

LDC Report	09/05/2017
Officer	Application Number
Matthew Dempsey	2017/1453/P
Application Address	Recommendation
Flat 4 26-30 Cubitt Street London WC1X 0LS	Grant Certificate of Lawfulness (Existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Use as a 3 bedroom flat (Class C3), at raised ground floor level.	
Assessment	
<p>The application site is located on the eastern side of Cubitt Street within the Kings Cross Ward of the London Borough of Camden.</p> <p>The application relates to a 4 storey (plus basement) building consented in 2005 to accommodate office/light industrial (Use Class B1) floorspace at ground and basement floor levels and 8 residential units on the upper floors. The property in question is located on the upper ground floor and as such, its planning use was originally approved as Class B1a (office).</p> <p>The building is not listed and is located within the Bloomsbury Conservation Area.</p> <p>The application seeks to demonstrate that Flat 4 has 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 probability, that the existing residential unit has existed for a period of 4 or more years.</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"> • 1. Completed Application forms • 2. Location Plan • 3. Appendix 1 – lease plan • 4. Appendix 2 – Winkworth Agent's particulars • 5. Appendix 3 – signed lease agreement between Centenary Homes Limited • acting through the receivers (landlord) and Cynthia Knowles and Yanson Wu 	

- (tenant)
- 6. Appendix 4 – Statutory Declaration (1 of 2) of Cynthia Knowles, relating to electoral register
- 7. Appendix 5 – Statutory Declaration of Simon Hartley
- 8. Appendix 6 - Statutory declaration of Angela Kelly
- 9. Appendix 7 - Statutory declaration of Luisa Bastos
- 10. Appendix 8 - Statutory declaration of Amelie Paquette
- 11. Appendix 9 - Statutory Declaration (2 of 2) of Cynthia Knowles
- 12. Appendix 10 – Statutory Declaration of Yanson Wu
- 13. Appendix 11 – screenshot of government website search facility for business rates
- 14. Appendix 12 – NHBC Warranty
- 15. Appendix 13 - Planning history obtained as part of formal searches
- 16. Appendix 14 – Assured Shorthold Tenancy Agreement of current tenants

Council's Evidence

The Council's Planning Enforcement Department undertook a formal enforcement investigation under EN12/0964. The case was closed on 04/02/2013 as the use of the ground floor as residential appeared to be immune from enforcement action. The case officer's report states the following: *'Permission was granted in 2005 for ground floor office use, an amendment application was received in 2007 for change of use of the ground floor to residential but this was withdrawn. It appears however that the conversion took place without planning consent shortly after this time. There are 14 units registered with council tax since between 06/2007 and 11/2007 and as such with no evidence to the contrary it appears that the residential units have been in place for four years and are now therefore lawful.'*

Council Tax Officers confirmed that the liability for Council Tax started on 29/11/2007. It has been in payment continuously since then.

A site visit to the property was undertaken on the 20/04/2017. The Officer was satisfied that the unit had been occupied for residential use for some time. The property was occupied by 3 tenants.

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