

LDC Report	01/10/2015
Officer	Application Number
Nanayaa Ampoma	2015/4153/P
Application Address	Recommendation
366 Finchley Road London Camden NW3 7AJ	Refuse Certificate
1st Signature	2nd Signature (if refusal)
Proposal	
Conversion of property from 5x self-contained flats and HMO into 9x self-contained flats.	
Assessment	
<p>The application site relates to a two storey semi-detached property on Finchley Road. The area around the site is characterised by commercial and residential uses. However the building is not listed and is not located in a conservation area.</p> <p>The application relates to the conversion of the property into 9 self-contained units without planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing residential unit has existed for a period of 4 or more years.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following plans and information in support of the application:</p> <ul style="list-style-type: none"> • Cover letter (21st July 2015), • Camden Council Decision letter 2010/0534/P, • Camden Council officer report 2010/0534/P, • Camden Council officer acknowledgment 2010/0534/P, • FN Property LTD Building completion letter (25/01/2011), • Block Plan, T212/EX-001, T212/EX-002, T212/EX-003, T212/EX-021 • The applicant was given the opportunity to submit further evidence and on 27th August 2015 submitted Building receipts. <p>Council's Evidence</p> <p>In September 2010, permission was refused for the Change of use from 5 self-contained flats</p>	

and a four room HMO to 8 self-contained units (1x three bed, 1x two bed and 2x one bed and 5x studio flats with associated works – see permission 2010/0534/P). This was followed by two basement applications 2010/5898/P and 2011/2567/P to create a basement, lightwell and several flats. Neither of these applications was retrospective and both were withdrawn.

According to the application form associated with planning permission 2010/0534/P the 'existing' property at that time had no bedrooms and no building works had started. According to the 2011 application form (2011/2567/P) the property was used as 5 flats and a HMO. This application was later withdrawn in August 2011 with no confirmation by officers regarding the actual existing use. However it would not be unreasonable to assume that the existing plans submitted by the applicant were correct.

Planning records also indicate that there have been enforcement investigations for the change of use of the property from HMO to self-contained units in 2011 (EN11/1055) and 2012 (EN12/0583). However the number of self-contained units has never been clear. Officer records indicate that it was not possible to make a full inspection of the site in 2011 to confirm the number of units. This was again the case in 2012 when officers were unable to gain access on 26th June. However it was noted that only eight bins were seen for the property at the time. This contradicted Council tax records which confirmed that the property was used as 10 flats in 2012. No permission for these works or change of use exists.

In June 2015, a site visit was made by the Enforcement Officer. This visit confirmed that the property is currently being used as nine units however the layout did not corroborate with any previous plans submitted. Planning records therefore suggest that the use history of the site is as follows:

- 2010: House
- 2011: 5 flats and HMO
- 2012: 10 flats according to Council Tax
- 2015: 9 self-contained units

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.

In order for the application to be successful it would need to demonstrate that the nine flats/studio apartments have been in existence since July 2011. However regardless of the Council's historic information on the site, the details submitted in support of the application by the applicant fails to tie the use with the number of years required.

The applicant submitted a building completion certificate by FN Property Ltd. However on closure inspection the document fails to adhere to the required tests. FN Property Ltd is a real estate company established in December 2008 and have since gone into liquidation. They are not registered under the Government's building regulations Competent Persons Scheme and

therefore are not considered an authorising body for building works. In addition, the building regulations team hold no records for the works in any form. As such the letter submitted pertaining to be a Building Control Certificate is considered invalid.

Planning records indicate that there have been several conversions of the property without planning permission. However evidence submitted by the applicant themselves as part of the 2011 planning application dated 29th June 2011, clearly indicates that the property was not 9 units at the time of the application and what was proposed was the creation of seven studio units and a HMO with the help of a basement development. The Design and Access Statement for this application refers to nine units. However the existing plans with the application shows four studio apartments and 1x five bed flat used as a HMO and not nine units.

As of from the 7th September 2015 Council tax records indicate that the property is classified as flats 1-9 and a separate flat 'A'. Council tax is therefore being collected on ten units at the property and not nine. This has been the case since the 20th February 2012. It is therefore clear that based on historic records as well as the inadequate information supplied in support of the Certificate, there is no consistent evidence to support the claim that the property has been used as nine flats for four consecutive years since 20th June 2011.

In conclusion, 'on the balance of probability' the applicant has failed to demonstrate that the property has been used as nine flats for the last four years as required by the Secretary of State's direction. The application is therefore refused.

Recommendation: Refuse Certificate