

LDC Report		09/09/2019
Officer		Application Number
Kate Henry		2019/3575/P
Application Address		Recommendation
8 Gainsborough Gardens London NW3 1BJ		
1st Signature		2nd Signature (if refusal)
Proposal		
Use as a single dwellinghouse (Class C3)		
Assessment		
<p><u>Application site</u></p> <p>The application site is 8 Gainsborough Gardens, a two storey plus raised basement and accommodation in the roof space, semi-detached, residential building on the southern side of the street. The building is Grade II listed.</p> <p><u>Relevant planning history</u></p> <p>2016/2777/P: Change of use from 3 flats to single-dwelling house with associated alterations. Granted 25/07/2016.</p> <p>2016/2902/L: Change of use from 3 flats to single-dwelling house with associated alterations. Granted 25/07/2016.</p> <p>2009/5457/P: Installation of a cast iron spiral staircase and platform at rear of residential flat (C3). Granted 29/01/2010.</p> <p>2007/5841/P: Conversion of four flats into two self-contained dwellings (1x 5-bedroom maisonette and 1x 1 bedroom flat), erection of replacement rear side extension and reinstatement of original fenestration and features. Withdrawn.</p> <p>2006/5875/P: Erection of single-storey side extension with rooflight at lower ground floor level (following demolition of existing side extension), alterations to front, rear and side fenestration, replacement of balustrading at second floor level (side elevation), creation of new bin store, all in connection with change of use of 4 self-contained flats to 2 self-contained flats. Withdrawn.</p>		

Applicant's Evidence

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

- Application form
- Site location plan
- Cover letter, dated 11/07/2019, including the following:
 - Photos of studio flat entry door
 - Valuation Office Agency application form and supporting photographs, dated 30/04/2017
 - Valuation Office Agency response letter, dated 19/06/2019

Council's Evidence

The relevant planning history for the site is outlined above.

The Valuation Office Agency's website indicates that the following properties have been deleted:

- 8A, GAINSBOROUGH GARDENS
- Flat GND FLR 8, GAINSBOROUGH GARDENS
- Flat LGND FLR 8, GAINSBOROUGH GARDENS
- THE STUDIO AT 8, GAINSBOROUGH GARDENS
- FLAT 1 AT 8, GAINSBOROUGH GARDENS
- FLAT 1ST FLR 8, GAINSBOROUGH GARDENS
- FLAT 2ND FLR 8, GAINSBOROUGH GARDENS
- 8, GAINSBOROUGH GARDENS

It then lists 8, GAINSBOROUGH GARDENS as being within Council Tax Band H, with effect from 29/04/2019.

Assessment

This application seeks a Certificate of Lawfulness (Existing) to establish whether the commencement of planning permission reference 2016/2777/P, dated 25/07/2016, occurred lawfully and therefore the lawful use of the building is as a single family dwellinghouse (Class C3).

The applicant is required to demonstrate that, on the balance of probability, planning permission reference 2016/2777/P has been implemented in line with any pre-commencement conditions and prior to 3 years from the date of the permission (i.e. before 25/07/2019).

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.

Planning permission reference 2016/2777/P, dated 25/07/2016 gave permission for the following: *Change of use from 3 flats to single-dwelling house with associated alterations.*

Planning permission was granted subject to 3 conditions, as follows:

No.	Description	Deadline (if applicable)
1	Time limit	Not later than 3 years from the date of permission (25/07/2019)
2	All new work to match existing	n/a
3	Approved plans list	n/a

The table demonstrates that no details needed to be provided to the Council prior to the commencement of development.

The evidence provided by the applicant demonstrates that an application was made to the Valuation Office Agency on 30/04/2019 to have No. 8 Gainsborough Gardens listed as one single property. The application was accompanied by a Visual Appendix which showed the following:

- Photograph of new internal staircase between the ground and lower ground floors
- Views of the previous basement kitchen now dismantled
- View of previous entrance to the studio flat
- Views of single gas meter and single electric meter

The evidence provided by the applicant demonstrates that the Valuation Office Agency agreed to list No. 8 Gainsborough Gardens as a single family dwellinghouse, effective from 29/04/2019. This was on the basis that the building now appears to be being used as a single family dwellinghouses rather than two separate and self-contained dwellings, as previously.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

Conclusion:

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' planning permission reference 2016/2777/P, dated 25/07/2016, has been lawfully implemented (i.e. the change of use occurred within 3 years of the date of the permission). It is therefore confirmed that the planning permission has been lawfully commenced and the use of the property as a single family dwellinghouse is lawful.

Recommendation: Approve.