

LDC Report	18/05/2017
Officer	Application Number
Tony Young	2017/1542/P
Application Address	Recommendation
Flat 9 42 Fellows Road London NW3 3LH	Grant Certificate of Lawfulness (Existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Use as 1-bed residential flat (Class C3) at 2nd floor level.	
Assessment	
<p>The application site comprises an existing semi-detached ground plus 3-storey property, situated on the northern side of Fellows Road, close to its junction with Primrose Hill Road to the east. The property is sub-divided into flats and this application relates to Flat 9 at 2nd floor level.</p> <p>The building is not listed and sits within the Belsize Park conservation area. The building is considered to make a positive contribution to the conservation area (Belsize Park conservation area statement, adopted December 2002).</p> <p>This application seeks to demonstrate that on the balance of probability the use as a 1-bed residential flat (Class C3) at 2nd floor level began more than four years before the date of this application such that its retention would not require planning permission.</p>	
Applicant's Evidence	
The applicant has submitted the following information in support of the application:	
<ul style="list-style-type: none"> Valuation Office Agency (VOA) letter (dated 12/12/2016) confirming that Flat 9 has been on the Council Tax list since 01/07/1994; Valuation Office Agency (VOA) registration document (ref. rent register R22853121) confirming that the property has a rent registration with the VOA since 06/05/2010 and tenancy commencement since 14/07/1972. 	
The applicant has also submitted the following plans:	
<ul style="list-style-type: none"> Unnumbered site location plan outlining the application site; Existing unnumbered 2nd floor plan. 	
Council's Evidence	

The 2 approved planning applications below (8905069 & 2011/5412/P) confirm the use of the premises to be residential and sub-divided into flats in 1989 and 2012.

- 8905069 – Conversion, refurbishment and extension to form five self-contained flats one self-contained bedsit two self-contained maisonettes comprising of a three storey partial side extension and a one storey partial rear extension including the provision of skylights in the roof. Granted planning permission dated 16/08/1989.
- 2011/5412/P - Installation of balustrading to part of rear upper ground floor level flat roof and replacement of window with door at rear upper ground floor level all in connection with the use of part of the flat roof as a terrace by the existing residential flat (Class C3). Granted planning permission dated 16/01/2012.

An enforcement case (EN981186) was raised on 05/10/1998 in response to a complaint that Flat 8 had been sub-divided into 2 flats. The complaint was investigated and it was considered that further action was not expedient. The case was closed on 25/02/1999.

Camden's Council Tax and Business Rates records indicate that council tax has been paid for Flat 9 as a 2nd floor residential unit since 1996.

Valuation Office Agency (VOA) records indicate that that council tax has been paid for Flat 9 as a 2nd floor residential unit since 01/07/1994.

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 and Council evidence demonstrate that the use as a 1-bed residential flat (Class C3) at 2nd floor level had begun since at least 1996 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 residential flat (Class C3) at 2nd 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