

LDC Report	10/03/2020
Officer	Application Number
Matthew Dempsey	2020/0166/P
Application Address	Recommendation
93 Belsize Lane London NW3 5AU	Grant Certificate of Lawful Development/ Use (Existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Use of whole property as a single dwellinghouse (C3).	
Assessment	
<p>No 93 is a five-storey building located on the Southern side of Belsize Lane. The property is a Grade II listed Heritage asset which is also within the Belsize Conservation Area, making a positive contribution to it.</p> <p>The building is in use as one residential dwellinghouse (Class C3).</p> <p>The application seeks to demonstrate that the building has been in use as a single family dwelling house and remained as such continuously within a period of 4 years or more such that the continued use would not require planning permission.</p> <p>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.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • Planning covering letter (Brown & Co Planning, January 2020), providing an analysis of the history of the property; • A signed affidavit from Mr David Bouchier, joint freehold owner of the entire property since 17 July 2009, attesting as to the duration of the use as a single dwellinghouse (dated 19 December 2019); • A signed affidavit from Mr Stephen Hanscomb, joint freehold owner of the entire property since 17 July 2009, attesting as to the duration of the use as a single dwellinghouse (dated 7 January 2020); • A statutory declaration from Mr Neil Levy, barrister, attesting as to the duration of the use of the property as a single dwellinghouse (16 December 2019); 	

- A photograph of work being undertaken to remove the partition wall and doors between 93A and 93B Belsize Lane (27 July 2009);
- 2 x photographs of hallway after removal of partition wall and doors (7 November 2009);
- The Registered Title for the entire property ref. NGL292857 (27 August 2009);
- Extract from Companies House evidencing dissolution of 93 Belsize Lane Ltd (23 March 2010);
- Details of the Insurance Schedule for the entire property for the periods 1 July 2010 – 30 June 2011 and 1 July 2019 – 30 June 2020 (Oak Underwriting);
- A Certificate of Investment from Nationwide showing the address 93 Belsize Lane dated 26 September 2009;
- An account closure statement from Nationwide showing the address 93 Belsize Lane dated 26 September 2014;
- A Building Society Document showing the address 93 Belsize Lane dated 2 December 2013 (Chelsea Building Society);
- A Building Society Annual Savings Statement showing the address 93 Belsize Lane dated 5 April 2019 (Chelsea Building Society);
- An invoice for electrical works at the property dated 20 August 2009 (Sparking Executive Electrical Services);
- An invoice for plumbing works at the property dated 21 September 2010 (Pimlico Plumbers);
- A receipt for plumbing works at the property dated 28 September 2010 (Dyno-Rod Plumbing & Drains);
- A letter regarding plumbing works at the property dated 13 October 2010 (Dyno-Rod);
- A letter regarding roofing works dated 4 January 2011 (Keel Surveyors Partnership);
- An invoice for guttering works at the property dated 22 February 2011 (gmd Pennine);
- A roofing works contract dated 6 March 2011 (HornCastle and Sons);
- A receipt for works to windows on the property dated 19 October 2011 (Sash Restorations Ltd);
- A receipt for manhole works at the property dated 12 July 2012 (D & S Ansell T/A Econorod).

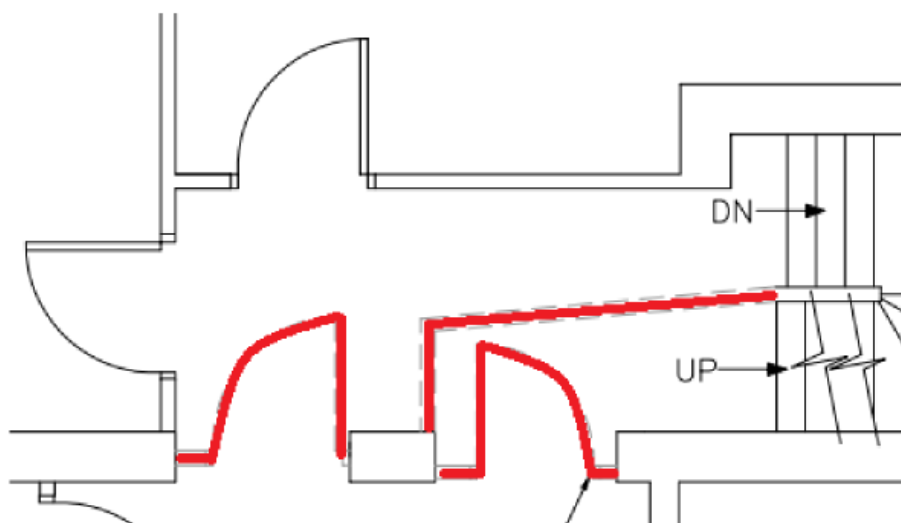
The applicant has also submitted the following plans:

- Site and Location Plan 022/003;
- Existing Lower Ground Floor Plan 93BEL/001;
- Existing Ground Floor Plan 93BEL/002;
- Existing First Floor Plan 93BEL/003;
- Existing Second Floor Plan 93BEL/004;
- Existing Third Floor Plan 93BEL/005;

The applicant has provided evidence to show that prior to 2008, the property had been arranged as three self-contained residential units previously, 93 A, B & C Belsize Lane, and that planning permission was granted for the conversion of 93B and 93C Belsize Lane to one 3bedroom maisonette and replacement of existing glazed lean-to with double-glazed lean-to on 26 November 2008 (2008/4066/P).

Listed Building Consent was also granted for works associated with the above permission on 26 November 2008 (2008/4536/L).

On 27 July 2009, while the above works were being undertaken, the partition wall and doors separating 93A Belsize Lane with 93B and 93C, as shown on the plan extract below in red, were removed. From this date the entirety of 93 Belsize Lane (i.e. 93A, 93B and 93C) has been occupied as a single dwelling (C3 Use Class).



The joint freehold owners acquired the leasehold of 93A Belsize Lane on 3 March 1998.

The joint freehold owners acquired the leasehold of 93B Belsize Lane on 23 October 2008.

The joint freehold owners acquired the leasehold of 93C Belsize Lane on 27 April 2007.

The freehold of 93 Belsize Lane was purchased from 93 Belsize Lane Ltd (a company which managed 93 Belsize Lane) on 17 July 2009.

93 Belsize Lane Ltd was wound up on 23 March 2010 as there was no longer a need for a management company due to the entire property's freehold ownership by David Bouchier and Stephen Hanscomb.

In 2010, the registered titles for 93A Belsize Lane, 93B Belsize Lane and 93C Belsize Lane were combined into a single registered freehold title under the names of David Ian Bouchier and Stephen Richard Hanscomb.

Council's Evidence

Planning History:

8401843 - Change of use and works of conversion to the first floor to form a self-contained flat as shown on drawing No.84/30/02. **Granted 13/02/1985.**

8470300 - Internal alterations to form a self-contained first floor flat as shown on drawing No.84/30/02. **Granted 13/02/1985.**

9070846 - Internal alterations and refurbishment of first floor self contained flat including formation of new bathroom as shown on drawing no. 93BL/026 and specification dated 15.01.90. **Granted 12/09/1990.**

9500126 - The provision of a rear second floor terrace with a new doorway access together with a dormer window to the side and one to the rear as shown on drawings nos. 06.449.10 11B 12 and 13B and revised by letters dated 14th June 1995 and 21st July 1995. **Granted 21/09/1995.**

9570034 - The opening up of an existing window to provide a new doorway access to a rear second floor terrace together with the erection of a dormer window to the side and one to the rear as shown on drawings nos. 06.449.10 11B 12 and 13B and revised by letters dated 14th June 1995 and 21st July 1995. **Granted 21/09/1995.**

L9601269 - Amendment to Listed Building Consent 9500126 (November 1995) to replace a side and a rear dormer with a side and a rear velux window, as shown on photographs and manufacturers brochure. (Top Flat, 93 Belsize Lane). **Granted 21/03/1997.**

PWX0202469 - Erection of single storey rear conservatory extension. As shown on drawing numbers: 2598-01-001 (93 Belsize Lane). **Granted 19/08/2002.**

LWX0202470 - Erection of a single storey rear conservatory extension. As shown on drawing numbers: 2598-01-100. (93 Belsize Lane). **Granted 19/08/2002.**

Planning Enforcement History:

There is no planning enforcement history for this site.

Council Tax information:

Council Tax records show there are two flats (A and B) listed at 93 Belsize Lane, NW3 5AU. Flat A listed since 01/04/1996. Flat B listed since 22/05/2009 following a merger of the 1st & 2nd Floors.

Site visit:

A site visit to the property was undertaken on the Monday 09/03/2020 at 10:30am. The officer was satisfied that the unit had been occupied for residential use for some time.

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.

No.93 Belsize Lane is a five-storey building that is in use as a single family dwelling house. The applicant is seeking clarification that the use of the building as a dwelling house is now authorised, as there are no planning permissions specifically for this operational use.

It may be noted here that an associated Listed Building Consent (ref: 2020/0159/L) was submitted alongside this application for a Lawful Development Certificate, in order to regularise

the internal works to the hallway carried as described by the image above.

Council Tax have confirmed that the liability for Council Tax at No.93 Belsize Lane since 2009 is split into 2 addresses, Flat A and Flat B; both liabilities are with the Freeholder(s) Mr David Bouchier and Mr Stephen Hanscomb jointly, which is supported by the applicant's own evidence. Although there are two separate Council Tax liabilities current at the address No.93 Belsize Lane, both Flat A, and Flat B. These are under the joint liability of the freeholders and applicants and it is therefore considered on the balance of probability that the owner occupiers have been paying Council Tax for the property as a whole since 2009.

The Council does not have any evidence to contradict or undermine the applicant's version of events and the substantial evidence that has been provided to demonstrate that the house has existed for well over 4 years and indeed for over 10 years.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the single residential unit has existed, in residential use, for a period of more than 4 years as required under the Act.

Recommendation: Grant Certificate