

LDC Report	
Officer	Application Number
Elaine Quigley	2021/2930/P
Application Address	Recommendation
Rear of Barkat House 116-118 Finchley Road London NW3 5HT	Grant Certificate of Lawfulness (existing)
Proposal	
Use of property as a single-family dwelling (C3).	
Assessment	
<p>The application for the certificate relates to the existing use of the property as a single-family dwelling house. The application is made on the basis that the use is lawful because it is now immune from enforcement action because it has occurred for a continuous period of more than four years, before the date of the application – in other words, between 16/06/2017 and 16/06/2021 (“the relevant period”).</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"> • Site plan • Tenancy Agreements dating back to 2013 • Utility bills from 2017 • Camden’s Council Tax bills from 2017 <p>Council’s Evidence</p> <ul style="list-style-type: none"> • Retrieved land registry records for title LN221181 • Council tax valuation for band E property effective 15 January 2011: https://www.tax.service.gov.uk/check-council-tax-band/property/8185713000 • Records for planning permission 2660 • Records for planning permission PW9802499R1 • No enforcement records for the property <p>Assessment</p> <p>The Secretary of State has advised 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</p>	

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 planning records indicate that the original permission for the building (ref 2660) was granted in 1966 for an artist's studio and gallery. In 1998 a personal planning permission was granted (ref PW9802499R1) for change of use from B1 to D1. These predate the relevant period and there is no further planning history suggesting any particular uses over the relevant period.

The land registry records confirm the land (title LN221181) was purchased on 23 July 2008 and registered to Russell Keith Ambrose of The Rotunda Studios, Rear Of, 116-118 Finchley Road, London NW3 5HT. The cover letter claims ownership since 2010 but this does not cast doubt on the other evidence and supports that it has been in the applicant's control for the relevant period.

The cover letter states Russell Ambrose then lived in the property or rented it out as a house since buying the land.

Signed tenancy agreements (AST) between Russell Ambrose and various tenants cover the period from 22 September 2012 to 6 May 2018. Although this does not cover the whole of the relevant period, it does cover a continuous period of more than four years (with no evidence of material breaks in that period) during which such a dwellinghouse would have accrued lawfulness.

The utility bills show bills were paid by Russell Ambrose, or by tenants that were also named on tenancy agreements (with matching dates). Similarly, council tax demands (within the relevant period) match up with the names on tenancy agreements over the same period. Further council tax records show Russell Ambrose liable for council tax over much of the relevant period. This also matches up with the VOA records showing a council tax valuation for band E property effective since 15 January 2011 to the current date.

In the absence of any contradictory evidence, the evidence appears demonstrates on the balance of probability that the property has been used as a single family dwellinghouse for a period of more than four years prior to the date of the application. There is no evidence at this time of any intervening uses, or that the residential use that accrued lawfulness over the tenancy period was abandoned. As such the use as a single family dwellinghouse would remain lawful.

Recommendation: Approve

Documents:

- Cover letter dated 14th June 2021; Site plan; Tenancy Agreements dating back to 2013; Utility bills from 2017; Council Tax bills from 2017.