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| Delegated Report LDC (Existing) | | Analysis sheet | Expiry Date: | 29/01/2019 |
| | | N/A / attached | Consultation Expiry Date: | n/a |
| Officer | | | Application Number(s) | |
| Matthew Dempsey | | | 2018/5135/P | |
| Application Address | | | Drawing Numbers | |
| 42 Fordwych Road London NW2 3TG | | | Refer to Decision Notice | |
| PO 3/4 | Area Team Signature | C&UD | Authorised Officer Signature | |
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| Proposal(s) Use of part of the property (excluding the first-floor rear flat) as three self-contained dwellings comprising; a two-bedroom flat at ground floor, a one-bedroom flat at first floor (to the front of the property), and a one-bedroom flat on the second (top) floor. | | | | |
| Recommendation(s): | | Refuse Lawful Development Certificate | | |
| Application Type: | | Certificate of Lawfulness (Existing) | | |
| Conditions or Reasons for Refusal: | | Refer to Draft Decision Notice | | |
| Informatives: | | | | |
| Site Description | | | | |
| The application site is a three storey mid-terraced property located on the western side of Fordwych Road. The property is not listed, nor is it within a conservation area. | | | | |
| Proposal: This applications seek to demonstrate that the ground floor 2 bed flat, 1 st floor (front) 1 bed flat, and 2 nd floor 1 bed flat have been in use as self contained units in their current layout for a period of 4 years or more, such that continued use would not require planning permission. The applicant is required to demonstrate, on the balance of probability that these self-contained residential units have existed for a period of 4 year or more. | | | | |

Applicant's Evidence:

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

- Existing plans: EX01, EX02, EX03, EX04, EX05, EX06, EX07, EX08.
- Site Location plan: LOC.00.
- Statutory declaration by Allan Myers, dated 02/10/18.
- Legal letter, dated 20/03/19.

Tenancy Agreements:

- Assured Shorthold Tenancy Agreement (4, 42 Fordwych Road), 15/04/10.
- Assured Shorthold Tenancy Agreement (Top floor flat, 42 Fordwych Road), 03/08/11.
- Tenancy Agreement (Top floor flat, 42 Fordwych Road), 10/08/12.
- Memorandum of Renewal Agreement (Top floor flat, 42 Fordwych Road), 10/08/12.
- Tenancy Agreement (Top floor flat, 42 Fordwych Road), 10/08/13.

Valuation Office agency documents:

- Valuation Office Agency Rent Register, Garden flat & bedsit; Tenancy commenced 1979.
- Valuation Office Agency Rent Register, 1st floor flat; Tenancy commenced 0th March 1981.
- Valuation Office Agency Rent Register, 2nd floor flat; Tenancy commenced 000080.
- Valuation Office Agency Rent Register, Garden flat & Bedsit; (Non-self contained rooms). 14/08/14.
- Valuation Office Agency Rent Register, 2nd floor flat; (Non-self contained converted flat). 04/09/06.
- Valuation Office Agency Rent Register, 1st floor flat; (Self contained converted flat). 09/05/15.

Council Tax details:

- (Flat ground floor & 1st floor rear) Council Tax for financial year 2015/16, dated 10/03/16.
- (Former flat ground floor & 1st floor R) Council Tax for financial year 2016/17, dated 12/11/16.
- (Flat ground floor) Council Tax for financial year 2016/17, dated 28/12/16.
- (Former flat ground floor & 1st floor R) Council Tax for financial year 2016/17, dated 04/01/17.
- (Flat ground floor) Council Tax for financial year 2017/18, dated 01/08/17.

Gas safety information:

- (Top floor flat) Landlord /Homeowner Gas Safety Record, dated 11/11/10.
- (Top floor flat) Landlord /Homeowner Gas Safety Record, dated 11/01/13.
- (Top floor flat) Landlord /Homeowner Gas Safety Record, dated 14/01/15.
- (Top floor flat) Landlord /Homeowner Gas Safety Record, dated 11/01/17.
- (Top floor flat) Gas safety certificate, dated 14/01/14.

Utility bills:

- (Ground floor 42 Fordwych Rd) British Gas bill 27/02/16 – 13/09/16, dated 13/09/16.
- (Ground floor 42 Fordwych Rd) British Gas bill 14/09/16 – 07/12/16, dated 07/12/16.
- (Ground floor 42 Fordwych Rd) British Gas bill 08/12/17 – 10/03/17, dated 10/03/17.
- (Ground floor 42 Fordwych Rd) British Gas bill 11/03/17 – 02/06/17, dated 03/06/17.
- (Top floor 42 Fordwych Rd) British Gas bill 23/08/16 – 19/09/16, dated 08/12/16.
- (Top floor 42 Fordwych Rd) British Gas bill 20/09/16 – 10/03/17, dated 10/03/17.
- (Top floor 42 Fordwych Rd) British Gas bill 11/03/17 – 02/06/17, dated 08/06/17.
- (Ground floor flat) EDF Energy electricity bill 06/04/16 – 13/05/16, dated 17/05/16.
- (Ground floor flat) EDF Energy electricity bill 14/05/16 – 02/09/16, dated 02/09/16.
- (Top floor flat) EDF Energy electricity bill 21/08/16 – 3/02/17, dated 03/11/16.
- (Ground floor flat) EDF Energy electricity bill 03/09/16 – 29/11/16, dated 29/11/16.

- (Top floor flat) EDF Energy electricity bill 21/08/16 – 03/02/17, dated 09/02/17.
- (Ground floor flat) EDF Energy electricity bill 30/11/16 – 03/03/17, dated 03/03/17.
- (Top floor flat) EDF Energy electricity bill 04/02/17 – 03/05/17, dated 15/05/17.
- (Ground floor flat) EDF Energy electricity bill 04/05/17 – 16/06/17, dated 31/05/17.
- (Top floor flat) EDF Energy electricity bill 04/05/17 – 16/06/17, dated 18/08/17.
- (2nd floor flat) Thames Water bill 21/08/16 – 31/03/17, dated 19/09/16.

Miscellaneous information:

- (Top floor flat) Chambers Plumbing & Heating Services invoice, dated 19/03/15.
- (1st floor flat) Chambers Plumbing & Heating Services invoice, dated 31/01/16.
- (FFF 42 Fordwych Rd) M.O.T. Inventories invoice, dated 05/06/17.

Council's Evidence:

A site visit was conducted on 13/12/2018. The ground floor flat was vacant and in a poor state of repair. The first floor (front) flat was occupied and visibly in use as a residential dwelling. The 2nd floor flat was occupied and visibly in use as a residential dwelling. An additional residential unit at 1st floor (rear – as indicated on the floor plans) was occupied and visibly in use as a residential dwelling. However, the applicant has confirmed that this particular unit has only been recently development and has not been in situ for a period of four years or more. Therefore, the first floor studio flat is not considered to be lawful.

Council Tax Officers have provided confirmation that the property has not been configured as suggested by the plans submitted for the period in question. The Council's HMO Officer has confirmed that according to historic records the property should be considered a HMO. The Council's legal team have also assessed the submitted evidence and do not believe that the statutory declaration provided by the applicant confirms continuous use of 3 x self-contained flats, and furthermore highlights the anomaly of the 4th unit at 1st floor (rear).

A meeting was held at the Council offices (13/02/19) to discuss the investigation and set out the likelihood of a recommendation to refuse the application, no further evidence or supporting information was provided by the applicant within the initial extension of time. However, a further extension was requested and accepted which allowed the applicant to provide an additional supporting document which was a written letter from Keystone Law dated 20/03/19.

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 3 flats as self-contained units. Utility bills, Council Tax payment records, and other supporting evidence has been provided, however there is no documentary trail to demonstrate continuous use of the current layout. Furthermore, some evidence provided by the Council Tax department and also the House in Multiple Occupation Officer provides discrepancies with the applicants version of the situation within the property.

Additionally, as part of their submission, the applicant has provided rent register documents from the Valuation Office Agency which confirm that at least 2 of the units have been designated as "non-self-

contained", one of them confirmed as recently as 2014. This would appear to suggest that the layout of the property as shown on the floor plans, provided with the application, has been altered within the last 4 years. The applicant has not been able to provide any evidence to confirm precisely when the flats/ studio were converted to self-contained units. The first floor flat is identified as self contained in 2015, however; this is not more than 4 years prior to the application date.

Whilst the applicant has provided a statutory declaration to confirm the current layout of the property, and to further state that 3 flats have existed for at least 4 years, in the absence of any information relating to the creation of the 4th flat (1st floor rear), the evidence provided is considered ambiguous and not precise enough to demonstrate the continuous use of the ground floor 2 bed, 1st floor (front) 1 bed and 2nd floor 1 bed flat as self-contained residential units.

The Council's evidence contradicts that of the applicant. 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 (13/12/2018) the ground floor flat was vacant, and an additional unit (1st floor rear) was clearly in evidence and occupied. During a meeting at the Council offices (08/02/19), the applicant acknowledged the 1st floor (rear) flat was created within the last 4 years and therefore the existing layout of the property must have been altered during that time period. Furthermore, Council Tax bills suggest the units were configured in a different arrangement to that shown on the existing plans provided by the applicant.

Whilst it is acknowledged that there are in fact 4 x self-contained flats within the property currently, and residential use has been in place at the property, probably since it's construction, the information provided by the applicant is not sufficiently precise and unambiguous to demonstrate that; the 3 x flats seeking lawful use have been in continuous use as self-contained flats for a period of more than 4 years as required under the Act. Furthermore, the Council's evidence contradicts that submitted by the applicant.

During a requested extension of time the applicant has provided an additional supporting document, i.e.) legal letter dated 20/03/2019. This has been considered with the other evidence available, but is not considered to sufficiently demonstrate the existing legal use of the property is as 3 self-contained flats.

Recommendation: Refuse Lawful Development Certificate