

LDC (Existing) Report		Application number	2018/2338/P
Officer		Expiry date	
Ben Farrant		16/07/2018	
Application Address		Authorised Officer Signature	
Second Floor, 5 Rosemont Road London NW3 6NG			
Conservation Area		Article 4	
N/A		Restricting B1a to C3	
Proposal			
Use of second floor as 1 x 1 bed self contained flat			
Recommendation:	Refuse Lawful Development Certificate		

Application site:

The application site is a two storey (plus roof additions) mid-terraced property located on the northern side of Rosemont Road.

The property is not listed, nor is it within a conservation area.

Proposal:

5 Rosemont Road comprises of a hairdressers/beauty salon to the ground floor (use class A1) with office space (use class B1a) to the first floor, and ancillary office space to the second floor. The applicant has undertaken works to subdivide the property, separating the second floor to form a self-contained residential unit without the benefit of planning consent. This application seeks to demonstrate that the second floor of the building has been in use as a self-contained residential unit (use class C3) for a period of 4 years or more, such that the continued use would not require planning permission.

The applicant is required to demonstrate, on balance of probability that the existing residential unit has existed for a period of 4 or more years.

Applicant's Evidence:

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

- Current floorplans (ref:18-12-002)
- Estate agent details of the property dating from 1993 – description of 'Second Floor Flat' containing '2 Rooms, Shower, W.C'
- Signed 15 year lease dated 14/07/2006 referencing 'Ground floor entrance first floor office and second floor residential studio'

Council's Evidence:

- A site visit was conducted on 07/06/2018, the second floor was vacant

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 information provided by the applicant it is considered insufficient to demonstrate continuous use of the second floor as a self-contained flat. No evidence of utilities, council tax payment records, or other such evidence has been provided. Whilst the applicant states the tenant paid these directly, in the absence of any such information, the evidence provided is considered ambiguous and not precise to demonstrate the continuous use of the second floor as a self-contained flat.

The Council’s evidence contradicts the applicant’s. The applicant is aiming to demonstrate under the current Certificate of Lawful development that the units have been in continuous use for more than 4 years. However at the time of a site visit (07/06/2018) the second floor was vacant.

Whilst it is acknowledged that the flat exists, the information provided by the applicant is not sufficiently precise and unambiguous to demonstrate that the second floor has been in continuous use as a self-contained flat for a period of more than 4 years as required under the Act. Furthermore, the Council’s evidence contradicts that submitted by the applicant.

Recommendation: Refuse Lawful Development Certificate