

<b>LDC Report</b>	05/08/2015
<b>Officer</b>	<b>Application Number</b>
Tony Young	2015/3261/P
<b>Application Address</b>	<b>Recommendation</b>
8 Greenaway Gardens London NW3 7DJ	Grant Certificate of Lawfulness (Existing)
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Use of Nos. 8 and 8b Greenaway Gardens as a single dwelling house (Class C3).	
<b>Assessment</b>	
<p>The application site is located on the western side of Greenaway Gardens. The property is a three-storey (with basement) detached residential property (Class C3).</p> <p>The application relates to the use of the host property as a single dwelling house.</p> <p>The building is not listed but sits within the Redington/Frognaal Conservation Area (adopted January 2003). The Redington/Frognaal Conservation Area appraisal and management strategy statement identifies the properties on 2-17 Greenaway Gardens as making a positive contribution to the character of the conservation area.</p> <p>Planning permission was granted on 23/09/2008 for the change of use of a maisonette at no. 8 (comprising basement, ground floor and part of first floor) and a self-contained flat at no. 8A (part first floor) to a single residential unit (ref. 2008/3825/P) with the retention of no. 8B (second floor level) as a separate self-contained flat. The property was therefore known to be divided into three self-contained residential units on 23/09/2008.</p> <p>The application seeks to demonstrate on the balance of probability that the property has been in use as a single dwelling house (Class C3) for a period of 4 years or more, such that continued use would not require planning permission.</p>	
<b>Applicant's Evidence</b>	
<p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>Statutory declarations from Mr. Adam Simon Cedar (applicant), Mrs. Michelle Fiona Cedar (applicant), Mr. James Tarzey and Mrs. Joklan Ramos dated 09/06/2015 and co-signed by a solicitor, asserting that the property has been in use as a single dwelling house for over 4 years</li> </ul>	

- Statutory declarations from Mr. Zoeb Taher Sachee and Mrs. Nisreen Zoeb Sachee dated 08/06/2015 and co-signed by a solicitor, asserting that the property has been in use as a single dwelling house for over 4 years
- Building Regulations Final Certificate (ref. DAW/846509/JOS) dated 31/03/2011 confirming the completion of internal refurbishment works to create a single dwelling including extension to basement and single storey rear extension.
- Building Contractor Agreement (Joint Contracts Tribunal Ltd) between Mr. Adam Cedar (applicant) and Laxcon Construction (contractor) dated 10/09/2009 indicating works to refurbish an existing residential dwelling.
- Supporting documentation from Pegasus Group (agent) received on 05/08/2015 (ref. HC/JT/LON.0251) with enclosures, including electoral role details, various utility bills (gas, electricity, water and television licence) and residential parking permit details, in support of the assertion that the property has been in use as a single dwelling house for over 4 years.
- Cover letter from Pegasus Group (agent) dated 09/06/2015 (ref. HC/JT/LON.0251) setting out the case to demonstrate that the host property has been occupied as a single residential dwelling for over 4 years.

The applicant has also submitted the following plans:

- Site location plan (ref. LON.0251\_02) dated 12/05/2015.
- Survey drawings (dated August 2008): basement (1082/S 02), ground floor (1082/S 03), first floor (1082/S 04) & second floor (1082/S 05).
- Building Regulations Approval Construction drawings (dated July 2009): basement (1082/WD 02A), ground floor (1082/WD 03B), first floor (1082/WD 04A) & second floor (1082/WD 05A).

### **Council's Evidence**

There is relevant planning history but no relevant enforcement action on the subject site.

E5/13/2/12944 - Planning permission granted for the erection of a side addition to improve access to the 1st and 2nd floor flats. Granted 31/05/1972

E5/13/2/13117 - Planning permission granted for addition of a glazed bay to be used as a conservatory to the rear basement room. Granted 25/05/1972

2008/3825/P - (nos. 8 & 8a) Planning permission granted for change of use of maisonette (comprising basement, ground floor and part of first floor) and self-contained flat (part first floor) to a single residential unit. Granted 26/09/2008

2008/4718/P - Planning permission granted for erection of single storey rear extension including terrace at first floor level, garage extension to front elevation, extension to the existing basement, new front boundary treatment, new terrace to the rear and the felling and replacement of 4 trees. Granted 22/12/2008

2009/1051/P - Planning permission granted for revision to planning permission 2008/4718/P dated 22/12/2008 (for a single storey rear extension) comprising the installation of four air condensing units to the North-West elevation of the approved extension of the existing single family dwelling house. Granted 03/06/2009

2009/4110/P - Replacement of rear ground floor level doors, alterations to the rear ground floor

level orangery and creation of new stairs and external access to basement level, as a revision to planning permission ref. 2009/1051/P granted on 02/06/2009 (for alterations to permission granted on 22/12/2008 ref. 2008/4718/P for a single storey rear extension to the building and a garage extension to the front). Granted 30/10/2009

2009/4392/P – (no. 8b) Planning permission granted for installation of projecting rooflight and access hatch to crown roof top and velux roof light to north-west side roof slope of top floor flat (Class C3). Granted 24/12/2009

2010/0557/P - Alterations and additions to the existing dwelling to include excavation to create an enlarged basement area including swimming pool and sunken terrace as an amendment to application reference 2008/4718/P for "erection of a single storey rear extension including terrace at first floor level, garage extension to front elevation, extension to the existing basement, new front boundary treatment, new terrace to the rear and the felling and replacement of 4 trees" granted permission on 22/12/2008. Granted 23/03/2010

### **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. All the statutory declarations and the building regulations final certificate state that the property has been in use as a single dwelling house (Class C3) for more than 4 years and the additional information supports that assertion.

The information provided by the applicant is therefore deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the property has been in use as a single dwelling house (Class C3) for 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**

