

LDC Report		16/08/2017
Officer		Application Number
Tony Young		2017/2810/P
Application Address		Recommendation
Flat 2nd Floor 36 Ainger Road LONDON NW3 3AT		Grant Certificate of Lawfulness (Existing)
1st Signature		2nd Signature (if refusal)
Proposal		
Use as a 1-bed self-contained residential unit at 2nd floor level (Class C3).		
Assessment		
<p>The site is a mid-terraced property consisting of 3 storeys with a basement/lower ground floor and accommodation in the roof space. The building is located on the north-western side of Ainger Road near to the junction with Oppidans Road to the north and is sub-divided into a number of separate residential units. This application relates to a 2nd floor unit (also known as Flat 6).</p> <p>The building is not listed and does not sit within a conservation area.</p> <p>This application seeks to demonstrate that on the balance of probability the use as a 1-bed self-contained residential unit at 2nd floor level (Class C3) began more than four years before the date of this application such that its retention would not require planning permission.</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"> Supporting Statement (dated May 2017) from Agent (Contour Planning) received on 15/06/2017 asserting that a 2nd floor flat (Flat 6) has been in existence for more than 4 years; Valuation Office Agency (VOA) extract document dated 09/05/2017 showing a council tax banding for a residential use at Flat 2nd Floor since 01/04/1993; Council Tax statement from London Borough of Camden (Council Tax & Business Rates) dated 08/03/1997 confirming the valuation band for Flat 6; Letter from James D. Page (tenant at Flat 7) dated 14/04/2017 asserting that the 2nd floor flat (known as Flat 6) has existing since the beginning of his tenancy in 2004 and has continued to be the case to the present day; Undated letter from Mr John Pullen (Architect) acknowledging a previous error in drawings in relation to Flat 5 and confirming there to have been only one 2nd floor flat at the time the drawings were produced; Various miscellaneous utility and other supporting documents: including Council Tax 		

statement (no. 36a) dated 03/11/2016; Inventory report from Harewood Inventories (Flat 6) dated 16/06/1992; Inventory report from Northwest Inventories (Flat 6) dated 17/03/1997; Gas Safety Assessment (Flat 6) dated 23/02/2001; Gas Safety Certificate (Flat 6) dated 24/01/2017.

The applicant has also submitted the following plans/photos:

- Unnumbered site location plan identifying the application site;
- Unnumbered floor plans (dated November 2006);
- Unnumbered existing floor plans (dated July 2017);
- Photo sheet showing roof terrace (received 04/08/2017).

Council's Evidence

There are no relevant historic planning records.

There is an outstanding enforcement case (EN17/0193) raised on 16/02/2017 in response to a complaint in relation to the self-containment of HMO rooms at the property. The Enforcement Officer for the case has been made aware of the current Certificate of Lawfulness application being considered in this report.

Camden's Council Tax and Business Rates records indicate that Flat 2nd Floor has been on the council tax register since 1997. Valuation Office Agency (VOA) records also show council tax banding details for residential use at Flat 2nd Floor since 1993.

Camden's Housing Support Services have confirmed that the self-contained 2nd floor unit (Flat 6) has existed since at least 2012 and have no objections.

Site visit

A site visit to the property was undertaken on 12/07/2017. The officer was satisfied that the unit had been occupied for residential use for some time.

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 self-contained residential unit at 2nd floor level (Class C3) (known as Flat 6) had begun since at least 1997 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 self-contained residential

unit at 2nd floor level (Class C3) 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