

LDC Report	31/03/2015
Officer	Application Number
Matthias Gentet	2015/0559/P
Application Address	Recommendation
3-5 Camden High Street London NW1 7JE	Approve Certificate of Lawfulness (Existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Retained use of 6 x 1-bed self-contained residential flats (Class C3).	
Assessment	
<p>The application site is located at the south end part of Camden High Street, overlooking a traffic highland with Cobden Statue erected at its centre and facing Koko (formerly The Camden Palace) which is a Grade II Listed Building.</p> <p>The application relates to all upper floors – ground floor is for commercial use.</p> <p>The building is not listed and is located in the Camden Town Conservation Area.</p> <p>The application seeks to demonstrate that the first, second and third floors have been in residential use (Class C3) 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 unit has existed for a period of 4 or more years.</p> <p>Permission was granted on 7th July 1975 for the construction of an additional storey to provide two habitable rooms and a bathroom for the flat on the second floor (20531), followed by the approval on 20th June 1991 for the erection of a rear extension to second floor level to provide additional residential accommodation for the existing self-contained flat together with the erection of a roof extension at third floor level to provide 2 x 1-bedroom self-contained residential flats (9003492), permission renewed on 26th July 1996 together with erection of a roof extension at 3rd floor level to provide 2 self-contained flats (P9601777).</p> <p>However, six residential units were created out of the five residential units approved under application reference: P9601777. The applicant seeks to legitimise the residential use of the 6th</p>	

residential unit.

Applicant's Evidence

The applicant has submitted the following information in support of the application:

- Application form with Reaptry Ltd as the applicant
- Statutory Declaration for all 6 residential units, signed by Androula Papadopoulos and dated 17th March 2015;
- 6 year lease between Reaptry Ltd (landlord) and Christopher House (London) Ltd, (tenant) signed by Mrs A Papadopolous as a director of Reaptry Ltd and dated 16th September 2009 expiring 15th September 2015;
- Purchase Orders from various local authorities (Westminster, Haringey, Islington, Enfield, Camden, Waltham Forest, Barnet) for the temporary renting of the 6 individual flats to house homeless people;
- Spread sheets detailing the length of let from the various tenants for each flat.
- Email providing extract from the legislation: The 2015 Deregulation Act 2015 amended The Greater London Council (General Powers) Act 1973 is amended the provision in relation to short let accommodation in London - Section 25A (*Please see email dated 18/05/2015*)

The applicant has also submitted the following plans:

- A site location plan outlining the application site ref: 995/01;
- Ground and First floor plans ref: 995/02;

Council's Evidence

2004/2208/P - The erection of a roof extension to enlarge the existing residential unit – Refused on 04/08/2004.

PE9900745 - Erection of a 1.75m high obscure glass screen enclosure in connection with retention of a roof terrace at 1st floor level – Refused on 09/11/1999.

P9601777 - Renewal of planning permission for erection of a rear extension to second floor level to provide additional residential accommodation for existing self-contained flat together with erection of a roof extension at 3rd floor level to provide 2 self-contained flats – Granted on 26/07/1996.

9003492 - Erection of a rear extension to second floor level to provide additional residential accommodation for the existing self-contained flat together with the erection of a roof extension at third floor level to provide 2 x 1-bedroom self-contained residential flats – Granted on 20/06/1991.

20531 - The construction of an additional storey to provide two habitable rooms and a bathroom for the flat on the second floor – Granted on 07/07/1975.

K12/2/1/14161 - The erection of a fourth storey at Nos. 3-5 Camden High Street, N.W.1, to provide a self-contained dwelling unit – Refused on 07/02/1973.

TP103600/17029 - The erection of a building comprising basement ground and three upper floors on the site of Nos. 3-5 Camden High Street, St. Pancras, and for its use as a shop and estate agents office on the ground floor and flats on the three upper floors – Refused on 20/11/1964.

A site visit to the property was undertaken on the Wednesday 01/04/2015.

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 most recent permission for the upper floors shows the 1st, 2nd and 3rd floors split into 5x flats. However, the 2 bedroom flat at second floor level has been converted into 2 x 1-bed flats. Therefore the property currently provides 6 x 1-bed flats (2 per floor) from 1st to 3rd floor levels.

Statutory Declaration

This declaration states that the flats (1-6) have been “separate flats continuously since 1st May 1999”, however this is not corroborated by the Council’s records.

An application was submitted on 10th September 1999 (ref PE9900745) by Reaptry Ltd for the “Erection of a 1.75m high obscure glass screen enclosure in connection with retention of a roof terrace at 1st floor level”. The submitted application form (section 8) refers to the property being divided into 5x self-contained flats. The submitted plans (drawing no. SK/02) shows the second floor laid out as a single 2-bedroom flat (flat 3) rather than 2x 1-bedroom flats.

A further application was submitted in 2004 for “The erection of a roof extension to enlarge the existing residential unit” (ref 2004/2208/P). This application, by a different applicant, also refers to the property as being in use as 5x flats rather than 6.

As such, it appears that in 1999 the second floor was a single 2-bedroom flat and not 2x flats, therefore the upper floors would have contained 5x flats and not 6 as indicated by the statutory declaration. The second floor was divided into 2x flats some time after 2004, but there is no evidence to indicate when this happened.

Occupancy

The applicant has supplied a breakdown of the occupancy of the flats, including the names of the tenants, their period of occupancy, and who placed them there:

Flat 1

A single occupier since 2004, placed there by Camden Council.

Flat 2

Three different occupiers in 2010, placed there by the boroughs of Barnet, Camden, and Islington, with a fourth tenant occupying the flat from December 2010 to present.

Flat 3

Five different occupiers from May 2010 to December 2012, placed there by Barnet, Camden and Islington. A sixth tenant occupying the flat from September 2012 to present.

Flat 4

One tenant from 2008 to 2013, two separate tenants for a total of less than three months in 2013, one tenant from September 2013 to present.

Flat 5

Seven tenants from January 2011, the most recent occupying the flat from March 2014 to present.

Flat 6

Twelve tenants from May 2010, the most recent from October 2014 to present.

As shown in the evidence submitted by the applicant, all of the tenants have been placed there by local authorities, including Camden, Islington, Hackney, Haringay, Westminster, Barnet and Enfield. The invoices and purchase orders from the authorities housing departments variously refer to emergency and temporary accommodation.

Whilst two occupants have been in their flats for five or more years, other occupiers (current and previous) have been there for significantly shorter periods. The submitted invoices indicate that the residents do not have a binding tenancy with the landlord, in all cases the agreements are between Christopher House (T/A Limelight Properties) and the various local authorities.

As such, based on the evidence submitted by the applicant it is clear that the units have been let out as temporary accommodation to various local authorities. It could be argued that flats 1 and 2 have become permanent residential as they have been occupied as such for more than 4 years, however there is no limit to how long temporary accommodation can be occupied and the application is for the existing use of all the flats, the remainder have not been occupied by a single tenant for four years or more.

Temporary accommodation does not fall under the C3 use class which is for permanent residential. The use of the flats has been to provide temporary and emergency accommodation for local authorities which would be a Sui Generis use.

The applicant contends that even though some of the periods of occupation have been for less than 90 days, this does not prevent the planning unit falling within the C3 use class.

The applicant refers to the 2015 Deregulation Act 2015 which amends The Greater London Council (General Powers) Act 1973 in relation to short let accommodation in London. Section 25A states

- (1) Despite section 25(1), the use as temporary sleeping accommodation of any residential premises in Greater London does not involve a material change of use if two conditions are met.
- (2) The first is that the sum of—
 - (a) the number of nights of use as temporary sleeping accommodation, and
 - (b) the number of nights (if any) of each previous use of the premises as temporary sleeping

accommodation in the same calendar year, does not exceed ninety.

- (3) The second is that, in respect of each night which falls to be counted under subsection (2)
- (a)—
- (a) the person who provided the sleeping accommodation for the night was liable to pay council tax under Part 1 of the Local Government Finance Act 1992 in respect of the premises, or
- (b) where more than one person provided the sleeping accommodation for the night, at least one of those persons was liable to pay council tax under Part 1 of that Act in respect of the premises.
- (4) For the purposes of subsection (2)(b), it does not matter whether any previous use was by the same person.”

The applicant contends that the application property was constructed to provide self-contained flats and as such is not contested by the Council (agreed) and that the Deregulation Act 2015 now makes clear that tenancies of less than 90 days do not in principle constitute a material change of use.

The above section of the act was largely introduced to give flexibility to homeowners, not letting companies, allowing them to lawfully let their properties out for short periods. It is not considered applicable in this instance as

(1) the temporary sleeping accommodation should not exceed 90 days per year - in this case the temporary accommodation is provided continuously throughout the year.

(2) the person providing the accommodation is liable for council tax - in this instance it is not an individual providing the accommodation, it is Lime Light Properties, and the Council tax is, by the applicant's admission, paid by the residents.

Furthermore, the “90 day” period relates to C3 uses only, with lets of less than 90 days potentially being unauthorised, unless they meet the criteria of Section 25A of the Deregulation Act. It is the Council's position that as the upper floors are not in a C3 use, the 90 day period is not applicable.

The 90 day rule does not operate both ways. Whilst letting out a unit that is lawfully within the C3 use class for less than 90 days could potentially be a change of use, the same does not apply in the opposite direction i.e. if a planning unit is in use a temporary accommodation (outside the C3 use class) any occupancy of more than 90 days would not constitute a change of use, as there is no limit upper time limit to temporary accommodation.

Conclusion

The onus is on the applicant to demonstrate that, on the balance of probability, the upper floors have been in permanent residential use for the last four years.

The applicant's statutory declaration, that the upper floors have been in use as 6x flats, contradicts the Council's planning records, which include an application form and plans submitted by the applicant in 1999 which clearly demonstrate that the premises were in use as 5x flats. As such, there is no evidence to demonstrate when the use of the upper floors as 6x flats began.

The applicant's own evidence demonstrates that tenants have been placed at the site by local authorities. This has been variously described in the invoices as temporary and emergency accommodation. Such accommodation is a sui generis use and does not fall within the C3 use class. Whilst two of the units have been occupied by the same tenant for more than four years,

the other units have been occupied on a more temporary basis. All six units are treated as a single planning unit for the purposes of this application as the application form refers to all six units.

As such, the applicant has not demonstrated that, on the balance of probability, the upper floors have been in a permanent residential use (Class C3) for the last four years.

Recommendation: Refuse Certificate of Lawfulness