

LDC Report	28/08/2018
Officer	Application Number
Obote Hope	2018/3122/P
Application Address	Recommendation
104 Cleveland Street London W1T 6NU	
1st Signature	2nd Signature (if refusal)
Proposal	
Use of the basement and ground as a residential dwelling.	
Assessment	
<p>The application site is located on the north side of Cleveland Street and relates to a three-storey building with basement and mansard roof extension.</p> <p>The application relates to the ground floor and basement as a maisonette.</p> <p>The building is not listed and is located in the Fitzroy Square Conservation Area.</p> <p>Permission is sought for a certificate of lawful development for the use of the building as a single family dwelling (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 dwelling house.</p> <p>National Planning Practice Guidance states that a local planning authority needs to consider 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.</p>	

The application seeks to demonstrate that on balance of probability the maisonette and rear ground floor has existed for a period of 4 years or more such that the continued use would not require planning permission.

Applicant's Evidence

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

- Cello Trading UK 12 Months Tenancy Agreement dated 1ST June 2012; March 2013; March 2014; March 2015; March 2016; March 2017 and March 2018 (Robert Wilson);
- Experian Credit Report 52356413/IN dated 15th June 2018;
- Statement and Evidence Report dated 2nd July 2018;
- Signed Affidavit from Brian Harris & Co Solicitor dated 29th June 2018;
- Signed Statement from Curry Popeck Solicitors & Mediators dated 19th June 2018;
- Lloyds Bank Account Statement between March 2013 to May 2018;
- Saving Account Statements from Beverley Building Society from August 2013 November 2017;
- Saving Account from Nationwide between April 2012 to January 2018;
- Utility Bills From British Gas, EDF Energy, Thames Water and Virgin Media various dates between April 2013 to March 2018;

The applicant has also submitted the following plans:

- A site location plan outlining the application site and Floor Plans;

Assessment of Evidence

Planning permission was obtained in 1995 (ref: 9501741) for the self-containment of the two self-contained flats and extensions and alterations. Planning permission was obtained in 1997 (ref P9602424R5) for 102-104 Cleveland Street; for the change of use of the rear part of the ground and basement floors from retail use (Class A1) to residential use, including the extensions to the rear of the first, second and roof to form seven residential units between both sites. It comprises two studio flats, three 1 bedroom flats, one 2 bedroom flat and one 3 bedroom flat. The property is laid out and used as a 2 bed residential maisonette (Class C3) at ground floor and basement with self-contained flats on the first, second and third floors.

The submitted evidence includes signed statements from two solicitors including sworn statutory declaration from Brian Harris & CO Solicitors confirming that the applicant occupied the maisonette from 1st March 2012 and has used the ground and the basement as a maisonette since this time to the present day. In addition, the applicant has provided a signed Affidavit, and credit report provided by Experian in June 2018. This affirms, by reference to bank, utility provider, and other credit suppliers his occupancy of the Property since early 2012.

The applicant submitted copies of Tenancy Agreements covering the periods from March 2012 to 28th February 2018. Copies of utility bills from various companies including Thames Water, Virgin Media and British Gas utility suppliers were also received since the applicant took occupation on the 1st March 2012.

Council's Evidence

- 9501741 - The erection of a rear extension at first, second and third floor levels with a mansard roof extension to provide one 1 bedroom flat and one 2 bedroom flat, - Granted – 08.02.1996.
- P9602424R5 - The erection of a rear extension to no 104 at first, second and third floor levels with an upper mansard roof extension from front to rear and a lower mansard at the rear, together with the erection of a rear extension to no 102 at lower ground, ground, first and second floors, to form seven residential units comprising two studio flats, three 1 bedroom flats, one 2 bedroom flat and one 3 bedroom flat including the change of use of the rear part of the ground and basement floors from retail use (Class A1) to residential use, - Granted – 09.05.1997.
- 2016/2868/P - Construction of a mansard roof extension and installation of air conditioning unit and rooflights, - Granted 08.08.2016

There is no relevant planning enforcement action on the subject site.

Overall, the statutory declarations, tenancy agreements and utility bills provide strong evidence that the property has been used as a single-family dwelling since 2012 at basement and ground floor levels. Although some weight is given to the fact that no council tax bills have been submitted the VOA website identifies the property as maisonette at basement and ground floor level.

Conclusion

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

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the lower ground floor unit has existed in residential use for a period of more than 4 years as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Recommendation: Approve