

LDC Report		23/05/2017	
Officer		Application Number(s)	
John Diver		(i) 2017/1751/P (ii) 2017/1756/P	
Application Address		Recommendation	
(i) First floor unit, and (ii) Ground Floor Unit; 2 Hermit Place London NW6 4BZ			
1st Signature		2nd Signature (if refusal)	
Proposal			
(i) Continued use of first floor unit for storage / distribution purposes (Use Class B8) (ii) Continued use of ground floor unit for storage / distribution purposes (Use Class B8)			
Assessment			
Application Site			
<p>1.1. The application relates to an unlisted two storey building on the south side of Hermit Place, NW6. Hermit Place is a mews on the north side of Belsize Road (formally Priory Mews). The area is characterised by two storey brick built buildings in semi-industrial use. The property is located within the Priory Road Conservation Area and is a short walk away from the Kilburn Highroad Overground station. There are no Article 4 Directives which have been issued to remove certain permitted development right from the property.</p>			
Proposal			
<p>1.2. The applicant seeks to demonstrate that the established, lawful use of the property remains for storage / distribution purposes (Use Class B8) at both ground floor (application 2017/1756/P) as well as first floor levels (application 2017/1751/P). The applications therefore cumulatively seeks to demonstrate that the use of the property for storage purposes (B8) remains lawful and that the continued use would not require planning permission.</p> <p>1.3. To satisfy the above, the applicant is required to demonstrate, on balance of probability, that the existing use has been in situ for a period of 10 or more years (where an unapproved change of use has occurred) or that the change of use for the property to storage use (B8) was permitted under the provisions of the General Permitted Development Order 2015 (as amended).</p>			
Applicant's Evidence			
<p>1.4. The applicant has submitted the following information in support of the applications:</p> <p><u>2017/1751/P (1st floor)</u></p> <ul style="list-style-type: none"> • Covering Letter (dated April 2017) • Signed ground floor lease (dated 2012) 			

- Signed affidavit from freeholder of property (dated March 2017)
- Signed affidavit from tenants of first floor unit (dated March 2017)
- Signed affidavit from construction contractor / user (dated March 2017)
- Signed statement from adjoining occupier (dated March 2017)
- Signed letter from worker at 244 Belsize Road (dated April 2017)

2017/1756/P (Ground floor)

- Covering Letter (dated April 2017)
- Signed ground floor lease (dated 2012)
- Signed affidavit from freeholder of property (dated March 2017)
- Signed affidavit from tenants of ground floor unit (dated March 2017)
- Signed affidavit from construction contractor (dated March 2017)
- Signed statement from adjoining occupier (dated March 2017)
- Signed letter from worker at 244 Belsize Road (dated April 2017)

1.5. The applicant has also submitted the following plans:

2017/1751/P (1st floor)

- Existing 1st floor plan (dated Sept 2016)
- OS Location Plan

2017/1756/P (Ground floor)

- Existing GF floor plan (dated Dec 2016)
- OS Location Plan

Council's Evidence

Planning History

1.6. The A summary of the planning history for the property is given below:

9005319: A non-determination application was dismissed on the 31/10/1990 for the 'Extension to existing premises for storage use'.

- *This appeal was dismissed by the inspector for reasons relating to the visual impact of the proposed extensions upon residential amenity.*

2003/1887/P: Planning permission was granted on the 19/11/2003 for the 'Erection of 2nd floor mansard roof extension to provide additional Class B1 office space'

2011/6119/P: Planning permission was granted on the 26/01/2012 for the 'Erection of 2nd floor mansard roof extension with rooflights to provide additional Class B1 office space'

2016/5931/P: Prior approval was refused on the 23/12/2016 for the 'Change of use from storage (B8) to residential unit (C3) (GPDO Prior Approval)'

Reasons for refusal:

- 1) *In the absence of a sufficiently comprehensive statement to demonstrate that the building was used solely for a storage or distribution centre use on 19th March 2014 (the date referred to in paragraph P1.(a)) and for the period of 4 years before the date development the application has not satisfied the requirements of Class P subparagraphs P.1(a), (b) and P.2(a) of the of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015...*
- 2) *The proposed development, in the absence of a legal agreement securing car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and fail to promote more sustainable and efficient forms of transport, ...*
- 3) *The applicant has failed to adequately demonstrate that suitable noise insulation would be provided to protect future occupiers from noise pollution from surrounding land uses*

contrary to...

2016/7125/P: Prior approval was refused on the 23/02/2017 for the 'Change of use from storage (B8) to residential unit (C3) (GPDO Prior Approval).

Reasons for refusal:

- 1) *In the absence of a sufficiently comprehensive statement to demonstrate that the building was used solely for a storage or distribution centre use on 19th March 2014 (the date referred to in paragraph P1.(a)) and for the period of 4 years before the date development the application has not satisfied the requirements of Class P subparagraphs P.1(a), (b) and P.2(a) of the of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015...*
- 2) *The proposed development, in the absence of a legal agreement securing car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and fail to promote more sustainable and efficient forms of transport, ...*
- 3) *The applicant has failed to adequately demonstrate that suitable noise insulation would be provided to protect future occupiers from noise pollution from surrounding land uses contrary to...*

Other public records

- 1.7. Valuation Office Agency (VOA) records are available for the premise from 2017, 2014 and 2010 (Local Authority VOA ref. 00680000210009 & 00680000210018).
- 1.8. These records show that for both the ground floor and first floor of the property, business rates have been charged on the basis of the property being used as a 'Store and premise' effective from 20 January 2014 and prior to that, the VOA records shows that the rateable value in 2010 was as 'workshop and premises'.
- 1.9. Bing 'Streetview' images taken on the 6th May 2011 show the ground floor unit to be is use as ancillary space to a motorcycle repair workshop (Use Class B2)

Assessment

- 1.10. 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.

Submitted evidence

- 1.11. Evidence has been submitted in the form of several sworn affidavits, a signed lease for the ground floor unit and several signed statements for both units in order to demonstrate that the use of the property has remained within a storage use (Class B8) since 2012.
- 1.12. The submitted lease dated from 2012 (covering the period until 2017) includes a clause that the permitted use of the property shall remain for "storage uses within Class B8 of the Town and Country Planning (Use Classes) Order 1987". Although a signed lease does not in itself demonstrate that a use has been implemented; this evidence is corroborated via sworn affidavits from the freeholder of the property, the tenants of both the ground and first floor units as well as a construction contractor and user of the storage unit.

- 1.13. The affidavit submitted by the freeholder of the property states that following acquisition of the then vacant property in 2011, the property was converted from the former motorbike repair use (B2) back into a storage use (B8) in 2012. This affidavit also confirms that planning permission for extensions were applied for on the basis of a potential office use at first floor but that permission was never implemented. This statement also confirms that since the leasing of the property in 2012, the storage use has continued by the same tenant to date.
- 1.14. The affidavit submitted by a construction contractor confirms that this individual was instructed by the owner of the property in 2012 to refurbish the property for use as storage units (including the strip out of industrial fixtures and fittings, heating systems, partitions and suspended ceilings). This statement also confirms that since September 2012 (to date) they had visited the property numerous times in association with the storage use and that the property had not been used for any other use during this period.
- 1.15. The affidavits submitted from both tenants confirm that since the commencement of their leases (2012), each floor of the property has been used solely for storage purposes.
- 1.16. These affidavits represent sworn, witnessed statements and as it is the case that if an individual knowingly makes a false a statement in an affidavit they commit an offence and could be fined or imprisoned; significant weight is awarded to this evidence.
- 1.17. Furthermore, signed statements from a residential occupier of the adjoining building (no.248 Belsize Road) and a member of staff from the commercial unit within no.244 Belsize Road also confirm that to their knowledge the property has remained in storage use only since 2012. It should be noted however that signed statements which are not witnesses are awarded limited weight in this decision.

Council's evidence #1 (Planning History):

- 1.18. The Council's planning history for the site contains a number of contradictory descriptions for the historic use of the property. The first recorded application at the premises is dated from 1990 and, although the non-determination appeal was dismissed, the inspector's report makes clear reference to the use of the property as storage – Class B8. It is considered that on this basis that the established lawful use of the property at this point was agreed as Class B8.
- 1.19. In the period between this determination in 1990 and the current freeholder acquiring the property in 2011, the use of the property appears to have been changed to a vehicle repair shop at ground floor and ancillary office at first floor levels (Use Class B2) without express permission. No enforcement complaint regarding this change was ever recorded and this change of use was never investigated. If this use had of been in existence for a period of 10 more years then the established use of the property would have been altered to B2.
- 1.20. Applications 2003/1887/P (dated 19/11/2003) and 2011/6119/P (dated 26/01/2012) both secured permission for roof extensions to the property to provide "additional Class B1 office space". Although this seems like a discrepancy, the officer's report for both applications describe the existing use of the property at the time as a vehicle repair workshop. It is understood that the permissions for increase office space thus related to the ancillary office at first floor level and as such the reference to Class B1 within the description was an error. Neither of these permissions were implemented however this evidence does support the case that the property had been in B2 use prior to September 2012.
- 1.21. The applicant claims that the established vehicle repair workshop use (Class B2) was subsequently reverted back to a storage use (Class B8) in 2012. There are no planning records of this change of use however; as a change from uses falling within Class B2 to B8 was permitted under the General Permitted Development Order 1995 (updated by GPDO (Amendment) 2005), a change of use would not have required planning permission. The owner of the property thus had no

requirement to notify the Council prior to this change (assuming that the B2 use had been established, otherwise this conversion would have restored the property to its lawful B8 use).

1.22. Two further applications have since been determined regarding the property, both Prior Approval applications made under Class P of the updated GPDO (2015). Both of these applications were refused for reasons including the lack of evidence to demonstrate that the property had remained in use as B8 since 2014. For both applications,

1.23. Overall it is considered that the planning history for the site does not contradict the statement of case outlined by the applicant with regard to the use of the property for storage purposes (Class B8) since 2012 and provides some evidence of the previous use.

Council's evidence #2 (Other public records):

1.24. As outlined in para.1.7 – 1.8, the business rates information for the property show that rates were charged between the periods of 2014-2017 on the basis that the property was used as a 'Store and Premise'. Although VOA records are not kept in accordance with specific Use Classes, further interrogation of the valuation records show that this property is charged under a 'valuation scheme' which includes:

"properties built prior to 1955 and situated in the London Borough of Camden within the postcode areas NW6 1-5 (excluding Kilburn High Road), NW8 0, NW3 7 west of Redington Road, or the two sections of NW3 6 which abut Finchley Road, excluding railway arches & properties at Belsize Road, Webheath, Netherwood Street, Loudon Road and the Liddle Road Estate" (VOA Valuation scheme description: 368753).

1.25. Within this valuation scheme, rates are charged for the following uses:

- Air conditioning (for retail purposes only)
- Lock-up garages
- Fenced and surfaced land
- Portable buildings
- Loading bays
- Storage containers
- Offices
- Workshops/stores (VOA Valuation scheme description: 368753)

1.26. On this basis, it is not considered that the valuation records contradict applicant's statement of case. The 'street view' photography dated from 2011 similarly does not contradict the applicant's statement of case, as the conversion of the property is stated to have occurred in September 2012.

Conclusion of assessment

1.27. It is considered that the evidence submitted along with Council records are considered to adequately demonstrate that, on the balance of probability, the lawful use of the ground and first floor units are for storage (Class B8) purposes, having begun within the last 10 years following a change of use that did not requiring planning permission and there has not been a change of use requiring planning permission in the last 10 years.

Recommendations:

- (i)&(ii) Approve certificate of lawfulness**