

<b>LDC Report</b>		22/07/2019
<b>Officer(s)</b>		<b>Application Number(s)</b>
Samir Benmbarek		2019/2876/P
<b>Application Address</b>		<b>Recommendation</b>
118 Cleveland Street London W1T 6PE		Grant Certificate of Lawfulness (Existing)
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
Use of building as 7x self-contained flats (Use C3)		
<b>Assessment</b>		
<p>No. 118 Cleveland Street is a four storey plus basement building located on the eastern side of Cleveland Street. The building is not listed, but it is located within the Fitzroy Square Conservation Area. Opposite, on the western side of Cleveland Street is the City of Westminster.</p> <p>At present, all floors of the building are in residential use (Use C3).</p> <p>The application seeks to demonstrate that the building has been in use as 7x self-contained flats and has been in such a use continuously for a period of four 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 building consisting of 7x self-contained residential units have existed for a period of four or more years.</p>		
<b>Planning History</b>		
<p><b>2011/0429/P-</b> Replacement of front windows at ground floor level of existing dwellings (Use Class C3). Granted 31/03/2011.</p>		
<b>Applicant's Evidence</b>		
<p>The applicant has submitted the following information in support of the applications:</p> <ul style="list-style-type: none"> <li>• Statutory Declaration signed by R Patel dated 13<sup>th</sup> May 2019</li> <li>• Statutory Declaration signed by P Pluhar dated 30<sup>th</sup> April 2019</li> <li>• Statutory Declaration signed by A Monteiro dated 09<sup>th</sup> May 2019</li> <li>• Statutory Declaration signed by E Majcher dated 30<sup>th</sup> April 2019</li> <li>• Statutory Declaration signed by D Prifitis dated 10<sup>th</sup> May 2019</li> <li>• Statutory Declaration signed D Nathaniel dated 08<sup>th</sup> May 2019</li> <li>• Bank Statement of A Monteiro dated 19<sup>th</sup> May 2017</li> <li>• Invoice from Noble House Construction dated 10<sup>th</sup> December 2013</li> <li>• Signed Flat 1 Tenancy Agreement commencing 16<sup>th</sup> August 2014</li> </ul>		

- Signed Flat 2 Tenancy Agreement commencing 21<sup>st</sup> August 2014
- Signed Flat 3 Tenancy Agreement commencing 19<sup>th</sup> July 2014
- Signed Flat 4 Tenancy Agreement commencing 05<sup>th</sup> March 2014
- Signed Flat 5 Tenancy Agreement commencing 26<sup>th</sup> April 2013
- Signed Flat 6 Tenancy Agreement commencing 03<sup>rd</sup> October 2013
- Signed Flat 7 Tenancy Agreement commencing 14<sup>th</sup> January 2012
- Gas Safety Record- Flat 5 dated 04<sup>th</sup> June 2014

The following plans were also submitted with the application:

- Unnumbered Location Plan (OS Extract)
- 546-EX.01 Existing Basement Plan
- 546-EX.02 Existing Ground Floor Plan
- 546-PA.01 Existing First and Second Floor Plans
- 546- EX.04 Existing Third and Loft Floor Plan

## **Council's Evidence**

### Flat 1

The Council Tax team has confirmed that the liability for Council Tax has been established for Flat 1 since 05/12/2011.

A site visit was undertaken to the property on 22<sup>nd</sup> July 2019. On the site visit, the officer was satisfied that the flat is in residential use (C3) and the layout of the property corresponds correctly to the submitted plans. The flat has its own entrance door within the building as well as its own utility meter, post-box and intercom.

The evidence submitted and site visit demonstrates that on the balance of probability, Flat 1 has been in continuous use for a period surpassing four years and therefore the Council has no evidence to contradict this.

### Flat 2

The Council Tax team has confirmed that the liability for Council Tax has been established for Flat 2 since 05/12/2011.

A site visit was undertaken to the property on 22<sup>nd</sup> July 2019. On the site visit, the officer was satisfied that the flat is in residential use (C3) and the layout of the property corresponds correctly to the submitted plans. The flat has its own entrance door within the building as well as its own utility meter, post-box and intercom.

The evidence submitted and site visit demonstrates that on the balance of probability, Flat 2 has been in continuous use for a period surpassing four years and therefore the Council has no evidence to contradict this.

### Flat 3

The Council Tax team has confirmed that the liability for Council Tax has been established for Flat 3 since 05/12/2011.

A site visit was undertaken to the property on 22<sup>nd</sup> July 2019. On the site visit, the officer was satisfied that the flat is in residential use (C3) and the layout of the property corresponds correctly to the submitted plans. The flat has its own entrance door within the building as well as its own utility meter, post-box and intercom.

The evidence submitted and site visit demonstrates that on the balance of probability, Flat 3 has been in continuous use for a period surpassing four years and therefore the Council has no evidence to contradict this.

#### Flat 4

The Council Tax team has confirmed that the liability for Council Tax has been established for Flat 4 since 05/12/2011.

A site visit was undertaken to the property on 22<sup>nd</sup> July 2019. On the site visit, the officer was satisfied that the flat is in residential use (C3) and the layout of the property corresponds correctly to the submitted plans. The flat has its own entrance door within the building as well as its own utility meter, post-box and intercom.

The evidence submitted and site visit demonstrates that on the balance of probability, Flat 4 has been in continuous use for a period surpassing four years and therefore the Council has no evidence to contradict this.

#### Flat 5

The Council Tax team has confirmed that the liability for Council Tax has been established for Flat 5 since 27/10/2017.

A site visit was undertaken to the property on 22<sup>nd</sup> July 2019. On the site visit, the officer was satisfied that the flat is in residential use (C3) and the layout of the property corresponds correctly to the submitted plans. The flat has its own entrance door within the building as well as its own utility meter, post-box and intercom.

Although the Council Tax record for this flat has only been established since October 2017, the evidence submitted and site visit demonstrates that on the balance of probability, Flat 5 has been in continuous use for a period surpassing four years and therefore the Council has no evidence to contradict this.

#### Flat 6

The Council Tax team has confirmed that the liability for Council Tax has been established for Flat 6 since 27/10/2017.

A site visit was undertaken to the property on 22<sup>nd</sup> July 2019. On the site visit, the officer was satisfied that the flat is in residential use (C3) and the layout of the property corresponds correctly to the submitted plans. The flat has its own entrance door within the building as well as its own utility meter, post-box and intercom.

Although the Council Tax record for this flat has only been established since October 2017, the evidence submitted and site visit demonstrates that on the balance of probability, Flat 6 has been in continuous use for a period surpassing four years and therefore the Council has no evidence to contradict this.

#### Flat 7

The Council Tax team has confirmed that the liability for Council Tax has been established for Flat 7 since 05/12/2011.

A site visit was undertaken to the property on 22<sup>nd</sup> July 2019. On the site visit, the officer was satisfied that the flat is in residential use (C3) and the layout of the property corresponds correctly to the submitted plans. The flat has its own entrance door within the building as well as

its own utility meter, post-box and intercom.

Although the Council Tax record for this flat has only been established since October 2017, The evidence submitted and site visit demonstrates that on the balance of probability, Flat 6 has been in continuous use for a period surpassing four years and therefore the Council has no evidence to contradict this.

### **Assessment and Context**

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.

No. 118 Cleveland Street is a four storey plus basement that is currently in residential use (use C3) consisting of 7x self-contained flats. This was observed on a site visit which took place on 22<sup>nd</sup> July 2019.

The applicant/agent is seeking clarification that the 7x self-contained flats within the building are now authorised as there are no planning applications made on the site for these works.

The Council is satisfied that the evidence submitted demonstrates that the 7x self-contained flats have been in continuous present and in use for a period of more than four years from the date of the submission of this application.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’, the 7x self-contained flats at No. 118 Cleveland Street have existed and been in use for a period of more than four years as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

**Recommendation: Approve**