015
Officer Ian Gracie	Application Number 2015/2103/P
Application Address 19 Hampstead Hill Gardens London NW3 2PJ	Recommendation Grant Certificate of Lawfulness (Existing)
Proposal Use of top floor of property as 2 self-contained flats, specifically 1 no. studio flat and 1 no. two bedroom flat.	
Assessment	
<p>The application site is located to the north-east side of Hampstead Hill Gardens. The application relates to the second floor of the building. The building is not listed and is located in the Hampstead Conservation Area.</p> <p>The application seeks to demonstrate that the second floor has been in use as 2 self-contained flats comprising 1 no. studio flat and 1 no. two-bedroom flat for a period of 4 years or more such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing residential use has existed for a period of 4 or more years.</p> <p>Permission was granted on 3rd December 1979 for “Change of use including works of conversion to provide one self-contained flat on the garden floor, two self-contained flats on the ground floor and two self-contained flats on the first floor.” (LPA Ref: 29108). There is no such planning history relating to the second floor of the property, to which this application relates.</p>	
Applicant’s Evidence	
<p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • Site Location Plan (1:1250); • Signed tenancy agreements; • A statement signed by the applicant (Sasha Jophides) confirming that <ul style="list-style-type: none"> ○ The works of subdivision were completed by April 2004, and no further works have been undertaken to either the two bedroom flat or the studio flat since that date. ○ The two bedroom flat and the studio have been occupied permanently since May 2004 save for short periods of vacancy between tenants. ○ The property was shown as a single dwelling for council tax purposes until May 2010 when it was assessed as two dwellings and two separate council tax accounts have existed since then. To distinguish the two dwellings within the property, the Council Tax Office called the two bedroom flat ‘Flat D Left’ and the studio flat ‘Flat D Right’. • A statutory declaration signed by the accountant of the land owner (Adreas Stylianou) stating that that Sasha Josephides divided the flat into two units known as the studio flat, and the two bedroom flat. The studio flat was let in May 2004. From April 2011 the 	

accountant calculated the tax payable for both flats. He is fully aware that the two flats have been used as two separate dwellings since May 2004 and he has seen the tenancy agreements for each flat, the studio flat since May 2004 and the two bedroom flat since April 2011, in order to work out the tax payable on the rental income.

Council's Evidence

Planning history of the subject site is as follows:

29108 Planning permission was granted on 3rd December 1979 for "Change of use including works of conversion to provide one self-contained flat on the garden floor, two self contained flats on the ground floor and two self-contained flats on the first floor."

32513 Planning permission was granted on 17th August 1981 for "Change of use and works of conversion to create four self-contained flats."

PW9703076 Planning permission was refused on 13th February 1998 for "The erection of a two storey side extension, as shown on drawing numbers: 1109/1A, /2A, /3A, /7A and /8."

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 (Planning Practice Guidance, paragraph 006). 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 lower ground floor unit has been 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