

<b>LDC Report</b>	01/02/2016
<b>Officer</b>	<b>Application Number</b>
Tony Young	2015/7024/P
<b>Application Address</b>	<b>Recommendation</b>
Flat 3rd Floor 103 Canfield Gardens London NW6 3DY	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 as 1 x 2-bed self-contained flat at 3rd floor level.	
<b>Assessment</b>	
<p>The application site is located on the south side of Canfield Gardens between Priory Road to the west and Fairhazel Gardens to the east.</p> <p>The building is not listed and sits within South Hampstead conservation area.</p> <p>The application seeks to demonstrate that on the balance of probability the use as a 2-bed self-contained flat at 3rd floor level began more than four years before the date of this application such that their retention would not require planning permission.</p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>• Statutory declaration from Hilmar Schonauer (owner and applicant) dated 02/12/2015 asserting that the self-contained flat has been in existence since 04/09/2003 and referring to drawings also provided as part of this submission.</li> <li>• Statutory declaration from Spencer Levene (managing and lettings agent) dated 02/12/2015 asserting that the self-contained flat has been in existence since 2010 and has been continuously used and let as a self-contained flat from that date until the present day.</li> <li>• Tenancy agreements, various utility bills and gas safety certificates (various dates from 2007 to 2015) demonstrating the existence of a self-contained flat since 2007 until the present day.</li> </ul> <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> <li>• 151019-01 - site and block plans outlining the application site;</li> <li>• 151019-02 – ground and 1<sup>st</sup> floor plans</li> </ul>	

- 151019-03 – 2<sup>nd</sup> and 3rd floor plans

### **Council's Evidence**

There is relevant planning history and no enforcement history on the subject site:

PWX0002579 – The provision of two dormers and a velux rooflight on the rear roofslope, three rooflights on the front roofslope and two rooflights on the side roofslope, together with a roof terrace positioned behind the rear roofslope and alterations to the second floor stair window to provide additional habitable accommodation for the second floor flat. Granted planning permission dated 06/11/2000

9100120 - Formation of a means of access to the highway in connection with the formation of vehicle hardstanding for two cars. Refused planning permission dated 02/07/1991

8905803 - Formation of a means of access to the highway in connection with the construction of a vehicle hardstanding for two cars. Refused planning permission dated 28/03/1990

27399 - The change of use to three self-contained dwelling units, including works of conversion. Granted planning permission dated 17/01/1979

20124 - The conversion of No. 103, Canfield Gardens, N.W.6. into four self-contained flats including the formation of one flat in the roof space. Granted planning permission dated 17/02/1972

### **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 Practise Guidance para. 006), 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. The documents provided demonstrate that the use as a self-contained flat at 3rd floor level had begun since at least 2010 and has remained unaltered until the present time.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the use as a 2-bed self-contained flat at 3rd floor level began more than four years before the date of this application as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

**Recommendation: Approve**