

LDC Report

18/11/2019

Officer	Application Number
John Diver	2019/2873/P
Application Address	Recommendation
8-9 Spring Place London NW5 3ER	Refuse certificate of lawful development with warning of enforcement action to be taken
1 st Signature	2 nd Signature (if refusal)

Proposal

Continued use of the property as 30x residential dwellings (Class C3)

Assessment

1. Application Site:

1.1. The site in question contains a part single, part three storey former commercial building on the southern side of Spring Place. The building is not listed and is not located within any Conservation Area. The local vicinity is generally characterised by a cluster of light industrial or employment uses that straddles the raised viaduct of the London Overground route between Gospel Oak and Kentish Town West. Abutting the site to the south east, however, is a modern 7 storey housing block providing 21 flats (built circa 2010). To the north west of the site is Spring House (known as Spring Studios) which provides photographic studios. To the rear of the site are some small commercial units and two storey dwellings. On the opposite side of Spring Place is a row of three storey terrace properties.

2. Proposal:

2.1. The applicant seeks to demonstrate that the established, lawful use of the property remains for residential accommodation (Use Class C3), providing a total of no.30 self-contained dwellings. The applications therefore seeks to demonstrate that the use of the property for residential purposes (C3) remains lawful and that the continued use for thirty dwellings would not require planning permission.

2.2. To satisfy the above the applicant is required to demonstrate that, on balance of probability, the existing layout and use of the building has been in situ and in continuous use for a period of at least 4 years (where an unapproved change of use has occurred) or that the change of use was permitted under the provisions of the General Permitted Development Order 2015 (as amended). As this application was submitted on the 03/06/2019, the relevant four year period would be from the 03/06/2015.

3. Applicant's Evidence

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

- Chronology of events report (not named, dated or signed)
- Statutory declaration by Morris Finlay dated 12th April 2019
- Statutory declaration by Andrew Rowlands dated 12th April 2019 (exhibiting letter dated 28th March 2019)
- Letter from Waldemar Kucinski, Lift Engineer, dated 28th March 2019

3.2. The applicant has also submitted the following plans:

- Site Location Plan (no.P/101)
- 'As built' ground floor plan (no drawing reference, date, scale or details of surveyor);
- 'As built' first floor plan (no drawing reference, date, scale or details of surveyor);
- 'As built' second floor plan (no drawing reference, date, scale or details of surveyor);

4. Council's Evidence

Planning History

4.1. A summary of the planning history of the property is set out below in chronological order:

TP48938/C/26.06.1953: Planning permission was granted on the 26/06/1953 for the 'With a permanent workshop forming extension of ground floor of existing factory'

2013/2913/P: Planning permission was refused on the 02/09/2013 for the 'Change of use of ground, first and second floors from film production offices and studio (Class B1) to gymnasium (Class D2)'
Reasons for refusal:

- 1) *In the absence of sufficient evidence to justify the loss of the existing employment use on the site, the proposed development would result in the unacceptable loss of floorspace suitable for continued employment use and would therefore fail to support economic activity in Camden particularly small and medium sized businesses. This is contrary to*
- 2) *The proposed development, in the absence of a legal agreement to secure car-free development, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and would promote the use of non-sustainable modes of transport,*
- 3) *The proposed development, in the absence of environmental sustainability measures in its use of energy, water and resources and in the absence of a legal agreement to secure such measures, would fail to ensure proper standards of sustainability in the new use,*
- 4) *The proposed development, in the absence of sufficient information provided to demonstrate the use properly integrates with the existing transport network, would be likely to create unacceptable traffic generation and congestion,*
- 5) *The proposed development, in the absence of a Travel Plan and in the absence of a legal agreement to secure such measures, would be likely to give rise to significantly increased car-borne trips and would result in an unsustainable form of development,*

2013/6494/P: Certificate was granted on the 17/01/2014 for the 'Use as offices on the ground, first and second floors'

2014/0597/P: GPDO prior approval was withdrawn on the 18/03/2014 for the 'Change of use from office (Class B1a) to 13 x residential units (Class C3)'

2014/4578/P: GPDO prior approval was required and granted subject to Section 106 Legal agreement on the 03/09/2014 for the 'Change of use from office (Class B1a) to 13 x residential units (Class C3) with amenity provision and external landscaping'

2015/4691/P: GPDO prior approval was withdraw on the 23/10/2015 for the 'Conversion of existing B1(A) office building to 24 self-contained residential units with ancillary storage spaces on the ground floor serving the flats (C3)'

2015/4691/P: GPDO prior approval was withdraw on the 30/08/2017 for the 'Conversion of existing B1(A) office building to 24 self-contained residential units with ancillary storage spaces on the ground floor serving the flats (C3)'

4.2. In addition, the following enforcement history was recorded for the site:

EN16/0772: An enforcement investigation relating to the 'unlawful conversion of an office block into no.30 residential units' remains under assessment at the time of writing. After enforcement officers had visited the site and warned that an unlawful change of use had occurred, this certificate of lawful development was submitted by the site owners.

Other public records

4.3. A search of the Council's Building Control records shows that a notification of an approved inspector was submitted by the Council on the 13/05/2016 (ref. 14/5/06188) for the proposed 'Conversion from office to residential'. No further specification of the extent or description of works was provided. After contacting the firm of approved inspectors appointed directly (LB Building Control Ltd), a copy of the final certificate was provided to officers. This was dated 13th May 2016, though it also did not specify the number of units within the building at the time, describing works only as 'Conversion from office to residential'. It did not detail whether any inspections had been made.

4.4. A search of the Council Tax valuation list for the property shows that the property was amended from a single, to a total of thirty units liable for Council Tax with effect from the 12/07/2016. In July 2016, Council Tax Officers visited the property and noted that 30, rather than 13 units were in situ. They noted that operational development was still taking place and the property was not fit for occupation.

Site visit

4.5. A site visit to the property was undertaken on the 29/10/2019 with the planning case officer as well as a member of the Environmental Health Housing team. During this visit, officers were only provided access into nine units across the building. During the visit, it was evident that a self-contained residential use (C3) was in operation within those units visited. During the site visit, the Environmental Health officer noted a number of health and safety violations, particularly regarding fire safety and access to natural light which would remain contrary to standards set out in The Building Regulations 2010, Approved Documents.

5. Assessment

5.1. 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 or development undertaken are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining this application.

Permitted development

- 5.2. Prior to the recent change of use, the host building had operated first as a light industrial workshop and later as offices for many decades. The last known lawful use of the site was therefore within the B1 Use Class and this was confirmed in 2013 when an existing lawful development certificate was approved (ref. 2013/6494/P).
- 5.3. Under the General Permitted Development Order (2015), deemed consent is afforded for a change of use from use classes B1a (offices) to C3 (residential) under Schedule 2, Part 3, Class O. However, the deemed consent afforded under this class is not automatic and is instead subject to conditions (O.2) as well as the provisions of paragraph W (prior approval). Paragraph W is explicit that development within the class would only be lawful if an application is made to the local authority in advance of commencement (hence *prior approval*) and if the LPA has either provided written confirmation that prior approval is not required, is required but granted or if a period of 56 elapsed from a valid submission. The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. Class O considered proposed developments only and does not include any option for retrospective consent.
- 5.4. As set out in the planning history above, the owners of the site submitted a total of four prior approval applications under Class O of the GPDO between 2013 and 2015. Three were withdrawn following a warning of refusal, however, one was granted. For this application (ref.2014/4578/P) it was determined that prior approval was required, but was granted subject to conditions and a section 106 legal agreement for the 'Change of use from office (Class B1a) to 13 x residential units (Class C3)' on the 03/09/2014. The plans indicated that a section of the existing ground floor would be demolished to form a communal courtyard and that the front entrance would be re-landscaped and gated to provide further amenity areas. Paragraph W (12) is also explicit that where prior approval is required and granted, the development must be carried out in accordance with the details approved by the local planning authority.
- 5.5. Although a prior approval was granted for the site, the development carried out on site is materially different from that considered and approved by the LPA. Rather than sub-dividing the property into a total of 13 planning units including partial demolition and re-landscaping, a total of 30 were built out on site. None of the external alterations approved were carried out and so the entire ground floor contains residential units without any amenity spaces being provided. The submitted 'as built' plans represent a significant and material change from the approved scheme. The conditions and legal agreement previously approved would not apply to the works carried out, as they represent a materially different scheme. The 'as built' scheme did not benefit from prior approval and, as set out above, the GPDO does not include any rights that could be used to apply for a retrospective change of use.
- 5.6. In light of the above, the development carried out on site does not benefit from express or deemed consent meaning that unauthorised development had occurred. In order to confirm that the existing use of the site as thirty self-contained dwellings remains lawful, the evidence must therefore confirm that this unauthorised development is now immune from enforcement action.

Immunity from enforcement

- 5.7. Unauthorised operational development, changes of use and breaches of conditions are immune from enforcement provided specific periods of time have elapsed since the breach commenced. These periods are set out in section 171B of the 1990 Act, and are four years in the case of operational development and changes of use to form single dwellinghouses.
- 5.8. If a use is to be found to be immune from enforcement action the onus is on the applicant to show that, over the 4 years concerned, it has been in reasonably continuous operation and the use did not cease for such a significant period of time as to indicate that a fresh breach of control resulted on resumption. A key test is whether, if at any time during the relevant period, the local planning authority would not have been able to take enforcement proceedings in respect of the breach because, for example, no breach was taking place, then any such period cannot count towards the rolling period of years that gives rise to the immunity.
- 5.9. As the works undertaken on site are all internal, the unauthorised development carried out relates to the change of use from office to residential and the subdivision of the planning unit into no.30 self-contained dwellings. Under section 56 of the Planning Act, a change of use is considered to have begun when the new use is instituted. This would involve the refurbishment of the property to contain all features necessary for self-contained accommodation to have been provided and those units first occupied by residential occupiers as their primary place of residence (C3). As this application was submitted on the 03/06/2019, the relevant four year period would be from at least the 03/06/2015 as discussed above.

Review of submitted evidence

- 5.10. Of the evidence provided, the affidavits are considered to hold the most amount of weight in this assessment. The other evidence provided is unsigned and often undated and so is afforded less weight.
- 5.11. Within his affidavit, Mr Finlay –the owner of the site- wrote that in his belief “*the majority of flats (85%) [onsite], have been in continual use since January 2015” (signed 12/04/19). This affidavit is unclear in terms of what ‘use’ is claimed to have been carried out. It also does not specify how many units are/were present onsite, or for how long. The wording of this affidavit refers to ‘flats’, however, does not expressly note that the building has been used for self-contained residential accommodation (Use Class C3). In this context a ‘flat’ could also relate to a number of alternative uses including short term lets (C1), or HMO (C4 / Sui Generis) and so this adds uncertainty to the assertions made. This statement does not clarify when the building works that necessitated the new use were all carried out or that the new use was instituted. In addition, it also does not confirm that thirty flats have been continuously occupied for a minimum of four years prior to the submission of the application, which remains the principle test. As a result this affidavit does little to demonstrate that the thirty existing self-contained residential flats were finished and ready for occupation since at least the 03/06/2015 and have been in continuous uses ever since. This evidence is therefore afforded limited weight.*
- 5.12. A second affidavit was submitted by a Mr Rowland. Within his affidavit, Mr Rowlands wrote to confirm that the contents of an attached letter, written on headed paper from ‘1st Impact Limited’ remained true. Mr Rowland is the director of ‘1st Impact Limited’, which is recorded on Companies House as being a construction installation firm. Companies House

notes that the company was incorporated in October 2017, but was dissolved via compulsory strike off in March 2019. In April 2019 an application for administrative restoration was successful, however, at the time of writing the company is again subject to a proposal to be struck off due to overdue accounts.

- 5.13. Within his letter, Mr Rowland sets out that he was instructed by the owner of the site (Mr Finley) to let a team of builders occupy the premise between January 2015 and early June 2016 to act as security and also to install boilers. He notes however that his team was not instructed to complete the internal fit out works. During this time, he notes that occupation *“fluctuated but as an estimate varied between 10 to 15 men throughout that period”*. This statement does therefore not confirm that the necessary works to facilities the new use were carried out in advance of, or during the period that his team occupied the site. Conversely, the statement confirms that the 10 – 15 builders were the sole occupiers of the building until at least June 2016, given that they were acting as security to avoid squatters occupying the otherwise empty building. This statement would actually contradict the claims made by the applicant as the 10 – 15 persons occupying the site for security purposes would not represent the institution of the use of thirty self-contained residential dwellings. It is also noted that the firm for which Mr Rowland represents was not incorporated until October 2017, 33 months after the letter states that the firm was instructed to provide boiler installation and security services onsite. This adds further uncertainty to this evidence provided.
- 5.14. An unsigned letter was also provided by a Mr Kucinski, of ‘Lift Installations and Repairs Ltd’. Companies House notes that this company was incorporated on 16th July 2015, with Mr Kucinski being appointed as director on the 01 August 2017. This letter states engineers from Mr Kucinski’s firm *“occupied the ground floor units of the above property from around the end of July 2014 until the beginning of June 2016”*. Notwithstanding the fact that again, this period predated the incorporation of the company in question and that this letter is unsigned and not a statutory declaration, the letter similarly does not specify the number of units built out on site at this time nor does it confirm that all units were in continuous use. In addition, it does not confirm when works to sub-divide the building were carried out. The letter again confirms that the engineers who occupied the site during this period were instructed to do so for security reasons, to prevent squatters. No confirmation that the building was used as self-contained dwellings is set out in the letter. This evidence is afforded limited weight in the assessment.
- 5.15. Finally, the submitted chronology of events provides some useful background to the application in question however can only be afforded limited weight given that it is undated, unsigned and, whilst it is understood to have been produced by the applicant’s planning agent, no name is provided. Notwithstanding, the chronology states that internal fit out works were completed in January 2015 and that the premise was ready for residential occupation from this point. Again, no confirmation of the number of units is provided and no other evidence provided would corroborate this claim. It is then claimed that the premise was again stripped of furnishings and redecorated in September of that year. The letter goes on to state that only in July/August 2016 did the *“Premises become substantially re-occupied again”*. This evidence therefore remains unclear and offers limited weight in the demonstration that 30 residential units have remained in continuous use since at least June 2015. In fact, the above quotation would act to undermine the applicant’s claim.
- 5.16. In terms of the Council’s evidence, the building control records both from the Council as well as the Final Certificate itself are extremely vague in terms of what works were assessed and signed off and offers little in the demonstration of implemented / continuous use of 30

residential units. In addition the final certificate is dated May 2016, less than four years from the submission date. Council Tax records also indicate that changes to convert the single planning unit into 30 residential flats came into effect from July 2016, 13 months after the applicant's claim the conversion to have been completed.

Assessment conclusion

- 5.17. The conversion of the property into no.30 self-contained dwellings did not benefit from express or deemed consent. The works undertaken on site were therefore unauthorised.
- 5.18. The information provided by the applicant is not considered to be sufficiently precise or unambiguous to demonstrate that 'on the balance of probability' the property in question was converted into thirty self-contained residential dwellings and ready for residential occupation since at least the 03rd June 2015, nor that since this point the thirty dwellings have remained in continuous use. Not only would the submitted evidence remain imprecise and partially inconsistent, but the Council's evidence would also act to contradict the applicant's claims given that Council tax payments and final Building Control certificate were only recorded since July 2016 and resulting Inspections by Officers confirmed building works were underway at this time.
- 5.19. On this basis it is concluded that on the balance of probability (based upon the evidence provided), the claims are not supported and the unauthorised conversion works remain liable for enforcement action. Given the outstanding concerns that the existing units offer sub-standard and potentially unsafe standards of accommodation, a retrospective planning application for the thirty units is not encouraged and these recommendations will instead be passed to the Council's planning enforcement team for formal action to be taken. The applicants would however be encouraged to enter into pre-application discussions with the Council to agree a suitable route forwards for the site.

6. Recommendation: Refuse certificate and warning of enforcement action to be taken

6.1. Reasons for refusal:

The applicant has provided insufficient evidence to demonstrate that, on the balance of probability, the premise was converted into no.30 self-contained dwellings (Use Class C3) at least four years prior to the submission of the application (03/06/2015) nor that the use of the thirty dwellings has remained in continuous use since this time, in accordance with Section 191 of the Town and Country Planning Act 1990.