

<b>LDC Report</b>	19/07/2019
<b>Officer</b>	<b>Application Number</b>
Ben Farrant	2019/3052/P
<b>Application Address</b>	<b>Recommendation</b>
10 Canfield Gardens London NW6 3JS	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 House in Multiple Occupation (HMO) as 16 self-contained flats (comprising 10 x studios and 6 x 1 bedroom flats) (Use Class C3) over basement, ground, first and second floor levels.	
<b>Assessment</b>	
<p>The application site is a three storey (plus basement) building located on the north-western side of Canfield Gardens. The building is not listed, though it is located within the South Hampstead Conservation Area.</p> <p>The application seeks to demonstrate that the basement, ground, first and second floor of the property have been in use as 16 x self-contained flats for a period of 4 years or more such that the continued use would not require planning permission. A single lawful development certificate application has been submitted to cover the flats collectively.</p> <p>The applicant is required to demonstrate, on the balance of probability that the 16 x existing self-contained flats have existed for a period of 4 or more years.</p> <p><b>Relevant Planning History</b></p> <p><b>TP3261</b> - Alterations and use of the ground, first and second floors of 10 CANFIELD GARDENS, N.W.6. for letting in rooms - <b>Refused 21/11/1960.</b></p> <p><b>8803845</b> - Change of use and works of conversion to form ten self-contained units including the insertion of rooflight at front as shown on drawing nos.8803/10 /11 /12 /13B /14B /15 /16a and /20 as revised on 20.12.88. - <b>Refused 07/06/1989.</b></p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>Letter confirming expiration of previous HMO licence dated 29/09/2012.</li> </ul>	

- Email to Camden Council dated 19/09/2012 informing the Council that the flats are now fully self-contained.
- Letter from Camden Council dated 01/10/2012 stating that the property is not licensable for a HMO given the self-contained nature of the flats.

The following plans were also submitted with the application:

- Location Plan (unnumbered)
- P1.01\_rev.A
- P1.02\_rev.A

### **Council's Evidence**

The Council has no evidence to suggest that the property has been used as an HMO in this time. The HMO licensing team have confirmed that no.10 Canfield Gardens does not currently hold a HMO license, with the license ceasing in September 2012.

It is also noted that each of the units is liable for council tax payments since 01/04/1993. Evidence from the Council Tax team shows that payments for each of the units have been made consistently during this time.

A site visit was undertaken to the property on 05/09/2019. Every unit in the property was visited. During the site visit it was clear each of the units is self-contained and in residential use (C3). The layout of the property corresponds correctly with the submitted plans. The flats have their own entrance doors within the building as well as their own post-box and intercom.

The Council's evidence from the Council Tax and HMO teams, as well as from the site visit supports the applicant's claim. This demonstrates that on the balance of probability, 10 Canfield Gardens has been in continuous use as separate self-contained units for a period surpassing 4 years.

### **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.

It was observed during the site visit that each property has separate intercoms and post-boxes as well as each individual front door having its own lock. Each self-contained flat has its own kitchen and bathroom and there are no shared facilities present at site apart from the main staircase to access each floor.

The applicant/agent is seeking clarification of the authorised use of the building as there is no planning applications made on the site for these works.

The Council is satisfied that the evidence submitted demonstrates that the basement, ground, first, and second floors of no.10 Canfield Gardens have been in use as self-contained flats for a period surpassing four years. Council Tax and HMO records (as discussed above) further confirm the use of all of the self-contained units. Therefore, it can be demonstrated that the layout and residential situation of the applicant building has been in its existing situation for a continuous period of more than 4 years on the 'balance of probability' in respect of the satisfaction of the evidence submitted and subsequent site visit to the building.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability', the basement, ground, first, and second floors at no.10 Canfield Gardens have been in use as a 16 x self-contained flats and has been used in this manner 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**