

LDC (Proposed) Report		02/12/2020
Officer	Application Number	
Charlotte Meynell	2020/3407/P	
Application Address	Recommendation	
80 Fortune Green Road London NW6 1DS	Grant Certificate of Lawfulness (Proposed)	
1st Signature	2nd Signature (if refusal)	
Proposal		
Use of ground floor as retail (Class A1) and 1st floor as residential (Class C3).		
Assessment		
Site Analysis		
<p>The application site is a three-storey plus roof extension mid-terrace building located on the eastern side of Fortune Green Road. The ground and first floors of the building are currently in use as a doctor's surgery (Class D1 prior to 01/09/2020; Class E since 01/09/2020), and the second and third floors are in residential use (Class C3).</p> <p>The ground floor of the building extends over the entire footprint of the site, with the exception of a small courtyard at the centre. To the rear of the site, a residential maisonette, No. 16 Rose Joan Mews, is located at first and second floor levels above the rear ground floor consulting rooms. This unit is accessed via an external staircase from Rose Joan Mews, and is a separate planning unit.</p>		
Relevant Planning History		
<u>80 Fortune Green Road</u>		
9358 – The formation of two units of the residential accommodation on the upper floors of No. 80 Fortune Green Road, N.W.6. Planning permission granted 05/11/1970		
10414 – The change of use of ground floor from a shop to Doctor's Surgery. Planning permission granted 28/01/1971 for a limited period until 30/06/1971 and personal to Dr Salim Mahmud		
11349 – The continued use of the ground floor shop premises at No 80 Fortune Green Road, N.W.6. as a doctors surgery. Planning permission granted 14/07/1971 and personal to Dr Salim Mahmud		
35847 – Change of use of the first floor and part of the ground floor from 1 residential to doctor's surgery for use in association with the existing part ground floor surgery and the erection of an external staircase at the rear. Planning permission granted 26/05/1983 and personal to Dr		

Mahmud

9005063 – The erection of a ground floor rear extension to doctors surgery to provide additional consulting room and treatment suite. **Planning permission granted 15/08/1990**

9005670 – Second floor extension to provide bedroom for caretaker's bedsit flat ancillary to doctors' surgery use on ground and first floors. **Planning permission granted 19/02/1991**

2007/1233/P – The erection of a rear extension at second floor level for the flat at that level and the erection of an additional storey to the main building to provide a studio flat. **Planning permission granted subject to a s106 legal agreement 08/10/2007**

2008/2396/P – Erection of first floor extension above the existing rear ground floor and change of use of part of the ground floor D1 floorspace to create a first floor studio flat accessed from Rose Mews. **Planning permission granted subject to a s106 legal agreement 10/02/2009**

2012/1219/P – Amendment to planning permission granted on 10/02/09 (Ref: 2008/2396/P) for the erection of first floor extension above the existing rear ground floor and change of use of part of the ground floor (Class D1) to create a first floor studio flat accessed from Rose Mews, namely for alterations to roof profile, omit maple cladding and replace with render on rear elevation, no change of use of D1 at ground floor and installation of external metal staircase from ground to first floor level on rear elevation. **Planning permission granted subject to a s106 legal agreement 23/04/2012**

16 Rose Joan Mews

2018/0282/P – Erection of recessed additional storey with terrace to front to provide additional residential floorspace for existing flat (C3). **Planning permission granted subject to a s106 legal agreement 28/06/2018**

Consultation Responses

The Council is not required to undertake public consultation for Certificate of Lawfulness applications. However, the public is still entitled to comment on such applications.

The Fortune Green and West Hampstead Neighbourhood Forum have submitted the following comments on the proposals:

1. We see that the proposed reinstatement of retail space on the ground floor shows a corridor for access to a meter cupboard, clearly residential, which reduces the retail floorspace considerably. We believe it highly unlikely that this was the original layout. Is there any evidence that it was? If not the Fortune Green and West Hampstead NDF would object to this loss of ground floor retail space in an area designated by Camden Council as a Neighbourhood Centre.
2. We have no objection to the conversion of the surgery space, at the rear of the site, to residential space although it appears to have never been residential previously.

Officer response:

1. *The proposed drawings have been revised to retain the existing ground floor layout.*
2. *The proposed drawings have been revised to retain the existing ground floor layout as a single unit and to remove the proposed ground floor residential floorspace.*

Proposal

A Certificate of Lawfulness for a Proposed Use or Development (CLOPUD) has been submitted to use the ground floor of the property as retail and the first floor of the property as residential.

Evidence Submitted and Justification

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

- Covering letter (prepared by Wildstone Planning, dated 29/07/2020)
- Appendix 1: 80 Fortune Green Road Planning History Summary
- Appendix 2: Decision Notice for Application Ref. 9358
- Appendix 3: Decision Notice for Application Ref. 9323
- Appendix 4: Decision Notice for Application Ref. 10414
- Appendix 5: Decision Notice for Application Ref. 11349
- Appendix 6: Decision Notice for Application Ref. 35847
- Appendix 7: Decision Notice for Application Ref. 9005063
- Appendix 8: Decision Notice for Application Ref. 9005670
- Appendix 9: Application Drawings submitted for Application Ref. 9005670
- Appendix 10: Decision Notice for Application Ref. 2007/1233/P
- Appendix 11: Decision Notice for Application Ref. 2008/2396/P
- Appendix 12: Decision Notice for Application Ref. 2012/1219/P
- Appendix 13: Decision Notice for Application Ref 2018/0282/P
- Appendix 14: Council Tax Band Details relating to Flat Second Floor 80 Fortune Green Road – Band B with effect from 01/04/1993
- Appendix 15: Council Tax Band Details relating to Flat Third Floor 80 Fortune Green Road – Band B with effect from 25/04/2010
- Death Certificate of Dr Mahmud

The applicant has also submitted the following plans:

- Plans, Elevations and Section As Existing FGR-P-11
- Plans, Elevations and Section As Proposed FGR-P-12B
- Site Location Plan
- Block Plan FGR-P-10

The submission documents seek to demonstrate that on the 'balance of probability' the proposed use of the ground floor as retail and the first floor as residential is lawful. The relevant legal framework and planning guidance is detailed, including the responsibility of the applicant to provide sufficient supporting information and relevant case law.

The crux of the applicant's justification is that the planning permissions granted in 1971 and 1983 for the change of use of the ground floor of the building from retail to a doctor's surgery and the first floor of the building from residential to a doctor's surgery, were personal to Dr Salim Mahmud. Following Dr Mahmud's death in 2013, the lawful use of the ground and first floors should revert to retail and residential respectively. As the ground and first floors of the building have not been operating in breach of the personal permission for more than 10 years, the use as a doctor's surgery has not been made lawful through the passing of time.

The proposed drawings have been amended during the course of the application to remove

proposed alterations to the internal layout and built form at ground floor level, which would not fall under the scope of this application.

Assessment

Officer's consider the above rationale to be sufficient and consider that the proposed change constitutes lawful development.

Recommendation: Grant Certificate of Lawfulness (Proposed)