

LDC Report	18/04/2016
Officer	Application Number
Tony Young	2016/0287/P
Application Address	Recommendation
Basement Flat 92 Fleet Road London NW3 2QX	Grant Certificate of Lawfulness (Existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Use as a 1-bed self-contained flat at basement floor level.	
Assessment	
<p>The application site is a 4-storey terraced property with a basement located on the northern side of Fleet Road near the intersection with Cressy Road. The ground floor is currently used as a shop and the upper floors are in residential use. A similar mix of commercial and residential properties adjoin the site on either side and along the wider terrace.</p> <p>The building is not listed and sits within the Mansfield Conservation Area.</p> <p>This application relates to the basement floor only and seeks to demonstrate that on the balance of probability the use as a 1-bed self-contained flat at basement floor level began more than four years before the date of this application such that their retention 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"> • Council tax payment records (for the continuous period from 01/10/2005 until 31/03/2016) confirming the existence of a self-contained flat since at least the end of 2005. <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> • Unnumbered site location plans outlining the application site; • Unnumbered basement floor plan. <p>Council's Evidence</p> <p>There is relevant planning history and no enforcement history on the subject site:</p>	

2008/1638/P - Installation of an extraction unit at the rear of the existing retail unit (Class A1). Planning permission granted 28/10/2008

2006/4308/P - Change of use from the existing 2 x flats at first and second floors to 2 x 2 bed flats at first floor and 2 x 3 bed maisonettes at second and third floors, including the erection of a two storey rear and side extension, and the creation of a new floor at roof level. (Amendment to approved application 2005/3918/P dated 12/01/06 for 2x1-bed flats at first floor and 2x3-bed maisonettes at second and third floors). Planning permission granted 10/05/2007

2005/3918/P (nos. 90/92) - Change of use from the existing 2 x flats at first and second floors to 2 x 1 bed flats at first floor and 2 x 3 bed maisonettes at second floor and above, including the erection of a two storey rear and side extension, and the creation of a new floor at roof level. Planning permission granted 12/01/2006

2005/3918/P (nos. 90/92) - Change of use from the existing 2 x flats at first and second floors to 2 x 1 bed flats at first floor and 2 x 3 bed maisonettes at second floor and above, including the erection of a two storey rear and side extension, and the creation of a new floor at roof level. Planning permission granted 12/01/2006

2004/4304/P (nos. 90/92) - Change of use and works of conversion of upper parts from 1 x 2 bed maisonette and 1 x 3 bed maisonette to provide four self-contained flats (2 x 3 bed maisonette, 1 x 2 bed, 1 x 1 bed) including first floor rear extension, roof extension and associated alterations. Planning permission refused 16/12/2004

9201240 - Erection of an extension at lower ground, ground, first and second floors; change of use of basement to self-contained flat conversion of first and second floors to two bed flats erection of rear fire escape and excavation of front basement area and provision of front access steps and railings. Planning permission refused 18/02/1993

9005246 - Change of use and works of conversion of the 1st and 2nd floors to 2 self-contained, 2-bedroom flats and the extension of the ground floor offices at the rear; including the erection of a new 3-storey rear extension. Planning permission refused 13/08/1992

19425 - Change of use of basement, first and second floors to three self-contained one-bedroom flats, including the erection of a new three storey extension. Planning permission refused 28/11/1974

19226 - Change of use of upper floors to two self-contained, one-bedroom flats and the erection of a new two-storey rear extension comprising sitting room extension/bathroom, over store/toilet for ground floor shop. Planning permission refused 04/10/1974

The most recently approved planning application (ref. 2008/1638/P) refers to the existing use of the basement floor level in the officer's report as being in residential use, so affirming the use in 2008 and supporting the applicant's assertion.

Camden's Council Tax and Business Rates records confirm that council tax has been paid for the basement level flat at no. 92 for at least the last 4 years.

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 basement floor level had begun since at least 2004 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 1-bed self-contained flat at basement 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