

<b>LDC Report</b>		05/12/2018
<b>Officer</b>		<b>Application Number</b>
Alyce Keen		2018/4855/P
<b>Application Address</b>		<b>Recommendation</b>
3 Bolton Road London NW8 0RJ		Refuse Certificate
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
Use of lower ground floor as office (Class B1a).		
<b>Assessment</b>		
<p>The application site is located at 3 Bolton Road.</p> <p>The application relates to the lower ground floor of the dwelling house.</p> <p>The building is not listed, however is located in the St John's Wood Conservation Area.</p> <p>The application seeks to demonstrate that the office use has existed in the lower ground floor for a period of 10 years or more such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on the balance of probability that the existing office use has existed for a period of 10 or more years.</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>Income &amp; Expenditure Account for year ended 30 April 2007</li> <li>2 x invoices for sale of photographs</li> </ul> <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> <li>A site location plan outlining the application site</li> </ul> <p><b>Council's Evidence</b></p> <p>The relevant planning history on the subject site is detailed below:</p> <p>2014/1527/P - Installation of 1no. dormer to rear. Granted planning permission 13/05/2014.</p> <p>2006/4174/P - Erection of a full-width single-storey rear extension at basement level and creation of terrace over (part of roof) at ground floor level in connection with existing dwellinghouse (Class C3). Granted planning permission 07/12/2006.</p> <p>35497 - Erection of a roof extension. Granted planning permission 08/02/1983.</p>		

31125 - The conversion of the roof space including formation of dormer windows at the rear to provide additional residential accommodation. Granted planning permission 23/06/1981.  
J5/13/10/15149 - The conversion of No. 3 Bolton Road, NW8, to provide 2 self contained maisonettes. Granted planning permission 24/01/1973.

Council tax have confirmed that the liability for Residential Council Tax started on 01/11/1998. It has been in payment continuously since then. There is no record of business tax being paid at 3 Bolton Road.

A site visit to the property was undertaken on the 27<sup>th</sup> November 2018. The officer wasn't satisfied that the unit had been occupied for office use for some time and the property was vacant. In addition, even though there was an external entrance door at the lower ground level, there remains internal access to the lower ground level as part of the dwellinghouse.

### **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 is considered insufficient to demonstrate continuous use of the lower ground floor as an office. No evidence of utilities, Council tax payment records, or other such evidence has been provided. In the absence of any such information, the evidence provided is considered ambiguous and not precise to demonstrate the continuous use of the lower ground floor as an office.

The Council does have evidence to contradict or undermine the applicant's version of events in terms of the site visit and tax records. The applicant is aiming to demonstrate under the current Certificate of Lawful development that the lower ground floor has been in continuous office use for more than 10 years. However, at the time of a site visit (27/11/2018) the lower ground floor was vacant and still had internal access from the dwelling house into the lower round floor. Tax records also demonstrate that the property is solely liable for residential tax.

The information provided by the applicant is insufficient and ambiguous to demonstrate that the lower ground floor has been in continuous use as office space for a period of more than 10 years as required under the Act. Furthermore, the Council's evidence contradicts that submitted by the applicant.

**Recommendation: Refuse Lawful Development Certificate**