

LDC Report	08/08/2019
Officer	Application Number
Jaspreet Chana	2019/3057/P
Application Address	Recommendation
Flats 8 and 9, 244 Kilburn High Road Kilburn London NW6 2BS	Grant
1st Signature	2nd Signature (if refusal)
Proposal	
Use of 1st floor rear (Flat 8) and 2nd floor rear (Flat 9) as self-contained flats (Class C3)	
Assessment	
<p>The application site is located on the eastern side of Kilburn High Road within the Kilburn Ward of the London Borough of Camden.</p> <p>The application relates to a 4 storey building consented in 2003 to accommodate commercial/residential use (Class A1) floor space at ground and residential on the units on the upper floors. The properties in question are located on the first and second floors and as such, its planning use was originally approved as Class C3 (Residential).</p> <p>The building is not listed and is not within a Conservation Area.</p> <p>Flat 7 which was approved as a three bedroom flat over the first and second floor has actually been operating as two separate flats, flat 8 1 bedroom flat (on first floor) and flat 9 a two bedroom flat (on the second floor). The applicant is demonstrating that the flats have existed this way 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 existing residential units have existed for a period of 4 or more years.</p>	
Applicant's Evidence	
<p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • Letter from agency dated 31/05/19 • Council Tax details showing that both flat have been in place since 22/12/2008. • Council Tax for financial year 2019/2020 (Flat 8) statement • Council Tax for financial year 2019/2020 (Flat 9) statement 	

- Assured short hold tenancy agreement May 13th 2013 (Flat 8).
- Assured short hold tenancy agreement June 13th 2018 (Flat 8).
- Assured short hold tenancy agreement October 12th 2012 (Flat 9).
- Assured short hold tenancy agreement October 12th 2013 (Flat 9).
- Assured short hold tenancy agreement July 13th 2018 (Flat 9).

The applicant has also submitted the following plans:

- A site location plan outlining the application site
- Existing and proposed floor plans of Flats 8 and 9.

Council's Evidence

Planning history:

2003/3333/P - The demolition of the existing first floor, alterations to the existing shop fronts and the erection of 3x new floors on the Kilburn High Road frontage and 2x new floors at the rear to accommodate 3 x 3 bed residential units and 4 x 1 bedroom flats above the existing ground floor retail premises – Granted subject to S106 on 27/04/2005.

2008/1097/P - Amendments to planning permission 2003/3333/P (The demolition of the existing first floor, alterations to the existing shop fronts and the erection of 3x new floors on the Kilburn High Road frontage and 2x new floors at the rear to accommodate 3 x 3 bed residential units and 4 x 1 bedroom flats above the existing ground floor retail premises) to include an additional (fourth) floor containing a 2-bed flat with roof terrace, extension to contain lift-shaft overrun, alterations to the front elevation including an amended shopfront and installation of solar panels – Granted subject to S106 on 18/11/2009.

2009/5355/P - Partially retrospective amendments to planning permission 2003/3333/P (The demolition of the existing first floor, alterations to the existing shop fronts and the erection of 3x new floors on the Kilburn High Road frontage and 2x new floors at the rear to accommodate 3 x 3 bed residential units and 4 x 1 bedroom flats above the existing ground floor retail premises) to include an additional (fourth) floor containing a 3-bed flat with roof terrace, extension to contain lift-shaft overrun, alterations to the front elevation including an amended shopfront, the installation of solar panels and the sub-division of a three-bedroom unit to create 2 one-bedroom units - Granted subject to S106 on 27/01/2011.

2011/0907/P - Installation of glazed folding/sliding shopfront, high level windows on side elevation at ground floor level (adjacent No. 246), new fire escape door with ventilation extract grille above on side elevation (adjacent to No. 242) all in connection with change of use of ground floor retail (Class A1) to offices (Class B1) – Granted on 10/12/2012.

The Council Tax confirms:

Flat 8 and 9 have been registered for Council Tax, effective since 22/12/2008. It has been in payment continuously since then.

A site visit to the property was undertaken on the 28/08/19. The officer was satisfied that the units had been occupied for residential use for some time. The property was occupied by one tenant in flat 8 and a family of four within flat 9.

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 two flats 8 and 9 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