

<b>LDC Report</b>		11/06/2019	
<b>Officer</b>		<b>Application Number</b>	
Obote Hope		2019/1162/P	
<b>Application Address</b>		<b>Recommendation</b>	
340A Kilburn High Road London NW6 2QJ		Grant Lawful Development Certificate – Existing	
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b>			
The continued use of the basement as 1Bed self-contained flat.			
<b>Assessment</b>			
<p>The application site consists of a four-storey building with basement. It is situated on the east side of Kilburn High Road, just to the north of Iverson Road and close to the north end of the major shopping and service centre. It is not within the core frontage area of the shopping centre, although commercial units occupy the ground floor of the building. The 1st, 2nd, and 3rd floors of the building are in residential use and are accessed via two separate doors from pavement level to the front of the building. Ground floor units are in commercial use. Access to the basement is via Loveridge Road and into the rear of the property.</p> <p>The building is not listed and is not located in a conservation area.</p> <p>The application seeks to demonstrate that the 1 Bed basement flat has existed 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 balance of probability that the basement flat has existed for a period of 4 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>• Southern Electricity quarterly bills dated 26/11/2016; 27/05/2017; 26/08/2017; 18/11/2017; 26/02/2018; 27/04/2018 and 25/08/2018;</li> <li>• Thames Water bill dated 30/03/2013 to 19<sup>th</sup> June 2013; 20<sup>th</sup> June to 08 September 2013; 09<sup>th</sup> to 18<sup>th</sup> December 2013.</li> <li>• British Gas Electricity bills dated 26<sup>th</sup> Nov 2016 to 24<sup>th</sup> Feb 2017; 27<sup>th</sup> May to 25 August 2017; 26 Aug 2017 - 17 Nov 2017; 18 Nov 2017 - 25 Feb 2018; 26.02.2018 - 26.04.2018; 27.04.2018 - 24.08.2018;</li> <li>• Statutory Declaration from NWL Solicitors dated January 2019.</li> <li>• Yearly Tenancy Agreement from Assured Shorthold Tenancy dated 26<sup>th</sup> May 2013; 26<sup>th</sup> May 2014; 26<sup>th</sup> May 2015; 26<sup>th</sup> May 2016; 26<sup>th</sup> May 2017; 26<sup>th</sup> May 2018 and 26<sup>th</sup> May 2018.</li> <li>• VOA search record dated 17/02/2019.</li> <li>• Land Registry Title no NGL717413.</li> <li>• Builders Estimate for Conversion dated 01/12/2012.</li> </ul>			

The applicant has also submitted the following plans:

- A site location plan outlining the application site - S.00;
- Basement plan - GA.01

### **Council's Evidence**

**2010/4877/P** – Certificate of Lawfulness (existing) for the continued use of basement unit as a residential flat (Class C3). **Refused** 15/11/2010.

Reason for refusal:

*'Insufficient evidence has been submitted to demonstrate that on the balance of probability, the use of the basement level of the property has been as a self-contained residential flat for a continuous period of 4 or more years'*

### **Information held by L.B.Camden:**

Council Tax records for 340A (checked 11/06/2019) indicate that the property has been in residential since 2012. Furthermore, records suggest the registered occupant of the basement flat has been receiving housing benefit continuously until 2018.

### **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 onus of proof in a lawful development certificate application lies with the applicant. The relevant test of the evidence on such matters is 'the balance of probability', the applicant is not required to discharge the stricter, criminal burden of proof, namely 'beyond all reasonable doubt'. The local planning authority are advised that if they have no evidence of their own, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous.

The applicant has submitted copies of Assured Shorthold Tenancy Agreements each referring to 340A Kilburn High Road. He has also submitted a signed statutory declaration with utility bills, earliest dated back in 2013. These are legal documents and 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 basement of 340A has been occupied as a 1Bed flat 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**