

<b>LDC Report</b>	08/08/2016
<b>Officer</b>	<b>Application Number</b>
Tony Young	2016/2901/P
<b>Application Address</b>	<b>Recommendation</b>
1st Floor Rear 194 Kilburn High Road LONDON NW6 4JD	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 of 1st floor rear as a 1-bed self-contained flat (Class C3).	
<b>Assessment</b>	
<p>The property is a 4-storey Victorian terraced building situated on the eastern side of Kilburn High Road. The ground floor operates as a retail unit and the upper floors are used for residential purposes with access provided through a separate entrance door to the right of the retail shop entrance on Kilburn High Road.</p> <p>The building is not listed and does not sit within a conservation area.</p> <p>This application seeks to demonstrate that on the balance of probability the use as a 1-bed self-contained flat at 1st floor rear (known as Flat 2 on drawing ref. MAL1001 rev D) began more than four years before the date of this application such that its 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 Mr. Mohammad Malik Ramzan (applicant and owner on behalf of AKK Investments Ltd) dated 13/06/2016 asserting that the 1<sup>st</sup> floor rear has been used as a 1-bed self-contained flat since at least 2011 and has operating continuously ever since;</li> <li>• Lease agreement dated 30/08/1994, Letter from Gerald Eve dated 31/03/2011, Valuation report from Nationwide Building Society dated 27/04/2011, and miscellaneous documents, including utility bills, tenancy agreements &amp; valuation report (various dates since 2011) confirming the existence of a 1-bed self-contained flat at 1st floor rear since 2011.</li> </ul> <p>The applicant has also submitted the following plans:</p>	

- Unnumbered site location plan outlining the application site;
- Existing ground floor plan (ref. 2352/4 rev C);
- Existing and pre-existing 1<sup>st</sup> floor plans (ref. MAL1001 rev D1, MAL1002 rev D1).

### **Council's Evidence**

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

2009/5830/P - Change of use of 1st, 2nd and 3rd floors from offices (Class B1) into three x 1 bed self-contained flats (Class C3). Planning permission granted subject to a section 106 legal agreement in 13/09/2010

2009/5439/P - Erection of part basement at rear, part two storey, and part three storey (including mezzanine) rear extension to provide ancillary accommodation in the basement and part ground floor and 3x one bed units (Class C3) following demolition of existing two storey rear extension. Planning permission refused in 12/08/2011

2008/0802/P - Erection of two storey rear extension (for additional retail floorspace and residential accommodation) and change of use of upper floors from offices (Class B1) into four x 1 bed self-contained flats. Planning permission refused in 06/08/2008

8500833 - Erection of infill extensions to the rear at ground and first floors to provide additional retail and office floorspace respectively. Planning permission granted in 30/07/1985

8401183 - Erection of a rear ground floor extension to shop. Planning permission granted in 25/07/1984

CTP/H4/24/7/20501 - Change of use of the first floor to offices, including works of conversion. 10/04/1975

TP14173/1385 - The use of the first floor of No. 194, Kilburn High Road, Hampstead, as a dental surgery. Planning permission granted in 04/06/1951

Camden's Council Tax and Business Rates records confirm that council tax has been paid for the residential 1<sup>st</sup> floor rear since at least 2011.

### **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 1-bed self-contained flat at 1st floor rear had begun since 2011 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 1st floor rear 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**