

LDC (Existing) Report		Application number	2019/3209/P
Officer		Expiry date	
David Peres Da Costa		02/09/2019	
Application Address		Authorised Officer Signature	
34 Aberdare Gardens London NW6 3QA			
Conservation Area		Article 4	
South Hampstead CA		Basements Heritage and conservation	
Proposal			
Use as two self-contained flats (3-bed flat at ground floor and maisonette at first and second floor) (Use Class C3).			
Recommendation:	Grant Lawful Development Certificate		

The application site is located on the south side of Aberdare Gardens.

The application relates to a three storey semi-detached property.

The building is not listed and is located in the South Hampstead Conservation Area.

The application seeks to demonstrate that the use as two residential flats (a 3-bed flat at ground floor and a maisonette at first and second) has existed for 4 years or more such that the continued use would not require planning permission.

The applicant is required to demonstrate, on balance of probability that the use as two flats has existed for a period of 4 or more years.

Applicant's Evidence

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

- Letter from Foxtons dated 28th August 2014 re top floor maisonette
- Council Tax band details for Maisonette 1st & 2nd with effect from 20/08/2014
- Council Tax band details for Ground Floor
- Assured shorthold tenancy agreement for first and second floor flat dated 13 December 2017
- Assured shorthold tenancy agreement for first and second floor flat dated 15 January 2016
- Assured shorthold tenancy agreement for first and second floor flat dated 5 February 2015
- Assured shorthold tenancy agreement for first and second floor flat dated 18 January 2019
- Assured shorthold tenancy agreement for first and second floor flat dated 6 January 2017
- Assured shorthold tenancy agreement for ground floor flat dated 04 December 2018

- Assured shorthold tenancy agreement for ground floor flat dated 15 August 2014
- Assured shorthold tenancy agreement for ground floor flat dated 19 February 2016
- Assured shorthold tenancy agreement for ground floor flat dated 1 February 2017
- Assured shorthold tenancy agreement for ground floor flat dated 20 February 2018
- Foxtons letting details for 3 bedroom ground floor flat

The applicant has also submitted the following plans:

- A site location plan outlining the application site and;
- Foxtons letting details for 3 bedroom ground floor flat including floor plans of ground floor flat
- Letter from Foxtons dated 28th August 2014 with plans of top floor maisonette (first and second floor plans)

Council's Evidence

There is no enforcement action on the subject site however the following planning history is relevant.

TPD585/21103: Conversion of 34, ABERDARE GARDENS, N.W.6. into three self-contained flats, and erection of a conservatory and an extension containing two bedrooms and a bathroom at rear. Granted 06/03/1962

TPD729: Conversion of No. 34, Aberdare Gardens, N.W.6 into three self-contained flats, together with the erection of conservatory and extension comprising bathroom and washing room at rear. Granted 08/06/1962

A site visit to the property was undertaken on the 3/9/19. The officer was satisfied that the ground floor unit and the first and second floor unit had 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 information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the ground floor 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