

<b>LDC Report</b>	21/04/2020	
<b>Officer</b> Raymond Yeung	<b>Application Number</b> 2020/1540/P	
<b>Application Address</b> 39 Netherhall Gardens London NW3 5RL	<b>Recommendation</b>	
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b> Use of the building No.39 Netherhall Gardens as 10 (Ten) self-contained residential flats (Use Class C3).		
<b>Assessment</b>  39 Netherall Gardens is a semi-detached brick built 4-5 storey property which consists of lower ground, ground, first, second and third (loft space) floors. It is located within the Fitzjohns/Netherhall Conservation Area, but the property is not statutory listed.  The application seeks to demonstrate that 10 flats has existed for a period of 4 years or more such that the continued use would not require planning permission. According to the floor plans;  Flat 1 and 2 –Lower Ground floor  Flat 3 and 4 –Ground floor  Flat 5 and 6 –First floor  Flat 7 and 8 – Second floor  Flat 9 and 10 – Third floor  The applicant is required to demonstrate, on balance of probability that the existing residential unit has existed for a period of 4 or more years.		

## **Council's Evidence**

### **The Council Tax website confirms:**

Flat 1 have been registered for Council Tax, effective since 1998. It has been in payment continuously since then.

Flat 2 have been registered for Council Tax, effective since 1998. It has been in payment continuously since then.

Flat 3 have been registered for Council Tax, effective since 2002. It has been in payment continuously since then.

Flat 4 have been registered for Council Tax, effective since 1998. It has been in payment continuously since then.

Flat 5 have been registered for Council Tax, effective since 1998. It has been in payment continuously since then.

Flat 6 have been registered for Council Tax, effective since 1998. It has been in payment continuously since then.

### **The Council Tax (Residential) team leader confirms:**

All 10 flats have been listed individually for Council Tax since 30 October 1998.

### **Statutory Declaration**

The submitted a statutory declaration (dated 11th July 2017) confirms that Keith David Freedman of K F Properties has been the freeholder of the property at 39 Netherhall Gardens since 1998, and the property has been configured as per the submitted plans since this time. The declaration confirms that the lawful use of the property is residential (use class C3) comprising 10 units, and has been used for this purpose continuously for more than four years before the date of the declaration.

### **Additional Evidence**

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

- A site location plan outlining the application site
- Floor plans displaying 10 units since 1998

The following evidence has been collated and is submitted to demonstrate that the property has been used as ten self-contained residential dwellings for at least four years.

### **Flat 1**

- Tenancy agreement for a Mr James Asbury Tait II for a period of 12 months commencing 12/09/2015.
- Addendum to tenancy agreement for a Mr James Asbury Tait II further period of 12 months commencing 09/09/2016.

### **Flat 2**

- Tenancy agreement for a Mr Alessandro Patrick Lingua and Miss Hannah Miranda Franklin for a period of 12 months commencing 19/01/2016.
- Tenancy agreement for a Mr Alessandro Patrick Lingua and Miss Hannah Miranda Franklin for a period of 6 months commencing 20/01/2018.
- Memorandum agreement for a Mr Alessandro Patrick Lingua and Miss Hannah Miranda Franklin for a period of 12 months commencing 20/07/2018.

### **Flat 3**

- Tenancy agreement for a Mr Vincenzo Reale and Miss Noemi Magnani further 12 months commencing 20/09/2015.
- Tenancy agreement for a Mr Vincenzo Reale and Miss Noemi Magnani for a further period of 12 months commencing 19/09/2016.

### **Flat 4**

- Tenancy agreement for a MS Katy Anne Carr for a period of 12 months commencing 03/07/2017.
- Memorandum agreement for a MS Katy Anne Carr for a period of 6 months commencing 04/07/2018.
- Memorandum agreement for a MS Katy Anne Carr for a period of 6 months commencing 04/01/2019

### **Flat 5**

- Tenancy agreement for a MS Guilia Maria Branzi for a period of 12 months commencing 11/04/2017.
- Council tax bill dated 08/03/2019
- Tenancy agreement for a Mr David Samson Dove and Ms Emily Garrity for a period of 12 months commencing 16/07/2019.

### **Flat 6**

- Memorandum of agreement for a Mr David Samson Dove for a period of 6 months commencing 11/06/2018.
- Memorandum of agreement for a Mr David Samson Dove for a period of 6 months commencing 11/12/2018.

### **Flat 7**

- Tenancy agreement for a Mr Gavin Andrew Bryson Ryan and Miss Rebecca Kathleen Scanlan Bergin for a period of 12 months commencing 31/05/2017.
- Memorandum agreement for a Mr Gavin Andrew Bryson Ryan and Miss Rebecca Kathleen Scanlan Bergin for a period of 6 months commencing 01/06/2018.
- Council tax bill dated 08/03/2019.
- Utility bill (issued by E-ON) dated 06/06/2019.
- Tenancy agreement for a Milinda Kevin Gunasinghe for a period of 12 months commencing 23/08/2019.

### **Flat 8**

- Tenancy agreement for a MS Joanna Przygoda and Mr Antonio Lopez Montesinos for a period of 12 months commencing 13/05/2016.
- Tenancy agreement for a Patricia Alexandra Moreira Canedo for a period of 12 months commencing 31/08/2019.
- Utility bill (issued by British Gas) dated 31/10/2019.

### **Flat 9**

- Tenancy agreement for a MS Joanna Elizabeth Pinkard for a period of 12 months commencing 11/07/2015.
- Tenancy agreement for a Mr Alexander John Orlowski for a period of 12 months commencing 01/09/2019.
- Council tax bill dated 06/22/2018.

### **Flat 10**

- Tenancy agreement for a Mr Doug Dowson and MS Alicia Wittmeyer for a period of 12 months commencing 23/07/2016.
- Memorandum agreement for Mr Doug Dowson and MS Alicia Wittmeyer for a period of 6 months commencing 24/07/2018.

- Utility bill (issued by SSE) dated 26/11/2019.
- Memorandum agreement for Mr Doug Dowson and MS Alicia Wittmeyer for a period of 6 months commencing 24/01/2019.

### **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 Council does not have any evidence to contradict or undermine the applicant’s version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the property above 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**