

LDC Report	29/09/2021
Officer	Application Number
Enya Fogarty	2021/3773/P
Application Address	Recommendation
77 Bartholomew Road London NW5 2AH	Grant certificate
1st Signature	2nd Signature (if refusal)
Proposal	
Use of lower ground floor as a self-contained flat	
<u>Application site</u>	
<p>The application site is 77 Bartholomew Road, which is a mid-terrace, three storey plus raised basement and roof accommodation residential building on the eastern side of the road. The main entrance is at upper ground floor level, accessed via steps from street level. There is also an entrance to the lower ground floor level from a door on the side of the entrance steps.</p> <p>The building is not listed.</p>	
<u>Planning History</u>	
<p>PEX0100519: Amendments to partially implemented planning permission dated 19th November 1992 (ref: PL9200423) for the erection of a roof extension. Granted 25/09/2001.</p> <p>9200423: Erection of a roof extension to provide additional habitable space for the dwelling house. Granted 19/11/1992.</p>	
<u>Proposal</u>	
A certificate of lawfulness (existing) is sought for the use of the lower ground floor as a self-contained flat.	
<u>Applicant's evidence</u>	
<ul style="list-style-type: none"> • Location Plan • Block Plan • Cover letter, dated 28/07/2021 • Signed Statutory Declaration, dated 15/07/2002, including: <ul style="list-style-type: none"> ○ Existing floorplans ○ Council Tax band details 	

- Copy of letter from The Deposit Protection Service, dated 03/08/2009
- Existing floorplans
- Photograph of Assured Shorthold Tenancy agreement, dated 27/06/2009, for “The Garden Flat, 77 Bartholomew Road, Kentish Town, London, NW5 2AH”
- Photograph of Assured Shorthold Tenancy agreement, dated 04/06/2015, for “The Garden Flat, 77 Bartholomew Road, Kentish Town, London, NW5 2AH”

Council’s Evidence

- Planning records for application references PEX0100519 and 9200423 (see planning history above)
- No enforcement records for the building
- Council Tax department have confirmed that 2 addresses are registered: 77 Bartholomew Road; Basement Flat 77 Bartholomew Road
- Valuation Office Agency’s website indicates the following:

EXCL BST 77 BARTHOLOMEW ROAD, London, NW5 2AH	F	Camden
FLAT BST 77 BARTHOLOMEW ROAD, London, NW5 2AH	C	Camden
77 BARTHOLOMEW ROAD, London, NW5 2AH	Deleted	Camden

- “EXCL BST 77” has been in effect since 27/01/1995
- “FLAT BST 77” has been in effect since 27/01/1995

Whether the use is lawful

The Town and Country Planning Act 1990, Section 191, sets out that for the purposes of the Act, uses and operations are lawful at any time if:

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and*
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

Section 55 (3) of the Act states: *For the avoidance of doubt it is hereby declared that for the purposes of this section—*

- (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;*

Section 171B(2) (Time limits) of the Act states: *Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.*

The applicant is therefore required to demonstrate that the change of use of the lower ground floor to a single dwellinghouse occurred more than 4 years before the date of the application (04/08/2021).

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 applicant's evidence suggests that the change of use occurred in 1995 when the staircase between the lower and upper ground floor levels was removed to establish the lower ground floor level as self-contained. Assured Shorthold Tenancy agreements from 2009 and 2015 have been provided (which relate to the same occupier) and Council tax records also support the claim that the change of use to two separate units occurred in 1995.

Whilst the applicant has not submitted any more recent evidence of the use of the lower ground floor, the Council does not have any evidence to contradict or undermine the applicant's version of events.

In the absence of any contradictory evidence the Council considers that, on the balance of probability, the lower ground floor has been used as a single 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 was abandoned. As such the use as a single dwellinghouse would remain lawful.

Recommendation: Grant certificate