

LDC Report	
Officer	Application Number
Robert Lester	2017/3193/P
Application Address	Recommendation
29 Estelle Road London NW3 2JX	Grant LDC
1st Signature	2nd Signature (if refusal)
Proposal	
Use of building as single family dwelling (C3)	
Relevant Planning History	
<ul style="list-style-type: none"> • CTP/E9/10/14/18159 - The self-containment of the three existing flats and the erection of an extension on ground and first floor levels to the existing rear extension and the provision of new windows - Conditional - 21/03/1974. • 2010/6877/P - Change of use from three to two self-contained maisonettes, erection of single-storey infill extension at rear ground floor level, second floor rear extension; formation of roof terrace at second floor, erection of dormer window to rear roof slope, installation of rooflights at front roofslope and alterations to fenestration at rear – Refused 17/02/2011 (Appeal Dismissed 23/08/2011). • 2010/5321/P - Change of use from three to two self-contained maisonettes, erection of single-storey infill -extension at rear ground level; formation of roof terrace at second floor level; erection of dormer window to rear roof slope, installation of rooflights at front roofslope and alterations to fenestration at rear to self-contained flats (Class C3) - Granted - 29/11/2010. • 2012/1569/P - Erection of front boundary wall and piers at ground level to residential dwellings (Class C3) – Granted - 07/06/2012. 	
Assessment	
<p>Permission is sought for a certificate of lawful development for the use of the building as a single family dwellinghouse (Use Class C3) under section 191 of the Town and Country Planning Act 1990.</p> <p>The statutory framework covering “lawfulness” for lawful development certificates is set out in section 191(2) of the Town and Country Planning Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.</p> <p>Section 171B of the Town and Country Planning Act 1990 states that development becomes immune from enforcement if no action is taken within 4 years for an unauthorised change of use to a single dwellinghouse.</p> <p>National Planning Practice Guidance states that a local planning authority needs to consider</p>	

whether, on the facts of the case and relevant planning law, the specific matter is lawful. The relevant legal test to consider when evaluating the evidence 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.

Submitted Evidence

- Location Plan (D 00).
- Statutory Declaration of Mr Irwin dated 4th May 2017 (owner/occupier of the property).
- Statutory Declaration of Mrs Davis dated 8th May 2017 (long-term friend of the owner/occupier).
- Statutory Declaration of Mr Norden dated 4th May 2017 (builder employed by owner/occupier).
- Existing Ground Floor & Basement Plan (110) Existing First Floor Plan (111), Existing Second Floor Plan (112), Existing Third Floor Plan (113), Existing Roof Plan (114).
- Application Cover Letter ref: CWA/CNW/pl/1309 dated 22nd May 2017.

Assessment of Evidence

Planning permission was obtained in 1974 (ref: CTP/E9/10/14/18159) for the self-containment of the three existing flats and extensions and alterations. Planning permission was obtained in 2010 (ref 2010/5321/P) for the change of use from three to two self-contained maisonettes together with single storey rear infill extension, second floor level roof terrace, rear dormer window and rooflights. A site visit was undertaken on the 25th July 2017 and the property is laid out and used as a single dwellinghouse.

The submitted evidence includes statutory declarations of the builder who converted the property from flats into a dwellinghouse in 2010-2011, the owner/occupier who moved into the property in 2011 and has used the entire building as a dwellinghouse ever since and a family friend who confirms the use of the property as a dwellinghouse over this period.

The current owner/occupier of the building (Mr Irwin) states that he purchased the property in September 2010 (when it had three flats) and he submitted application 2010/5321/P (to convert to two flats). Mr Irwin’s builder (Mr N Norden) states that the building works started on the 29/11/2010, which included the removal of fittings and partitions associated with the original layout of the property as three flats and the extensions and alterations in line with the 2010 planning permission. These works followed the permission except the internal front doors to the two flats were not installed and only one kitchen was installed. Building Regulations approval was granted in April 2012, which show the omission of the internal front doors.

Mr Irwin states that he moved into the property in June 2011 and has used the property as a single-family dwelling for him and his family ever since. Mr Irwin’s long-term friend Mrs Davis states that she stayed at the property in 2011, 2012, 2013, 2014 and 2015 and has confirmed it was used as a single-family dwelling. The first floor bedroom did not initially have direct access to the staircase as access was provided via the second staircase; however, an access door was later provided to this bedroom from the main staircase in 2012. Mt Irwin also states that the property has three electricity meters until February 2017.

Additional Evidence Submitted

- Council tax bills 1st, 2nd & 3rd floor unit 2011-2017.

- Council tax bills ground and part 1st floor unit 2011 -2017.
- Council tax bills for 2nd and attic floor unit 2010-2012 (empty).
- Council tax bills for former ground floor unit 2010 – 2012 (empty).
- Council tax bills for former 1st floor unit 2010 -2012 (empty).
- Electricity bill 2nd floor unit (July 2011 – January 2012).
- Electricity bill 2nd floor unit (July 2013 – January 2014).
- Electricity bill 2nd floor unit (October 2016 – March 2017).
- Electricity bills for 1st floor unit (July 2011 – January 2012).
- Electricity bills for 1st floor unit (July 2013 – January 2014).
- Electricity bill 1st floor unit (October 2016 – April 2017).
- Electricity bill for 29 Estelle Rd (July 2011 – January 2012).
- Electricity bill for 29 Estelle Rd (July 2013 – January 2014).
- Electricity bill for 29 Estelle Road (October 2016 – March 2017).
- Electricity Bill 1st floor (April – July 2017)[Applicant claims this bill is after the property has been changed to 1 meter].
- Land Registry Ownership Information.
- Statutory declaration of Mr Wasowski dated 11th July 2017 (builder employed by owner/occupier).
- Additional email regarding how the property has been used from Mr Irwin dated 14/07/2017.
- Date stamped photograph showing 3rd floor bedroom (view 1 towards the rear) taken on 21st June 2011 showing room with fitted carpet
- Date stamped photograph showing 3rd floor bedroom (view 2 towards the front) taken on 21st June 2011 showing room with fitted carpet
- Date stamped photograph showing 3rd floor bedroom taken on 28th October 2011 showing bed and fitted wardrobe
- Date stamped photograph showing ground floor front room taken on 24th April 2012 showing opening to hall
- Date stamped photograph showing entrance hall taken on 24th April 2012 looking towards main stairs
- Date stamped photograph showing door to property taken on 7th July 2011 showing one door bell
- Photographs of the property fuse boxes showing three separate fuse boxes marked i) lighting, ii) power and iii) water and heat.
- Combined Electricity Bill for entire property (27th July 2017 – 27th July 2017 1 day).
- Statutory Declaration of Mr Palmer-Hogan dated 1st August 2017 (architect involved in 2011 – 2012 building works).

Assessment of Additional Evidence

The additional submitted evidence includes Council tax bills, which show that the (i) ground and part 1st floor and (ii) 1st, 2nd & 3rd floor were registered separately for Council tax between 2011-2017. The statutory declarations state that the property was in use as a single dwellinghouse over the period; therefore, the owners/occupiers were registered for Council tax on two separate units but were using the property as a single dwellinghouse. The property was also registered as two separate properties on the electoral roll over this period although the same family name resided within both registered units.

The submitted electricity bills indicate that the property had 3 separate electricity meters/accounts/bills for the period 2011 – 2017. These are all in the name of the owner/occupier Mr Irwin. Therefore, the owners/occupiers were registered for electricity on three

separate units at this address, but were using the property as a single dwellinghouse. Analysis of the usage of the electricity over this period indicates high usage for the ground floor and second floor, which matches the locations of the kitchens in the 2010 permission. However, the applicant states that this is because the different meters relate to different functions i) lighting, ii) power, iii) water and heat.

The land registry information confirms that Mrs Irwin has been the owner since September 2011.

The statutory declaration of the second builder, Mr Wasowski confirms that building works commenced in November 2010, including the complete removal of the front doors, kitchens, bathrooms and toilets associated with the original 3 flats at the site and the internal conversion works including the installation of a single kitchen at ground floor level. The builder also confirms that he installed a door between the first floor bedroom and landing in 2012. The builder also confirms that he has made maintenance visits since 2012 and confirms that the property has been used solely by Mr Irwin and his family.

The additional email regarding how the property has been used from Mr Irwin reconfirms that the property was used by him and his family but that the second staircase was retained to provide his older/adult children with a degree of privacy, but separate front doors or kitchens were not provided. In 2012, the additional doorway between the first floor bedroom and staircase was provided to improve access. Mr Irwin also confirms that the property has had a single gas supply since 2010 but separate electricity meters.

The date stamped photographs from 2011 and 2012 show that the 3rd floor room was a bedroom (and not a kitchen as approved in the 2010 application) and the ground floor layout matches the current arrangement in 2011 and 2012. These photographs are supported by a statutory declaration from Mr Palmer-Hogan an architect who was involved in the 2011-2012 building works, who confirms that he took the photographs in 2011/2012.

Conclusion

It is accepted from the site visit inspection in July 2017 that the property is now being used as a single-family dwellinghouse. The key question is therefore has this use been in operation continuously for 4 years.

In terms of the evidence which supports the claim that the building was used as a single dwellinghouse:

The statutory declarations state that the property contained 3 flats in September 2010. Planning permission was obtained to convert the property into 2 flats on the 29/11/2010. The declarations state that building works started in November 2010 including the removal of the internal front doors and kitchens for the original 3 flats, the construction of the extensions associated with the 2010 permission but the front doors for the 2 flats approved were not installed and only one kitchen was provided at ground floor level. The declarations all confirm that the property has been used as a single family home for the applicant and his family ever since. The declarations and other information do state that the second staircase provided a degree of privacy for the children but that no separate unit/no other self –contained unit was provided.

The photographs, which are supported by a statutory declaration, which are date stamped 2011/2012 show that the second floor level kitchen approved in 2010 permission was not installed and the ground floor layout matched the existing. These photographs provide compelling evidence that the kitchen in the 2010 permission for the 2 flats was not implemented

which supports the declarations that the property was used as a single home.

In terms of the evidence which contradicts the claim that the building was used as a single dwellinghouse:

The council tax and electricity bills show that the site was registered as 2 units for council tax and 3 units for electricity since 2012. The Local Council Tax department visited the property in June 2011, which was followed, by a visit from the VOA in December 2011 and then banded the property as 2 separate flats. The property was also registered as a separate units on the electoral roll over the period 2011-2017. However, the Council tax bills, utility bills and electoral roll information are all in the family name of the applicant.

Overall, the statutory declarations and photographs provide strong evidence that the property has been used as a single-family dwelling since 2011. Although some weight is given to the contradictory evidence including the council tax bills and inspections, electricity bills and the electoral roll it is noted that these are all in the family name of the applicant and do not necessarily indicate separate self-contained use.

The submitted evidence demonstrates on the balance of probability that the property has been operating as a single-family dwellinghouse for more than 4 years and is therefore immune from enforcement in accordance with section 191 of the Town and Country Planning Act 1990.

Recommendation: Lawful - Grant Certificate