

LDC Report	01/03/2019
Officer(s)	Application Number(s)
Samir Benmbarek	2019/0722/P
Application Address	Recommendation
240 Kilburn High Road London NW6 2BS	Grant Certificate of Lawfulness (Existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Installation of 17x windows to flank wall of building (Use C3)	
Assessment	
<p>No. 240 Kilburn High Road is a five-storey building located on the eastern side of Kilburn High Road. The building is not listed, nor is it located within a conservation area. Opposite, on the western side of Kilburn High Road is the London Borough of Brent.</p> <p>At the front of the site at ground floor level, the building is in use as a dance studio (use D2).</p> <p>The applications seek to demonstrate that 17x windows have been installed on the side elevation of the building and remained as such continuously within 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 17 x windows have existed for a period of 4 or more years.</p> <p>Planning History</p> <p>2005/2545/P - Redevelopment of the site to provide a 5 storey building comprising ground floor in retail use (Class A1) to provide two retail units, change of use from office (Class B1a) to residential at first floor level in association with the provision of thirteen residential units (Class C3) on first, second, third and fourth floor levels (2 x bedsits, 3 x 1-bedroom self-contained flats, 4 x 2-bedroom self-contained flats, 4 x 3-bedroom self-contained flats). – Granted subject to S106 14/11/2005</p> <p>2019/0516/P; 2019/0517/P; 2019/0518/P; 2019/0519/P; 2019/0534/P; 2019/0535/P; 2019/0536/P; 2019/0537/P; 2019/0538/P; 2019/0539/P; 2019/0540/P; 2019/0541/P; 2019/0542/P; 2019/0543/P; 2019/0548/P; 2019/0549/P; 2019/0550/P; 2019/0551/P; 2019/0552/P; 2019/0553/P; 2019/0554/P; 2019/0555/P; 2019/0560/P; 2019/0561/P; 2019/0562/P; 2019/0563/P; 2019/0573/P: Use as self-contained flat (Use C3)- Granted 22/02/2019.</p>	

Applicant's Evidence

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

- Statutory Declaration (sworn affidavit) signed by A H Kerallah dated 2019
- Letter from Camden Council dated 26th February 2013

The following plans were also submitted with the application:

- TQRQM19026135256234 Location Plan (OS Extract)
- 0441/07 Side Elevation
- 0455/400 Ground Floor Plan
- 0455/401 First Floor Plan
- 0455/402 Second Floor Plan
- 0455/403 Third Floor Plan
- 0455/404 Fourth Floor Plan

Council's Evidence

It was brought to the attention of the Council in April 2013 that the site had not been developed in accordance with the previously approved plans related to 2005/2545/P to form (amongst other matters) 27 x studio and 1 bed flats, rather than the approved 13 flats (with a mix of studios, 1, 2 and 3 bed self-contained flats).

A Planning Contravention Notice was quickly served on the owner as a prelude to serving an enforcement notice against this breach of planning control. In response the owner provided evidence in the form of lease agreements, invoices and sworn statements that the use of the property as 27 residential units had existed, continually in excess of four years. The Council did not have any evidence to contradict this and the Council had to accept they were immune from enforcement action under Section 171B of the Town & Country Planning Act 1990 (T&CPA) and the enforcement case was closed on 26th May 2013.

The property was revisited by one of Camden Council's Planning Enforcement Officers in March 2017. It was confirmed that the property has not materially changed since it was inspected in 2013.

Assessment and Context

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.

No. 240 Kilburn High Road is a five-storey building with a D2 (dance studio) unit at ground floor level and self-contained flats at ground, first, second, third and fourth floor levels. On its side elevation (facing Grangeway), there are 17x windows. This was observed on a site visit which

took place on 15th February 2019.

The applicant/agent is seeking clarification that the 17x windows are now authorised as there is no planning applications made on the site for these works.

The Council is satisfied that the evidence submitted demonstrates that the 17x windows on the side elevation have been continuously present for a period of more than 4 years from the date of this application.

The Council has viewed archived street side photography in which the 17x windows have existed on the building continuously from more than 4 years from the date of this application. The earliest image is from July 2014. The Council's Enforcement Officer has also confirmed that the 17x windows have existed continuously for a period surpassing 4 years.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability', the 17x windows on the side elevation at No. 240 Kilburn High Road has been installed and have remained there 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