

LDC Report	10/03/2017
Officer	Application Number
John Nicholls	2016/5356/P
Application Address	Recommendation
86A Plender Street London NW1 0JN	Refuse
1st Signature	2nd Signature (if refusal)
Proposal	
Use as 4 studio units (Class C3) at 1st and 2nd floor levels	
Assessment	
<p>The site is located on the southern side of Plender Street, on a corner site at the junction of Bayham Street and Plender Street.</p> <p>The site comprises a 3-storey end of terrace building, which retains original windows in the rear elevation, timber sash windows in the front elevation and some shopfront features. The ground floor is in use as an A2 estate agent with the upper floors in use as residential accommodation. Single storey extensions exist at ground floor level to the rear and side.</p> <p>The site is within the Camden Town Conservation Area and is not listed. There is no on-street parking on Plender Street.</p> <p>The application seeks to demonstrate that x4 studio flats have existed 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 probabilities; that the existing residential units have existed for a period of 4 or more years.</p> <p><u>Applicant's Evidence</u></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • A marketing leaflet dated June 2009, advertising the shop and 4 self-contained flats by Property Centre. This has a plan on the back of the upper floors showing the layout; • A x2 year tenancy agreement for the period dated 8th December 2011; let by the landlord Renato Investments Ltd c/o Property Centre (London) Ltd, 5 Ashfield Parade, Southgate, London, to a tenant called Falcon Apartments Ltd for all 4 studio flats; • A x2 year tenancy agreement for the period dated 8th December 2013; let to a tenant called Falcon Apartments Ltd for all 4 studio flats; • A x2 year tenancy agreement for the period dated 8th December 2015; let to a tenant 	

called Tony Alan Investment Ltd for all 4 studio flats;

- An affidavit signed and dated (29th September 2016) by George Kouttoukis, a Director at Property Centre (London) Ltd, stating that; the company acts as managing agents for Renato Investments Ltd; that they have been familiar with the building since 2009; that he can confirm that since Renato's ownership of the building in November 2009, there has been a ground floor commercial unit and the upper parts have been in continuous use as four separate self-contained studio flats.

The applicant has also submitted the following plans:

- A site location plan outlining the application site at 1:1250 scale;
- A set of unscaled and undated "Existing plans" which delineate the 4 upper floor studio units in and is the same plan on the back of the marketing leaflet, but this one is colour coded to show the units more clearly.

Council's Evidence

Planning History:

2003/0002/P –The installation of a new shopfront and the use of the upper floors as 2 self-contained residential units (2x1 beds), with associated works to include access from Bayham Street, 4 new windows in the flank elevation, a 1st and second floor rear extension, replacement UPVC windows in the front elevation and a replacement single storey ground floor extension to the side – Refused - 18/3/2004

2004/4219/P - The erection of rear extension at first and second floor levels to form two studio flats and the installation of a new shopfront to the existing ground floor retail unit - 25/11/04 – Dismissed on appeal – Refused - 23/05/2005

2004/5494/P - The erection of a rear extension at first floor level to form a two-bedroom maisonette and the installation of a new shopfront to existing retail unit at ground floor. – Granted - 16/02/2005

2005/1837/P - Change of use of ground floor from retail (A1 Use Class) to restaurant (A3 Use Class) together with installation of external ventilation duct on rear elevation – Withdrawn

2011/5751/P - Retrospective Planning Application for the change of use of ground floor from retail (Class A1) to estate agency (Class A2) – Refused - 25/01/2012. Allowed on appeal – 28/6/2012

Enforcement History

EN14/0104 – Change of use to an estate agent without permission – Closed - 04/02/2014 – No breach found

EN15/1120 - Property has been converted from a maisonette to 4 apartments. They are also being let on a short term basis.

- Council Tax has confirmed that the liability for Council Tax for the former upper floor maisonette ended took effect from 18th March 2006. The property has never been re-assessed since and the unit still pays Council Tax for the single upper floor maisonette. In addition, the Council Tax payers are different from Renato Investments Ltd;

- As part of the enforcement investigation (Ref: EN15/1120) into the use of the property as short term lettings, a site visit to the property was undertaken on the 19th February 2016. The officer was satisfied that the unit was divided into x4 self-contained studio flats;
- As part of their enforcement investigation the Council served a Planning Contravention Notice (PCN) on the owners. The response to this PCN confirmed that the property had been used for short term lettings but only for a 20 day period between 8th October 2015 and 5th November 2015;
- Officers have kept regular checks on Booking.com since the case was opened on 3rd November 2015 and have notes of guest reviews back to that date for the studio flats being rented out on a short term basis. The following web link is still active today: http://www.booking.com/hotel/gb/regent-canalside-apartments.en-gb.html?aid=397597;label=gog235jc-index-en-XX-XX-unspec-gb-com-L%3Aen-V%3A0ahUKEwj01YvfmczSAhXFK8AKHTthHAOcQFggoMAA-O%3AawindowsS7-B%3AinternetSexplorer-N%3AAXX-S%3Aabo-U%3Ac;sid=63b6360a9a94d1b3c1a8dda877333e3a;dest_id=1543;dest_type=district;dist=0;group_adults=2;hpos=1;room1=A%2CA;sb_price_type=total;srfid=bf2bebcf9a734340cfe485715d24afec18095ef5X1;type=total;ucfs=1&

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 has presented a substantial amount of evidence to contradict or undermine the applicant’s version of events in proving that the lawful use of the upper floors of the property are as 4 self-contained studio flats for a continuous period of 4 years.

The application was submitted with information to prove the use has been continuously used as C3 residential use. However, the Council’s evidence suggests that the property has been used for short letting on the Booking.com webpage since autumn 2015, and this web page is still active. Officers have been able to book test dates online to prove this to be the case. This would seem to suggest that the current use is short term letting (sui generis use) and not permanent C3 residential.

Furthermore, it was also clear when visiting the studio flats, that with 2 flats occupied and 2 vacant they weren’t all being lived in when an officer checked these in February 2016. In addition, there was a lack of clothing in wardrobes, suitcases were evident in the rooms, and a lack of food in the fridge suggested that the properties were not being used for long term lettings.

Finally, it is also not clear who is responsible for undertaking the short term letting because the tenant on the current lease is not the same as those paying the Council Tax. Therefore, it is unclear whether the owners knew that this was being carried out, before the Council informed them.

The information provided by the applicant is therefore not deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the upper floor units have existed in residential use for a continuous period of 4 years or more as required under the Act. Furthermore, the Council's evidence contradicts and undermines the applicant's version of events, and would seem to suggest the use is not that of permanent C3 residential accommodation.

Therefore, although the owners have presented evidence to prove the use of the upper parts being used for more than four years as self-contained dwellings (Class C3), the certificate being considered in this application has to assess the current situation. In addition, the evidence also needs to prove a continuous use over the previous 4 years. Unfortunately, in this instance, the Council has contrary evidence to prove that the main use for the last 18 months seems to have been short term letting (*sui generis*), and therefore has no option but to refuse the certificate.

Recommendation: Refuse