

<b>LDC Report</b>	<b>Expiry Date:</b> 23/06/2020
<b>Officer</b>	<b>Application Number</b>
Tony Young	2020/1541/P
<b>Application Address</b>	<b>Recommendation</b>
39 Fordwych Road London NW2 3TN	Grant Certificate of Lawfulness (Existing)
<b>Proposal</b>	
Use as 8 self-contained residential units (Class C3)	
<b>Assessment</b>	
<p>The site is a 3-storey semi-detached property located on the south-eastern side of Fordwych Road. This application relates to accommodation at ground floor (flats 1, 2 and 3), 1<sup>st</sup> floor (flats 4, 5 and 6) and 2<sup>nd</sup> floor levels (flats 7 and 8), accessed from a street (ground floor) level front entrance door.</p>	
<p>The building is not listed nor is it located within a conservation area. The site sits within the Fortune Green and West Hampstead Neighbourhood Area</p>	
<p>This application seeks to demonstrate that on the balance of probability the use as 8 self-contained residential units (Class C3) at ground, 1<sup>st</sup> and 2nd floor levels began more than four years before the date of this application such that its retention would not require planning permission.</p>	
<b>Applicant's Evidence</b>	
<p>The applicant has submitted information in support of the application summarised as follows:</p>	
<ul style="list-style-type: none"> <li>• Supporting statement and cover letter from Savills (agent) dated 09/03/2020, providing background information in support of the assertion that Flats 1 to 8 (located at ground, 1st and 2nd floor levels) have been in use as 8 self-contained residential flats for a minimum period of 4 years and have remained in continuous use as such until the present time;</li> <li>• Statutory declaration from Keith David Freedman of K.F.Properties (freeholder/landlord) dated 11/07/2017, asserting that the property has been configured as per the submitted plans (ref. CAD/FO/AK/09 to 11 inclusive) since 1997; the lawful use of the property being residential (Class C3) and has been used for this purpose continuously for more than 4 years before the date of the declaration;</li> <li>• Letter from London Borough of Camden (HMO Licensing Team) dated 09/10/2012 (ref. RS/HMO/027512), confirming that the property was self-contained on this date; <u>Flat 1 (Ground floor)</u></li> <li>• Assured Shorthold Tenancy Agreement (Flat 1) between Mr Prashan Parbhu and Ms Floriana Lucia Gallo (tenants) and K.F.Properties (freeholder/landlord) signed and dated 25/01/2017;</li> <li>• Assured Shorthold Tenancy and Memorandum Tenancy Agreements (Flat 1) between Ms Floriana Lucia Gallo (tenant) and Akelius UK Twelve Ltd (landlord) signed and dated variously from 26/01/2018; <u>Flat 2 (Ground floor)</u></li> <li>• Assured Shorthold Tenancy Agreement (Flat 2) between Miss Holly Alexandra McGill (tenant) and K.F.Properties (freeholder/landlord) signed and dated 08/11/2016;</li> </ul>	

- Memorandum Tenancy Agreements (Flat 2) between Liana Marwan Gharzeddine (tenant) and Akelius UK Twelve Ltd (landlord) dated 20/05/2018 and 20/11/2018 respectively;  
Flat 3 (Ground floor)
- Assured Shorthold Tenancy Agreement (Flat 3) between Ms Suzette Luana Jacob St Clair (tenant) and K.F.Properties (freeholder/landlord) signed and dated 09/03/2017;
- Utility bill (Flat 3) from Southern Electric dated 27/12/2018;
- Council tax statement (Flat 3) dated 08/03/2019;  
Flat 4 (1st floor)
- Assured Shorthold Tenancy and Addendum Tenancy Agreements (Flat 4) between Mr Dominic Philippe Keen and Miss Helena Stephanie Newbold (tenant) and K.F.Properties (freeholder/landlord) both signed and dated 06/05/2015;
- Council tax statement (Flat 4) dated 14/08/2019;  
Flat 5 (1st floor)
- Assured Shorthold Tenancy and Addendum Tenancy Agreements (Flat 5) between Ms Naomi Mary Reid (tenant) and K.D.Freeman T/A K.F.Properties (freeholder/landlord) signed and dated 07/04/2017 and 09/04/2017 respectively;
- Council tax statement (Flat 5) dated 08/03/2019;  
Flat 6 (1st floor)
- Assured Shorthold Tenancy and Addendum Tenancy Agreements (Flat 6) between Ms Anabel Rodriguez-Gonzalez (tenant) and K.F.Properties (freeholder/landlord) signed and dated 13/02/2013 and 15/02/2017 respectively;  
Flat 7 (2nd Floor)
- Assured Shorthold Tenancy Agreement (Flat 7) between Ms Indie Vilkauskaitė (tenant) and K.F.Properties (freeholder/landlord) signed and dated 14/08/2015;  
Flat 8 (2nd Floor)
- Assured Shorthold Tenancy and Memorandum Tenancy Agreements (Flat 8) between Ms Giuseppina Barbato and Mr Vittorio Ubaldi (tenants) and K.D.Freeman T/A K.F.Properties (freeholder/landlord) signed and dated 24/03/2017 and 25/09/2018 respectively.

The applicant has also submitted the following plans:

- Unnumbered site location plan identifying the application site;
- As built floor plans (ref. CAD/FO/AK/01 to 11 inclusive) showing floor layouts at ground, 1st and 2nd floor levels showing 8 self-contained residential flats.

### **Council's Evidence**

The relevant historic planning records are as follows:

- P9601281R2 - Change of use from HMO to 3 self contained flats as shown on drawing nos. 102496/1 and 2A. Planning permission refused dated 12/09/1996.

Other information:

- Valuation Office Agency (VOA) records show council tax banding details for residential use at Flats 1 to 8 (inclusive) effective from 05/12/1997. There are no business rates in relation to the property;
- The Council's Private Sector Housing Team records confirm that the property has consisted of 8 self-contained studio units since at least 2007. The property currently has an Additional House in Multiple Occupation (HMO) licence under the Council's separate scheme which covers properties converted into self contained units (under section 257 - House in Multiple Occupation).

Site visit:

- A visit to the property hasn't been possible during the current situation with COVID-19.

**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 information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the use as 8 self-contained residential units (Class C3) at ground, 1<sup>st</sup> and 2nd floor levels began more than four years before the date of this application as required under the Act. Furthermore, and on balance, the Council’s evidence does not contradict or undermine the applicant’s version of events.

**Recommendation**

Grant certificate