

|  |  |  |  |
|--|--|--|--|
| <b>LDC Report</b><br>(Existing)  |  | 15/02/2018                                   |  |
| <b>Officer</b><br>Leela Muthoora   |  | <b>Application Number</b><br>2017/7005/P     |  |
| <b>Application Address</b><br>Studios 1-4<br>2 Downshire Hill<br>London<br>NW3 1NR   |  | <b>Recommendation</b>                        |  |
| <b>1<sup>st</sup> Signature</b>  |  | <b>2<sup>nd</sup> Signature (if refusal)</b> |  |
|  |  |  |  |
| <b>Proposal</b>  |  |  |  |
| Use as offices (Class B1a) for more than 10 years.   |  |  |  |
| <b>Assessment</b>  |  |  |  |
| <p>The application site is located on the northern side of Downshire Hill near the junction with Rosslyn Hill. The Studios are on the first floor level to the rear of numbers 1-4 Downshire Hill. The four units are named as Studios 1, 2, 3 and 4, 2 Downshire Hill and are comprised of first floor units with mezzanine levels without any windows in the walls but with north facing roof-lights. The studios share access from the ground floor of no. 2 Downshire Hill, which cannot be accessed by the public.</p> <p>The building is not listed, is located in the Hampstead Conservation Area and is covered by an Article 4 Direction that withdraws the permitted development right to change from office to residential use.</p> <p>The application seeks to demonstrate that Studios 1-4 have been in office use for a period of 10 years or more such that the continued use would not require planning permission.</p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>• Certificate of lawfulness statement ref:17327/SH/ta Dec 2017</li> <li>• Appendices 1-7: Application forms, decision notices and appeal decisions             <ul style="list-style-type: none"> <li>○ 1. PL/8402140- Refusal of permission for change of use of studios 1-4 to offices at 2 Downshire Hill, dated 8 March 1985</li> <li>○ 2: PL/8500347- Grant of permission for change of use from artists' studio to use as an architects' office at Studio 4, 2 Downshire Hill, dated 07 May 1986</li> <li>○ 3: 8601165- Grant of permission for change of use from artists' studio to use as an architects' office at Studio 4, 2 Downshire Hill, dated 22 July 1986</li> <li>○ 4: Appeal ref: T/APP/X55210/A/85/037200/P5 at studios 1-4 dated 06 May 1987</li> </ul> </li> </ul> |  |  |  |

(Appeal to application ref: 8402140)

- 5: PL/9100586- Grant of planning permission for change of use from dentist studio to architects' office within Class B1 at studio 3, 2 Downshire Hill, dated 22 October 1991
- 6: 2004/1979/P- Refusal of permission for the change of use of the existing artist/architect studios on the first and second floors of the building to create 4 x self-contained residential maisonettes, each with an identified parking space in the communal garage on the ground floor, dated 25 August 2004
- 7: 2006/4254- Change of use of first and second floor from artist's studio to office (B1)
- Appendix 8: Property Valuation Records
- Appendix 9: Signed Statutory Declarations from Adam Kaye, Samuel Kaye, Elaine Coles and Damian Maguire.
- Tenancy agreements
  - 5 year tenancy agreement for the period of 2007-2012 for Studio 1
  - 2 year tenancy agreement for the period of 2015-2017 for Studio 1
  - 1 year tenancy agreement for the period of 2010-2011 for Studio 2
  - 5 year tenancy agreement for the period of 2012-2017 for Studios 3&4

The applicant has also submitted the following plans:

- Site location plan
- Appendix 7b First floor Plan

### Council's Evidence

The relevant planning history on the subject site.

**TP83635** 1A, 2A, 3A, 4A and 2 Downshire Hill **Granted 14/06/1963**

The erection of a four-storey building with basement, car park and store comprising offices of the ground floor and residential accommodation over. (Records annotated that not implemented)

The original decision cannot be found in the Council records but is referred to in later appeal decisions.

Rear of 2 Downshire Hill **Conditional permission granted 24/02/1967**

Conditions

1. Ground floor use in connection with its previous use
2. Use of the artists' studios to that use only and no other without prior consent of the council.

**TP83635/19027** Rear of 2 Downshire Hill **Granted 28/08/1964**

The use of No. 2 Downshire Hill as an Architect Office.

(The site plan is for all four units to the rear of no. 2)

**E7/17/A/9355** Studio 1, 2 Downshire Hill **Refused 27/08/1970**

Change of use of Studio 1 to Architects use

**Reasons for refusal:**

1. The proposal does not comply with the provisions of the Initial Development Plan, in which the area is zoned for residential purposes.
2. Office use is considered inappropriate to this residential area.

**APP/4408/C/21122** - Studio 1, 2 Downshire Hill **Appeal allowed and enforcement quashed 23/10/1972**

Appeal against an enforcement notice served by the Council that Studio 1 was (a) in breach of a condition imposed on the planning permission 24/02/1967 that the building shall be used as artist's studios only and (b) the refusal for use of the premises by architects. The enforcement

notice was quashed and the appeal allowed and granted permission for the use as an architect's offices 23/10/1972.

**E7/17/A/9361 Studio 2, r/o 2 Downshire Hill Refused 27/08/1970**

Change of use of Studio 2 to architects' office

**Reasons for refusal**

1. The proposal does not comply with the provisions of the Initial Development Plan, in which the area is zoned for residential purposes.
2. Office use is considered inappropriate to this residential area.

**E7/17/A/9861 Studio 3 r/o 1-4 Downshire Hill Refused 03/12/1970**

**Reasons for refusal**

1. Proposal is contrary to the zoning provisions of the Initial Development Plan, in which this site is zoned for residential purposes.
2. Office use is considered inappropriate to this residential area.

**E7/17/A/25024 Studio 4, 2 Downshire Hill Conditional permission granted 25/10/1977**

Change of use from artist's studio to architects' studio and ancillary office.

1. This permission shall be personal to Sanders & Westbrook during their occupation and shall not enure for the benefit of the land. On their vacating the premises the use shall revert to the lawful use for artists studio and shall be used as an artist's studio only and for no other purpose without the prior consent of the Council.

**E7/17/A/26302 Studio 4, 2 Downshire Hill Conditional permission granted 09/06/1978**

Change of use from artist's studio to architects' studio and ancillary office.

1. This permission shall be personal to Mr. Michael Hopkins during his occupation and shall not enure for the benefit of the land. On his vacating the premises the use shall revert to the authorised use for an artist's studio.

**8402140 Studios 1-4, 2 Downshire Hill Refused 05/03/1985**

Change of use of 4 artist's studios to offices at 1- 4, 2 Downshire Hill.

**Reasons for refusal:**

1. The proposed development would involve the loss of a type of accommodation which serves the specialised needs of the artist community and contributes to the special character of the area.
2. The proposed development involves an increase in office accommodation contrary to the Council's policy to restrain the growth of such space as expressed in the District Plan and the proposed alterations to the District Plan.

**APP/X5210/A/85/037200/P5 - Appeal against refusal 8402140 - Appeal dismissed 31/03/1987**

**8500347 Studio 4, 2 Downshire Hill Conditional permission granted 30/04/1985**

Change of use from artist's studio to use as an architect's office

1. This permission shall be personal to Eva Jiricna during her occupation and shall not enure for the benefit of the land. On her vacating the premises the use shall revert to the lawful use for artists studio purposes.

**8601165 Studio 4, 2 Downshire Hill Conditional permission granted 16/07/1986**

Change of use from artist's studio to use as an architect's office.

2. This permission shall be personal to Stanley Trevor during his occupation and shall not enure for the benefit of the land. On his vacating the premises the use shall revert to the lawful use for artists studio purposes.

**8601486 Studio 4, 2 Downshire Hill Conditional permission granted 20/11/1986**

Change of use from artist's studio to use as an architect's offices.

1. This permission shall be personal to Barry Sacks during his occupation and shall not enure for the benefit of the land. On his vacating the premises the use shall revert to the lawful use for artists studio purposes.

**9100586 Studio 3, 2 Downshire Hill Granted 17/10/1991**

Change of use from dentist studio to architects office within Class B1.

**2004/1979/P Units 1-4, R/O 2 Downshire Hill Refused 25/08/2004**

Change of use of the existing artist/architect studios on the first and second floors of the building to create 4 x self-contained residential maisonettes, each with an identified parking space in the communal garage on the ground floor.

**Reason for refusal:**

The proposed development would result in the loss of premises that are suitable for continued employment use, contrary to policy EC3, and for the provision of accommodation suitable for small firms, contrary to policy EC5, of the London Borough of Camden Unitary Development Plan 2000.

Section 55 of the Town and Country Planning Act 1990 defines "development" as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

Paragraphs (2)(a) and (2)(f) of Section 55 of the Town and Country Planning Act 1990 state: "The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land –

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which –

- (i) affect only the interior of the building, or
- (ii) do not materially affect the external appearance of the building,

(f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class".

The Town and Country Planning (Use Classes) Order 1963 stated 'Class II - Use as an office for any purpose'.

The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Class B1(a) Business Use for all or any of the following purposes—

- as an office other than a use within class A2 (financial and professional services),
- for research and development of products or processes, or
- for any industrial process,

being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

**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 (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.

The planning history includes a number of permissions that demonstrate the Council’s policy to restrict the use to small creative businesses. The inspector’s recommendation in 1972 states that Studio 1 use for artists studio or architects office be allowed but no other purpose than Class II of the schedule to the Town and Country Planning (Uses Classes) Order 1963 implying that he considered an architect’s office to be within Class II ‘Use as an office for any purpose’. In 1972, the Planning Inspector observed that the studios were occupied by architects, designers and an artist. The inspector’s recommendation in 1987 stated that ‘The council have not challenged the evidence put before me that since the studios were permitted none of them has ever been used by an artist. It seems that it has only been possible for the studio units to be used because the council have taken a broad view in interpreting Condition 2 of the original permission’ (restricted use to an artist’s studio). In 1987, the Planning Inspector observed that the studios were occupied by toy designer, a graphics designer, a textile designer and an architect. In 1991, the change of use from dentists to architect’s office in Studio 3, was permitted without the condition restricting to personal use and return to the use as an artist’s studio on vacating the premises.

A site visit to the property was undertaken on the 23 January 2018. The officer was satisfied that the units have been occupied for office use for some time, the arrangement and furniture and equipment is typical of that found in offices. The access is via a secure ground floor entrance with no access to the public, therefore, architects offices where the services are provided principally to visiting members of the public would not be applicable here.

The Valuation Office (VOA) records confirmed Studios 1, 2 and 3 and 4 as offices and premises since 2010.

Council Tax and Business Rates have confirmed that the liability for Business rates started in 2006 for Studio 1, 2007 for Studio 2, 1993 for Studios 3 and 4, which merged in 2012. They have been in payment continuously since then.

Tenancy agreements have been provided for Studio 1 with Darren Dryer from 2007-2012, then The Everyman Media Group from 2012-2017, for Studio 2 with The Chrome-Alloying Company Ltd from 2010-2011 and for Studio 3 & 4 with The Everyman Media Group from 2012-2017 all stating the use allowed as B1 offices. The three tenants are listed on Companies House.

- A statutory declaration has been provided from an employee of the managing agent stating that the properties have been occupied by Class B1 office-based tenants since 2003.
- A statutory declaration has been provided from the owners of the managing agent stating that properties have been occupied by various office-based tenants since 2005, and that they received rental payments from tenants calculated on the space being in office use.
- A statutory declaration has been provided from Damian Maguire of Sacks Maguire, of which Barry Sacks was a partner, the previous tenant of Studio 4 stating that they used Studio 4 from 1985-2010 as an architectural practice and that the other units were also in

use as offices during that time.

The evidence provided demonstrates that use as offices has been demonstrated for more than 10 years and would be considered to fall within Class B1 use of The Town and Country Planning (Use Classes) Order 1987.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the four units at rear first floor level have existed in office use for a period of more than 10 years as required under the Act.

**Recommendation: Grant lawful development certificate.**