

LDC Report		04/01/2017
Officer		Application Number
Hugh Miller		2016/6180/P
Application Address		Recommendation
24A Heath Street London NW3 6TE		Grant Certificate
1st Signature		2nd Signature (if refusal)
Proposal		
Use of building as a gym and fitness studio (class D2)		
Assessment		
<p>The application site is located on the eastern side of Heath Street, south-east of the junction with Oriel Place.</p> <p>The submitted documents (<i>Npower – Electricity Bill, Thames Water Bills, TechnoGym Invoices, TechnoGym – Fitness & Biomedical Equipment, Client membership fee, Eleven Statutory declarations,</i>) relate to gym and Fitness Studio at 1st floor level at 24A Heath Street.</p> <p>The building is not listed and is located in the Hampstead Conservation Area.</p> <p>The application seeks to demonstrate that the Fitness Studio at 1st floor level at 24A Heath Street has existed for a period of 10 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 10 or more years.</p> <p>Planning History</p> <ul style="list-style-type: none"> February 1996- PP Granted - Change of use of the first floor from offices to a sports rehabilitation clinic (D1); ref. 9501113. October 1996 - PP Granted - Approval of details of sound installation pursuant to additional condition 02 attached to the planning permission granted on 09.02.96 (Ref: PI/950113) for the use as a sports rehabilitation clinic (D1). <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"> Thames Water Service bill dated 14 December 1999 		

- Thames Water Service bill dated 31 January 2000
- Npower (electricity statement) dated 29 October 2001.
- 05/06/1998 - Invoice no.5198 to 24a Heath Street - 'The Excellent Health Company' – [sports rehab & personal training] from; TechnoGym – Fitness & Biomedical Equipment.
- 15/02/1999 - Invoice no. 6879 - to 24a Heath Street - 'The Excellent Health Club' from TechnoGym – Fitness & Biomedical Equipment.
- 16/12/1999 - Invoice to 24a Heath Street - 'The Excellent Health Company' – [sports rehab & personal training];
- 19 /09/1999 - Statement of Account no.C00728 – 24a Heath Street - dated TechnoGym – The Wellness Company – Payment reminder/ request.- Lloyds TSB Bank Statement dated October 2001.
- 08/02/2000 - Invoice no.11681 to 24a Heath Street - 'The Excellent Health Company' – [sports rehab & personal training] – from TechnoGym – The Wellness Company.
- 28 /04/ 2000 - Statement of Account – 24a Heath Street - dated TechnoGym – The Wellness Company – Payment reminder/ request.
- 26/07/2005 - Invoice N Topping - to 24a Heath Street - 'The Excellent Health Company' – [sports rehab & personal training];
- 04/09/2005 - Invoice from N Topping to 24a Heath Street - 'The Excellent Health Company' – [sports rehab & personal training];

Statutory Declaration

Ten (10) Statutory Declarations have been submitted; comprising names and addresses, signatures, all witnessed by a variety of solicitors and dated between September and October 2016 by clients who have attended Fred's Gym since 1996 for personal training. The Statutory Declarations state that visits range between once, twice or three visits per week per individual. The names and address of clients stating that they are regular attendees of the gym have been submitted; and the declarations are almost identical except for differences in frequency in the clients' attendances. The names and address of the clients also a summarised version of a declaration is given below as follows:

- Gary Phillips, 3 Coach House Yard Hampstead High St.
- Deborah Davis, 27 Church Row, London NW3 6 UP
- Mrs Susan Harmer, 27 Gayton Road, London NW3 1TY
- Michael Sonnenthal, 4 Frognaal Rise , London NW3 6RD
- Phillip Jack Alexander, 19 Cavendish Crescent, Elstree Herts. WD6 3JW
- Tania Stowe, 38a Downshire Hill, London NW3 1NU
- Paddy Walker, 38a Downshire Hill, London NW3 1NU
- Vincent Smith, 13 Rothamstop Avenue, Harpenden, AL5 2DD.
- Mark Chapman, 14 Christchurch Hill, London NW3 1LB
- Penny Fitzpatrick, 14 Christchurch Hill, London NW3 1LB.

A. Statutory Declaration – made by Gary Phillips of 3 Coach House Yard Hampstead High St. dated 26/09/2016 at Taylor Wessing Solicitor, 5 New Street Square London EC4A 3TN commented as follows:

- He has been a regular client of Fred's Gym, 24 Heath St consistently since 1996 (20 years) to present; and he visit Fred's Gym, 24 Heath St twice per week;
- Although the layout has changed on several occasions, he confirms the 1st floor has been used as a gym and fitness studio continuously since 1996.
- To his knowledge, there are 20-25 regular clients to the gym per week and the premises have been open 7 days per week since opening in 1996.

B. Statutory Declaration – made by Kenneth Wolfson of Wolfson Associates, 1st floor, 314

Regents Park Road, Finchley, London N3 2LT; dated 19/10/2016 at Masood Haider, BSG Solicitor LLP, 314 Regents Park Road, Finchley, London N3 2JX, commented as follows:

- He has been employed by the applicant, Fred Kindall as his accountant since September 2001 to the present.
- He has been responsible for submitting tax returns in relation to the gym since September 2001, also daily book-keeping and associated duties.
- To the best of his knowledge, the 1st floor of 24a Heath Street has been used as a gym and fitness studio contentiously since September 2001.
- To his knowledge, there are 20-25 regular clients who attended the gym per week and the premises have been open 7 days per week since September 2001.

Business Rates: -

Information has been obtained from the Valuation Office Agency website (www.voa.gov.uk) demonstrating that 24a Heath Street has been registered as a 'gym and premises' since at least 1 April 2010. The applicant accept that this information is not in full compliance as it does not does not cover the full 10-year period. Apparently, the applicant did not submit LB Camden's business rates information because they do not specifically refer to the use of the premises; but if needed for the purposes of clarity and avoidance of doubt is prepared to submit to the Council.

Council's Evidence

There is no relevant planning history or enforcement action on the subject site. The Council is satisfied that the evidence that has been submitted demonstrates the continuous use of the 1st floor as Gym fitness studio.

A site visit to the property was undertaken on the 12/12/2016. The officer was satisfied that the gym and Fitness Studio at 1st floor level, had been occupied for use for some time.

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 Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the lower ground floor unit has existed in residential use for a period of 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