

LDC Report	15/03/2019
Officer	Application Number
Kristina Smith	2018/6128/P
Application Address	Recommendation
Fashion Apartments 55 Grafton Road London NW5 3EL	Approve
1st Signature	2nd Signature (if refusal)
Proposal	
Use of part ground and part first floor levels as 2 x studio units (Class C3)	
Assessment	
<p>The application site comprises a two-storey building located on the south west side of Grafton Road between the junctions of Athlone Street and Wilkin Street. The wider building appears to wholly be in use as self-contained residential units.</p> <p>The application relates to the use of two studio units: Flat 3 at ground floor and Flat 3A at first floor level.</p> <p>The building is not listed and is located in the Inkerman Conservation Area.</p> <p>The application seeks to demonstrate that Flats 3 and 3A have existed as self-contained units for a period of 4 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 residential units have existed for a period of 4 or more years.</p>	
Relevant Planning History	
<p>2012/1535/P - Change of use from office use (Class B1) to residential use (Class C3) to provide 9 self-contained units (2 x 1-bed, 6 x 2-bed, 1 x 3-bed), including extension at roof level to create an additional second floor with roof terraces at front and side, installation of two new windows on Wilkin Street elevation, and cycle storage at front. Granted subject to s.106 on 25/09/2012</p>	
Applicant's Evidence	

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

Flat 3A

- Gas Certificate Invoice dated 24/10/2014
- Energy Performance Certificate from HM Government (date of assessment: 18/5/2017)
- 1 year tenancy agreement for the period 25/10/2014 – 24/10/2015 (signed 23/10/2014)
- Letter from Deposit Protection Scheme (dated 23/10/2014)
- Inventory check in of 3A Fashion Apartments (dated 18/10/2014)
- Landlord's Gas Safety Record (dated 24/10/2014)
- Landlord Statement (dated 27/10/2014)

Flat 3

- Gas Certificate Invoice dated 24/10/2014
- Energy Performance Certificate from HM Government (date of assessment: 30/6/2014)
- 1 year tenancy agreement for the period 25/10/2014 – 24/10/2015 (signed 23/10/2014)
- Letter from Deposit Protection Scheme (dated 23/10/2014)
- Inventory check in of 3A Fashion Apartments (dated 18/10/2014)
- Landlord's Gas Safety Record (dated 24/10/2014)
- Landlord Statement (dated 27/10/2014)
- 1 year tenancy agreement for the period 08/02/2018 – 07/02/2019 (signed 7/12/2017)
- Court Summons for failure to pay Council tax (dated 15/10/2014)

No address

- Builder's invoice for work to new apartments (dated 22/07/2014)
- Gas safe register (dated 26/06/2014)
- Partial final certificate from Approved Inspector

The applicant has also submitted the following plans:

- A site location plan outlining the application site
- Existing ground floor and first floor plans showing only the 2no. converted studio units

Council's Evidence

There is no relevant planning history or enforcement action on the subject site which demonstrates the provision of two studio apartments at ground and first floors. Planning consent (ref. 2012/1535/P) shows that permission was granted for a 1-bed duplex unit over ground and first floors.

Council tax have confirmed that the liability for Council Tax at Flat 3 took effect from 30/06/2014. A Court Summons has been submitted as evidence that implies payments were not made for the period 30/06/2014 and 31/03/2015. There is no record of Flat 3A's liability for Council Tax.

A site visit to the property was undertaken on 28/01/2019. The officer was satisfied that both units have been occupied for residential use for some time.

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.

Notwithstanding the absence of Council Tax records for Flat 3A, 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 two studio units at ground and first floors have 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