

LDC Report	27/10/2015
Officer Tony Young	Application Number 2015/0912/P
Application Address 46 Eversholt Street London NW1 1DA	Recommendation Grant Certificate of Lawfulness (Existing)
1st Signature	2nd Signature (if refusal)
Proposal Use as 2 residential units at basement, part ground, 1st & 2nd floor levels (Class C3).	
Assessment <p>The application site is a basement plus 3-storey property located within a terrace on the eastern side of Eversholt Street. The street lies north of the junction with Euston Road and south of Mornington Crescent. Similar terraced properties with a variety of commercial uses are located to the north and south with mainly residential properties at the rear.</p> <p>The building is not listed and doesn't sit within a conservation area, however, it is identified as a non-designated heritage asset.</p> <p>The application relates to the use of part of the host property as 2 residential units. Previously the property had a retail use at part ground floor level and the basement, part ground and upper floors were used as a single residential unit. The residential part is now sub-divided into 2 residential units – 46A is at basement and part ground floor level, and 46B is at 1st and 2nd floor levels – with the retail use retained at part ground floor level.</p> <p>The application seeks to demonstrate on the balance of probability that the property has been in use as 2 residential units (Class C3) for a period of 4 years or more, such that its' continued use would not require planning permission.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • Woodroffes Solicitors letters dated 23/01/2008 and 06/05/2008 in relation to a dispute over works carried out and indicating the sub-division of the property prior to 2008; • MM Electrical schedule of works dated 08/06/2006; MM Electrical final account & letter dated 15/06/2006 and 28/06/2006; MM Electrical job sheet dated 24/07/2006 – all indicating works carried out to sub-divide the property during 2006; • H.B. Design & Construction costing of works dated 15/01/2006 indicating works carried 	

- out to sub-divide the property during 2006;
- Small Claims Order (ref. 6EC03887) dated 16/01/2007 between Mr K Manandhar (applicant) and MM Electrical in relation to a dispute over works carried out and indicating the sub-division of the property prior to 2007;
- Electricity bills dated 28/09/2006 (flat 46a) and dated 05/10/2006 (flat 46b) demonstrating bills for two separate units during 2006;
- SAI Properties tenancy letter 24/04/2015 stating that they rented flat 46b at various times between 2011 and 2013;
- Victorstone Property Consultants letter 09/09/2010 demonstrating renting of flat 46A in 2010;
- Allen Goldstein letter dated 22/04/2015 demonstrating renting of flat 46B from August 2013 to August 2014;
- Tenancy agreements dated 15/06/2012 and 15/08/2012 in relation to upper floor flat (flat 46B) and demonstrating the sub-division into 2 residential units.

The applicant has also submitted the following plans/photographs:

- Site location plan (ref. 0989-001) dated 20/01/2015.
- Drawings (dated 20/01/2015): 0989.005 - basement & ground (pre-existing) floor plans; 0989.006 - 1st & 2nd (pre-existing) floor plans; 0989.010 - basement & ground floor plans (for clarity, 46a is described as 'flat 1' on this drawing and 46b as 'flat 2'); 0989.011 - 1st & 2nd floor plans
- Photographs: (1) front doors flats A and B; and (2) shared front entrance from Eversholt Street.

Council's Evidence

There is relevant planning and enforcement history on the subject site:

PSX0004635 – (46-48) Change of use of the basement and ground floor of no:46 from retail to restaurant to be used in connection with the existing restaurant at no:48 and the erection of a single storey rear extension at first floor level to be used for additional residential premises. The installation of new ventilation duct, the provision of a new lightwell to the front of the no:46 and the installation of a new shopfront to both properties. Refused 05/09/2000

PSX0104667 – Extension to existing residential flat (Class C3) at rear first floor level. Granted 30/04/2002

2003/1178/P – (46-48) Change of use of ground floor of no. 46 from retail (Class A1) to restaurant (Class A3), three-storey rear extension of no. 46 to provide additional restaurant facility and residential accommodation and a roof extension to nos. 46 & 48 for additional residential accommodation and alterations to existing shopfronts. Refused 16/09/2003

2004/2107/P - Change of use from Class A1 (retail) to Class A2 (financial and professional services) at basement and ground floor levels. Refused 07/09/2004

2005/0754/P - Change of use of the ground floor from Class A1 (retail) to Class A2 (financial and professional services). Refused and dismissed on appeal 20/04/2005

EN13/1191 – Property reported to be divided and used as 2 residential units. Enforcement case created 21/10/2013 leading to the submission of the application considered here in this report.

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 (paragraph 006 of the National Planning Policy Framework effective 06 March 2014). 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 supporting evidence indicates that the property has been in use as 2 residential units (Class C3) for more than 4 years, and a site visit along with 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 2 residential units (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