

<b>LDC Report</b>		
<b>Officer</b>		<b>Application Number</b>
Edward Hodgson		2022/0926/P
<b>Application Address</b>		<b>Recommendation</b>
18a Flat Ground Floor Rear Cricklewood Broadway London NW2 3HD		Grant certificate
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
Use of rear ground floor as self-contained residential flat (Class C3).		

### **Application site**

The site is a three-storey mid-terraced period property located on the eastern side of Cricklewood Broadway. The front ground floor is used as a shop and the rest of the property is being used as residential. The certificate relates to the rear part of the ground floor, which is being used as a residential flat.

The building is not located within a conservation area nor is it listed.

### **Planning History**

**7767** - The use of the ground floor shop at 18, Cricklewood Broadway, N.W.2 for the sale of motor vehicles, also the installation of a new shopfront. **Granted – 15/08/1963**

**2007/2530/INVALID** - Erection of a rear extension at (lower) second floor level in connection with enlargement of an existing bedsit to a 1-bedroom self-contained flat and installation of rooflight on roofslope. **Withdrawn – 21/12/2007**

### **Proposal**

A certificate of lawfulness (existing) is sought for the use of the rear ground floor as a self-contained flat.

### **Applicant's evidence**

- Location Plan
- Existing floor plans
- Cover letter, dated 08/03/2022
- Signed Statutory Declaration, dated 22/02/2022, including:
  - HM Land Registry copy of register of title dated 27/04/2017

- Copies of Home Owner Gas Safety Record dated 21/8/2017, 21/8/2013 and 4/9/2014
- Copy of Tenancy Agreement dated 12/09/2011 for Ground Floor Flat
- Copy of Tenancy Agreement dated 18/01/2017 for Ground Floor Rear Flat
- Copy of Tenancy Agreement dated 18/06/2021 for Ground Floor Flat
- Copies of Camden Benefits Service Letter dated 21/07/2016, 18/08/2016, 15/09/2016, 29/09/2016 and 12/10/2016 all for Flat Ground Floor Rear.

### **Council's Evidence**

- Enforcement case EN14/0056. A Planning Contravention Notice was served on 21/03/2014 for the creation of rear ground floor flat.
- Council Tax records
- Valuation Office Agency's website indicates the following:

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[FLAT GND FLR 18 CRICKLEWOOD BROADWAY, London, NW2 3HD](#)

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[FLAT GND FLR REAR AT 18A CRICKLEWOOD BROADWAY, London, NW2 3HD](#)

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[FLAT 1ST FLR 18 CRICKLEWOOD BROADWAY, London, NW2 3HD](#)

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[FLAT 1ST FLR FRONT 18 CRICKLEWOOD BROADWAY, London, NW2 3HD](#)

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[FLAT 1ST FLR REAR AT 18A CRICKLEWOOD BROADWAY, London, NW2 3HD](#)

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[FLAT 2ND FLR AT 18 CRICKLEWOOD BROADWAY, London, NW2 3HD](#)

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- In terms of Council Tax - the flat GND FLR REAR has been in effect since 12/09/2011.

### **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.*

The applicant is therefore required to demonstrate use of the rear ground floor for a continuous period of more than 4 years before the date of the application (08/03/2022).

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 flat was created in 2011. Tenancy agreements from 2011, 2017 and 2021 have been provided and Council tax records also support the claim that the creation of the flat occurred in at least 2011 and has been used as a self-contained flat since. Letters from the Council’s Benefits Services from 2016 are addressed to the occupier at the rear ground floor flat. A planning contravention notice was served on the owner in 2014 as it was deemed that the creation of the flat required planning permission. The enforcement case was closed in 2017 with no further action taken. The case officer findings indicate that the flat has been in existence since 2011. The Council Tax department confirmed that tax has been paid at the flat since 12/9/2011.

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 rear ground floor flat has been used as a self-contained flat 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 self-contained flat would remain lawful.

**Recommendation:** Grant certificate