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planning

LDC
Supporting
Statement

36 Ainger Road,
London, NW3 3AT

May 2017

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1.0 INTRODUCTION

- 1.1 This Statement has been prepared in support of two separate but related applications for Lawful Development Certificates for two separate planning units (Flat 4 and Flat 6) of the property collectively known as number 36 Ainger Road, London.
- 1.2 Two separate applications have been submitted for two Certificate of Existing Lawful use, one for Flat 4 and one for Flat 6. The certificate for Flat 4 has been submitted on the grounds that the use began within the last 10 years, as a result of change of use not requiring planning permission and there has not been a change of use requiring planning permission in the last 10 years. The Certificate for Flat 6 is submitted on the grounds that the use has been in existence for more than 4 years requires to establish the lawful change of use to a dwellinghouse.
- 1.3 Both applications share similar characteristics and background information, thus a singular statement can be used to explain both, although separate evidence has been submitted for each application.

2.0 SITE DESCRIPTION & SURROUNDINGS

- 2.1 The application site is situated in a residential street, just north of Primrose Hill. The properties are predominantly three to four stories in height with basement levels in most instances, that have been converted into additional residential accommodation.

Figure 1: Site and Surroundings



- 2.2 The street is mostly Victorian style terraced properties a large proportion of which have been converted over time into flatted accommodation comprising self-contained units.
- 2.3 The application site is an example of the above. It is a Victorian style mid-terrace property which has been converted over time into five self-contained units falling within Use Class C3. The building is arranged as follows:
- Basement Level – 1 Bedroom Flat – Flat Number 1
 - Raised Ground Floor Level – 1 Bedroom Flat – Flat Number 2
 - First Floor Level – 1 Bedroom Flat – Flat Number 4
 - Second Floor Level – 1 Bedroom Flat – Flat Number 6
 - Third Floor Level – Studio Flat – Flat Number 7

- 2.4 The current configuration and layout of each of the five self-contained units is illustrated in the floor plans contained within **Appendix 1**. It can be seen from the plans of the property, that each of the five units have their own bathrooms and kitchen facilities as well as their own lockable internal front doors, which, with the exception of the Basement level flat, are accessed from a communal hallway, commensurate with the majority of Flatted development falling within Use Class C3.
- 2.5 Conversely, none of the properties share any other communal facilities such as bathrooms, kitchens, or recreation areas nor do they share external amenity space. The private garden space to the rear of the property is for the sole use of the occupiers of the basement flat (Flat Number 1).
- 2.6 All flats within this property are let on Assured Short-term Tenancy Agreements to unrelated individuals. All units also have their own separate utilities bills including, Council Tax, gas and electric. Payment of all utility bills for each individual property is the responsibility of the tenants for each property.
- 2.7 As is apparent from the numbering of the units within number 36 (as presented above), that the property does not have a flat number 3 or 5. We will deal with the deletion of Flat 3 separately later within this statement (as this is a matter for which a separate Certificate of Proposed Lawful Use is sought). The omission of Flat number 5, however, was simply a numbering error made during a historic refurbishment of the property. This is confirmed within a letter from a long-standing tenant of Flat 7 which is contained within **Appendix 2** of this statement.

4.0 Background

4.1 From circa 1970 up until 2013, number 36 Ainger Road was arranged as follows:

- Flat 1 – one Bedroom Garden Flat
- Flat 2 – One Bedroom Raised ground floor
- Flat 3 – Bedsit – 1st floor back flat
- Flat 4 – Bedsit – 1st Floor front flat
- Flat 6 – One bed 2nd Floor Flat
- Flat 7 – Top Floor Studio Flat

4.2 The configuration of the previous layout of the property is shown within **Appendix 3**.

4.3 Prior to 2013, the two bed-sit units at first floor levels (numbers 3 and 4) shared a bathroom facility which was located on the split-level landing between the first and second floor (which is now used as a utility room for the sole purpose of Flat 4). Both units contained a bedroom area with cooking facilities but had no bathroom or separate bedroom/lounge.

4.4 At this time, Flats 1, 2, 6 & 7 were all self-contained units, clearly and unequivocally falling within Use Class C3. (The definition of which is a "self-contained property which can include flats or maisonettes on more than one floor, which are occupied by a single person or family. Each flat within a block is treated as a separate unit for planning purposes") [Circular 08/2010].

4.5 However, the communal bathroom facility shared by the two bedsit units (numbers 3 & 4) made this element of the overall property a small HMO now falling within Use Class C4 (and previously, prior to the change in the Use Classes Order in 2010, within Use Class C3 – see following section).

4.6 In accordance with a National Scheme (introduced on 1 April 2006 under the Housing Act 2004), the landlord of number 36 applied for a HMO Licence in 2006 (as Mandatory Licences applied to large HMOs that are three or more storeys in height even if some of the floors are self-contained). Floor plans were drawn up by an architect to support this application. However, these plans were incorrect, in that they erroneously added a separate front door to Flat 6. This error made the second floor appear (on plan format) to have two bed-sits as opposed to one self-contained flat (see Section 5).

4.7 We understand that this error was caused as a result of confusion during the survey of the property over the positioning of the front door of Flat number 6 and also the architect taking the communal bathroom (used by units 3 & 4 up until 2013) as being a separate unit. These errors are acknowledged within a written omission by the Architect (contained within **Appendix 4**).

4.8 Subsequently, Camden Council introduced a scheme local to Camden which

required licences for all small HMOs which did not differentiate on height and also included buildings that have been converted into self-contained flats (in planning terms Use Class C3) and those where 50% or more of the property is rented.

- 4.9 Upon inspection by an Officer of Camden Council, following the application for the local licence, it was advised that unit 3 did not meet the minimum size requirement for a bedsit property (in accordance with the [then] new guidance on HMO space standards issued by Camden Council) and so was no longer considered habitable space.
- 4.10 It was later agreed with the Council's Licencing Department that in order to ensure that the new space standards were adhered to, the best course of action was to convert the small HMO (comprising the bedsit units 3 and 4 and their shared bathroom facility) into one self-contained flat (with utility room) to become flat number 4.
- 4.11 Accordingly, the amalgamation of units 3 & 4 was undertaken in 2013/2014 to create one self-contained flat falling within Use Class C3 from a small HMO falling within Use Class C4 under permitted development rights, under Schedule 2, Part 3, Class L of the Town & Country Planning (General Permitted Development) (England) Order 2015. [The delay between the requirement to change and the actual amalgamation was due to two main reasons. The first is that there was a lack of funds due to numerous redecoration and refurbishment works in other areas of the buildings. The second was that Flat 4 had a long-standing tenant since 2002 which was paying a relatively reasonable rent for a bedsit at the time, therefore the amalgamation of the two units only occurred following the termination of this tenant's lease]. Invoices for work carried out in association with the amalgamation are contained within **Appendix 5**.

5.0 EVIDENCE OF EXISTING LAWFUL USE

Application for a Certificate of Existing Lawful Use - Amalgamation of Units 3 & 4

- 5.1 A Certificate of Existing Lawful Use is sought to establish that the conversion of units 3 and 4 of number 36 Ainger Road has been lawfully undertaken through permitted development rights and as a result the certificate has been applied for on the grounds that the use began within the last 10 years, as a result of change of use not requiring planning permission and there has not been a change of use requiring planning permission in the last 10 years.
- 5.2 As explained in the preceding background section of this statement, units 3 & 4 operated as a small HMO within a larger block of self-contained units falling within Use Class C3, up until 2013. This is because these two units shared a communal bathroom, located on a split-level landing. This bathroom was easily accessed from both bed-sits (and no other tenants within the block had access to this bathroom – i.e. it was for the sole use of units 3 & 4).
- 5.3 The Annex to the [now defunct] Circular 08/2010 (which set out the Government's changes to planning regulations for dwellinghouses and houses in multiple occupation) confirms that, in broad terms, a small HMO covers small shared houses or flats occupied by unrelated individuals who share basic amenities (including bed-sits). And furthermore, to classify as a house in multiple occupation (in planning terms), the property does not need to be converted or adapted in any way.
- 5.4 However, due to unit 3 not meeting the space requirements required to adhere to the Council's HMO standards, the two units were amalgamated into one self-contained one bedroom flat falling within Use Class C3 complete with locked front door from the communal hallway, internal cooking facilities /fridge and an internal bathroom (including WC, bath and sink). The amalgamated property retained the address Flat 4. During these works, the previous communal bathroom was converted into a utility room for the sole use of the newly amalgamated flat. A copy of the invoice for the works carried out to amalgamate the two units on the first floor of the property is contained within **Appendix 5**.
- 5.5 As the [now defunct] Circular 08/2010 (which set out the Government's changes to planning regulations for dwellinghouses and houses in multiple occupation) states:

“On 6th April 2010, an amendment to the Use Classes Order introduced a definition of small-scale houses in multiple occupation into the planning system. It effectively split the old Class C3 (dwellinghouses) class into 2 separate classes – Class C3 (dwellinghouses) and Class C4 (Houses in multiple occupation).”

The result of this was that development previously falling under Class C3 was reclassified and now falls into either the new C3 or C4 Classes. This reclassification

does not amount to a change of use under planning legislation (it is not classified as development) so no consequences arise from the reclassification in terms of the need to seek planning permission".

- 5.6 The April and October changes to legislation mean that from 1 October 2010 a change of use from a dwellinghouse (Class C3) to a house in multiple occupation (Class C4) and from and from a House in Multiple occupation to a dwellinghouse is possible under permitted development rights and planning applications are not needed.
- 5.7 Part L [Schedule 2, Part 3] of the General Permitted Development Order confirms that permitted development includes Development consisting of a change of use of a building from a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule and from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule.
- 5.8 Given the provisions within the General Permitted Development Order, our client is seeking regularisation of the change from a small HMO within a larger property to a single self-contained dwelling through the grant of a Certificate of Existing Lawful Use to confirm that planning permission was not required for this change of use.

Application for a Certificate of Existing Lawful Use – Flat 6

- 5.9 The self-contained unit on the 2nd floor of number 36 Ainger Road, known as Flat 6, has been in sole and continuous Class C3 use since the early 1970's, (although no records exist from this period in time as we understand there was a fire in the archive records storage facilities which has destroyed any early documentation or evidence relating to this earlier time period).
- 5.10 However, the present managing agents were appointed in 1999 and have records dating from that period that clearly indicate that Flat number 6 has been in continued use as a self-contained unit falling within Class C3, since this time. This is evident from the signed statement submitted as part of the evidence to support this application, from the managing agents contained within **Appendix 6**.
- 5.11 This statement unequivocally confirms that, with the exception of the two bedsit units (numbers 3 & 4), the property has been divided into self-contained units of 1 per floor since at least 2003 when Ms Gold from the Managing Agents first visited the property in a professional capacity. This includes flat number 6, which is located on the second floor (see layout plan contained within **Appendix 1 & 3**).
- 5.12 The self-contained nature of flat 6 is also explained within a signed and dated letter

from the long-standing current tenant of Flat 7 above - Mr James D Page (contained within **Appendix 2**) whom has been the tenant of Flat 7 since 2004 (i.e. well in excess of the requisite 4 year period which is required to demonstrate existing lawful use of a change of use to a residential dwelling).

5.13 Furthermore, the Valuation Office Agency website also confirms that the Flat on the 2nd Floor of number 36 Ainger Road, had its own Council Tax entry (contained within **Appendix 7**) with effect from 01/04/1993 – again well in excess of the 4 year requisite period for establishing lawful use for a residential property.

5.14 In addition to the above, additional evidence has been provided in order to demonstrate the established lawful C3 use of Flat 6, as follows:

- Copy of Professional inventory carried out by Harewood Inventories dated 16th June 1992 (**Appendix 8**). This document confirms that Flat 6 comprises of entrance hall, living room, kitchen & bedroom with ensuite shower room. A comparison of the composition of this unit with the layout plans contained within **Appendix 1 & 3**, demonstrate that the description listed in the inventory remains valid when these plans were drawn. (Furthermore, the inclusion of a living room, kitchen, bedroom and ensuite would enable insufficient room for a further unit on this level).
- Inventory Dated 14th March 1997 carried out by Northwest Inventories (**Appendix 9**) – For the tenancy of Karsten Rosenplenter – Similarly, this professional inventory dated 1997 replicates the configuration of the second floor accommodation previously cited within the June 1992 inventory (again detailing there being a living room, kitchen, bedroom and bathroom).
- Gas Safety Certificate – 23/02/2001 stating the location of the boiler being in the lounge and the Current certificate stating location of boiler as location in living room (both within **Appendix 10**). The second floor of this property is not configured to enable a lounge in addition to the two separate bedrooms (which would be needed if this floor were to accommodate two separate units).
- Copy of Council Tax Bill for the period 1996 to 1997 (dated 8 March 1997) (**Appendix 11**). This document categorises the property as falling within Flat is Band D. Band D is the same band used in the other one beds (see attached Extract from VOA website confirming the categorisation of the one-bed Flat on the first floor of 36 Ainger Road also contained within **Appendix 11**). Whereas, Band A would have been the correct banding for a bed-sit (see the Council Tax Bill dated 17/03/11 for Flat 3 (which was a former Bed-sit) and the Council Tax Bill dated 19/09/13 for Flat 4 (again a former Bed-sit) which were both categorised as Band A - also contained within this Appendix).
- Camden Council's Tax Department have verbally confirmed to the Managing

Agent during a telephone conversation that their Council Tax records only go back to 1993 and they were unable to find any record of there being a Flat 5 on their database from this time onwards. The fact that there has not been a Flat 5 on the second level of this property is further supported by the evidence and data contained on the public Council Tax records contained on VOA web site – extracts from which are contained within **Appendix 12**.

- 5.15 The evidence summarised above, unequivocally demonstrates that the second floor of number 36 Ainger Road has been continuously and solely used as a single self-contained residential unit falling within Class C3 of the Use Classes Order since at least 1992 (from which date evidence is available) which is well in excess of the requisite 4 year period required to establish the change of use to a dwelling and even the 10 year period required to establish a lawful change of use for all other uses.

6.0 CONCLUSION

- 6.1 The above and supporting evidence proves, beyond reasonable doubt and on the balance of probability, that the amalgamation of units 3 and 4 have been undertaken lawfully through the exercise of Permitted Development Rights and that Flat 7 has been in Class C3 residential use for well in excess of the requisite four years to establish change of use.
- 6.2 As the Council are aware, the NPPG clearly states that in the case of lawful applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 6.3 We consider that the above and appended evidence is indeed sufficiently precise and unambiguous to justify the grant of a the two certificates being applied for simultaneously.