

LDC Report	15/03/2019
Officer	Application Number
Kristina Smith	2019/1423/P
Application Address	Recommendation
Flat D, 2 nd Floor 123 Fortress Road London NW5 2HR	Approve
1st Signature	2nd Signature (if refusal)
Proposal	
Use of 2 nd floor as self-contained 1-bed flat (Class C3)	
Assessment	
<p>The application site comprises a four-storey building (plus attic) located on the west side of Fortress Road. The wider building appears to be wholly in use as self-contained residential units.</p> <p>The application relates to the use of the second floor level as a 1-bed flat.</p> <p>The building is not listed and is not located in a Conservation Area. The building is located with the Kentish Town Neighbourhood Plan area.</p> <p>The application seeks to demonstrate that Flat D has existed as a self-contained unit 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 unit has existed for a period of 4 or more years.</p> <p>Relevant Planning History</p> <p><u>Flat A, 123 Fortress Road</u> 2018/5016/P - Use of lower ground floor as 1 bed self-contained residential unit (C3) – Certificate of Lawfulness Granted 04/12/2018</p> <p><u>Flat B, 123 Fortress Road</u> 2018/6100/P - Use of ground floor as 1 bed self-contained residential unit (C3) – Certificate of Lawfulness Granted 11/01/2019</p> <p>8701495 - Retention of works of conversion providing three self-contained flats comprising 2 two-bedroom maisonettes and a one-bedroom flat – Granted 05/08/1988</p>	

Applicant's Evidence

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

- Statutory declaration from representative of IGM Building Contractor Ltd declaring he worked as a sub-contractor during 2012/3 - and on a regular basis since - and the flat was self-contained with its own kitchen and bathroom facilities
- Letter to Council's Council tax division dated 31st May 2013 informing of responsibility for Flats A, B, C, D and E
- Utility bill from edf energy dated September 2017
- Council tax bills from Camden Council x 3 covering period between 22/03/2015 – 25/08/2018

The applicant has also submitted the following plans:

- A site location plan outlining the application site
- Second and third floor plans

Council's Evidence

There is no relevant planning history or enforcement action on the subject site which demonstrates the provision of a 1-bed unit at second floor level. Planning consent (ref. 8701495 – dated 05/08/1988) shows that retrospective permission was granted for '*Retention of works of conversion providing three self-contained flats comprising 2 two-bedroom maisonettes and a one-bedroom flat*'

The Council Tax valuation list confirms that the liability for Council Tax at Flat D took effect from 28/03/2014.

A site visit to the property was undertaken on 02/04/2019. The officer was satisfied that the unit has 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.

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 sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the unit at second floor level 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