

Flat 2A, 110 Kentish Town Road



This material has been reproduced from Ordnance Survey digital map data with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright.

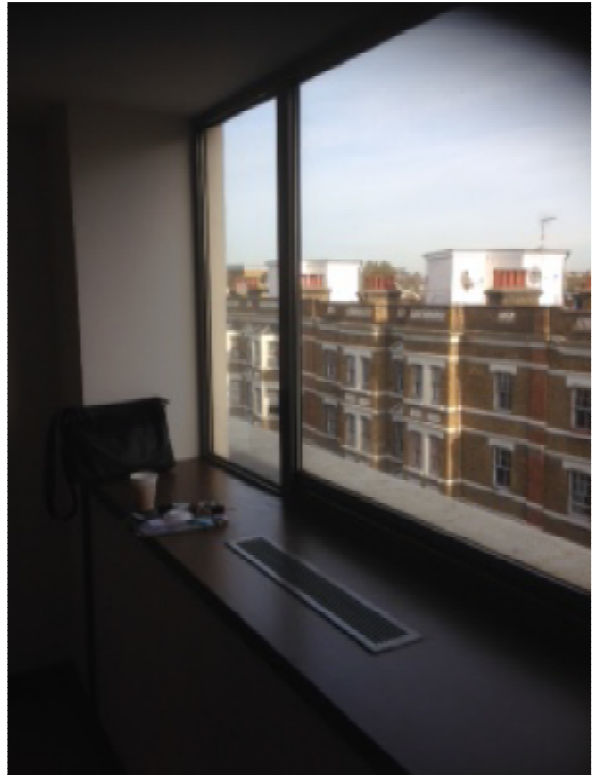
Photo 1 – front entrance on Kentish Town Road (view looking northwards)



Photos 2 & 3 – front entrance and hallway



Photos 4 & 5 – living room/studio space



Photos 6 & 7 – kitchen



Photos 8 & 9 – bedroom



Photos 10 & 11 – toilet and shower/bathroom



Delegated Report		Analysis sheet	Expiry Date:	15/12/2017
(Members Briefing)		N/A	Consultation Expiry Date:	n/a
Officer			Application Number(s)	
Tony Young			2017/5543/P	
Application Address			Drawing Numbers	
Flat 2A 110 Kentish Town Road London NW1 9PX			Refer to draft decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Use as a 1-bed studio flat at (part) 5th floor level (Class C3).				
Recommendation(s):		Grant certificate of lawfulness (existing)		
Application Type(s):		Certificate of Lawfulness (Existing)		

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	0	No. of responses	00	No. of objections	00
			No. Electronic	00		
Summary of consultation responses from local residents	n/a					
CAAC/Local groups comments	<p>Given the nature of certificate of lawfulness applications, and in particular that purely matters of legal fact are involved its' determination, the Council does not engage in a formal consultation process. Nevertheless, a response has been received from the Rochester Conservation Area Advisory Committee objecting to the proposals as follows:</p> <ol style="list-style-type: none"> a. <i>The application does not give sufficient attention to the location importance of the whole building and the significant planning history;</i> b. <i>The building is a Camden non-designated heritage asset (Local List no 521);</i> c. <i>It has close proximity (and views) to Rochester, Jeffreys and Kelly Street conservation areas, it stands opposite Kentish Town High Street which has further locally listed buildings, it views directly to the east towards the site which had a National School serving north Camden Town since the beginning of the nineteenth century;</i> d. <i>Adjacent building in Royal College Street, the former pub Black Horse, was refused permission for a roof extension;</i> e. <i>The application seeks a material change which requires planning permission;</i> f. <i>The application property is within a development that was made within the last 20 years for 'penthouse' flats on the original industrial building. Subdividing these into smaller flats would be contrary to Camden's purpose in the original planning approval, housing balance and policy for high quality residential provision;</i> g. <i>The current conversion was not supported by planning approval, and the property should be returned to its former provision;</i> h. <i>What was the original (before conversion) floor plan?</i> i. <i>What would be the consequent floor plan for the 'other' half of the premises (No 2) which is contingent on the changes proposed for No 2a (one 'room' appears without a door, and there are no bathroom or kitchen facilities shown)?</i> <p><u>Officer response:</u></p> <ol style="list-style-type: none"> a-g. <i>The planning merits of the use are not relevant in determining this type of application; purely legal issues are involved;</i> h. <i>A previous permission for the conversion from office to residential accommodation (2004/5123/P) shows the approved layout in 2005;</i> i. <i>The matter concerning the remaining part of the unit that has been sub-divided will be referred to the Council's Enforcement Team to investigate. An informative to this effect will be attached to any approval.</i> 					

Site Description

The application site is a 6-storey former warehouse building and factory (with basement) which has frontages on both Royal College Street and Kentish Town Road, and is located near the junction of these two roads. Both frontages have the same architectural approach containing rendered horizontal lines with full height windows in between.

The existing building comprises office floorspace from basement to 4th floor levels, the 5th and 6th floors being in residential use and were later additions to the building. The basement level mainly accommodates storage areas ancillary to the offices and cycle storage for the residential flats.

Though the building isn't listed, it is recognised as a non-designated heritage asset in Camden's Local List (January 2015) for its architectural and townscape significance, as well as, former use as a warehouse in late 19th century and factory in 1930s.

This application relates to the (part) 5th floor and seeks to demonstrate that on the balance of probability the use as a 1-bed studio flat (known as Flat 2A) began more than four years before the date of this application such that its retention would not require planning permission.

Assessment

1. Applicant's Evidence

1.1 The applicant has submitted the following information in support of the application:

- Design & Access Statement (ref. NW19PX) from Urbanist Architecture (agent) dated 02/10/2017 providing details and information in support of the assertion that the 1-bed studio flat falls within a Class C3 use and has been in continuous use as such for in excess of 4 years;
- Council Tax documents (various dates between 2008-2017) provided in support of the assertion that the 5th floor flat (Flat 2A) has been in existence as a separate residential unit since at least 2008 and has remained in continuous use as such until the present time;
- Miscellaneous utility bills & documents (various dates between 2008-2017) provided in support of the assertion that Flat 2A has been in existence as a separate residential unit since at least 2008;
- Unsigned letter from Naim Mustafa (owner and leaseholder) dated 02/10/2017 stating that the purchase of the studio flat (Flat 2A) was made on 26/08/2006 and that it has been rented as such more or less continuously since 08/08/2008;
- Lease document (Flat 2A) dated 26/08/2006 provided in support of the assertion that Flat 2A has been in existence as a separate residential unit since at least 2006;
- Tenancy Agreement/Possession Notice (dated 01/08/2008 and 06/11/2012) provided in support of the assertion that Flat 2A has been in existence as a separate residential unit since at least 2008;
- Email from Chestertons (letting agents) dated 29/09/2017 confirming that the studio flat (Flat 2A) has been on the market since 26/04/2017;
- Email from Urbanist Architecture(agent) dated 03/11/2017 in response to Rochester CAAC comments and support of the application proposals.

1.2 The applicant has also submitted the following plans:

- Unnumbered site location plan identifying the application site;
- 5th floor plan (part) showing the existing flat layout at scale 1:50 (ref. Flat2A_Plan) dated 25/03/2017;
- Unnumbered drawings (x14) showing all existing elevations, floor plans and sections at scales 1:100/1:200 (ref. NW19PX) dated 02/10/2017.

2. Council's Evidence

2.1 There is an extensive planning history associated with the site. The most relevant historic planning records are summarised below:

- 2015/4001/P - Alterations to the front facade, ground floor change of use from Class B1 to flexible B1/A1 uses and associated external elevations at ground floor level. Planning permission was granted 03/11/2015
- 2014/3341/P – Replacement of existing circular window by a new rectangular window on 5th floor of north elevation. Planning permission was granted on 24/06/2014
- 2007/3761/P – Change of use from offices (Class B1) to centre for independent living (Sui Generis) occupying space on ground & first floors fronting Royal College Street; and the formation of new entrance and emergency exit doors at 335-341 Royal College Street. Planning permission was granted on 11/09/2007
- EN05/0247 - An enforcement case was raised on 18/02/2005 in response to a complaint that the property had been converted from offices to residential flats. The complaint was investigated and the case was closed on 30/07/2007 following the granting of planning permission (2014/5123/P).
- **2004/5123/P – Change of use of the fifth and sixth floors from office accommodation (class B1) to 14 self-contained units comprising six one-bedroom units and eight two-bedroom units. Condition 2 of this planning permission requires the approved cycle parking (15 cycle parking spaces in the basement available for the residential units) to be retained and maintained. Planning permission was granted on 05/04/2005.**
- 2004/1022/P - Change of use of the fifth and sixth floors from offices (class B1) to residential use comprising 13 self-contained residential units. Planning permission was refused on 02/06/2004 on the grounds of poor layout of the residential units, which did not provide for adequate natural daylight and outlook to the habitable rooms. The proposal was considered to be detrimental to the amenity of the future occupiers of the residential units. An appeal was dismissed on 20/07/2005
- PEX0101029 – Change of use of part of the ground floor facing Kentish Town Road from office space (Class B1) to a sandwich bar for sale of cold food (Class A1). The primary cooking activity involving sandwich bar use was restricted by a condition. Planning permission was granted on 19/03/2002
- PEX0000820 - Conversion and refurbishment of the existing building for office use (Class B1) including the erection of a roof extension. Planning permission was granted on 02/08/2001
- PE9901045 - Use of the basement to third floor for B1 (office) accommodation and conversion of floors four to six (including rebuilt sixth floor) to form 14 residential units together with associated external alterations. Planning permission was granted subject to a section 106 legal agreement. However, the legal agreement was never signed and the application was withdrawn in February 2004

- PE9606058 – Change of use of part basement floor area from class A1 (retail) to class A3 (cafe). Planning permission was granted on 29/01/1997
- P9602611R1 – Change of use of first floor from (B1) office use to retail (A1). Planning permission was refused on 25/03/1997 on the grounds that the proposed retail use of first floor would restrict the potential for mixed use of this building; and the proposed development involves the loss of approved B1 office accommodation contrary to the policy of retaining sites and premises for employment use as expressed in the London Borough of Camden local plan and the draft unitary development plan
- P9600632R1 – Change of use of the ground and basement floors from warehouse use to retail use. Planning permission was granted on 14/06/1996

2.2 Other evidence:

- Valuation Office Agency (VOA) records show council tax banding details for residential use at Flat 2A since 06/09/2006.

2.3 Site visit:

- A site visit to the property was undertaken on 30/10/2017. The officer was satisfied that the studio flat that occupies part of the 5th floor (Flat 2A) is in residential use.

3. Comments from Local Group

Given the nature of certificate of lawfulness applications, the planning merits of the use are not relevant in determining an application; purely matters of legal fact are involved.

The response from the Rochester Conservation Area Advisory Committee has been assessed and it is considered to have provided no evidence to contradict or undermine the applicant's version of events.

4. 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 studio flat at (part) 5th floor level had begun since at least 2006 and appears to have remained as such 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 studio flat at (part) 5th floor level 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.

5. Recommendation

5.1 Approve certificate of lawfulness.

DISCLAIMER

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 20th November 2017, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.

Urbanist Architecture Ltd
133 Creek Road
London
SE8 3BU

Application Ref: **2017/5543/P**
Please ask for: **Tony Young**
Telephone: 020 7974 **2687**

8 November 2017

DRAFT

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Existing) Granted

The Council hereby certifies that on the 20 October 2017 the use described in the First Schedule below in respect of the land specified in the Second Schedule below, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Use as a 1-bed studio flat at (part) 5th floor level (Class C3).

Drawing Nos: Site location plan; Flat2A_Plan (25/03/2017); 14 unnumbered drawings (ref. NW19PX) 02/10/2017; Design & Access Statement (Urbanist Architecture ref. NW19PX) 02/10/2017; Council Tax documents (various dates between 2008-2017); Miscellaneous utility bills & documents (various dates between 2008-2017); Unsigned letter (Naim Mustafa) 02/10/2017; Lease document (Flat 2A) 26/08/2006; Tenancy Agreement/Possession Notice (01/08/2008 and 06/11/2012); Email (Chestertons) 29/09/2017; Email (Urbanist Architecture) dated 03/11/2017.

Second Schedule:

Flat 2A
110 Kentish Town Road
London
NW1 9PX

Reason for the Decision:

Executive Director Supporting Communities



- 1 The use of (part) 5th floor level as 1-bed studio flat (Class C3 use) began more than four years before the date of this application.

Informative(s):

- 1 You are reminded that this certificate solely relates to the change of use as described in the First Schedule above and does not grant planning permission or consent for any external alterations either described or shown on the approved drawings/documents attached to this Certificate.
- 2 The granting of this certificate is without prejudice to, and shall not be construed as derogating from, any of the rights, powers, and duties of the Council pursuant to any of its statutory functions or in any other capacity and, in particular, shall not restrict the Council from exercising any of its powers or duties under the Town and Country Planning Act 1990 as amended. Planning advice may be sought from the Council's Development Management Team, Town Hall, Argyle Street WC1H 8EQ, (tel: 020 7974 4444) or by email at planning@camden.gov.uk.
- 3 Your attention is drawn to the alleged unauthorised conversion and sub-division of the remaining part of the residential unit (described as 'Flat 3' on drawing ref. 201 Rev F approved under planning permission 2004/5123/P dated 05/04/2005). This matter will be referred to the Council's Enforcement Team for further investigation.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Director of Regeneration and Planning

Notes

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful on the specified date and thus, was not*/would not have been* liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use*/operations*/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.

4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

DRAFT

DECISION