

LDC Report	Expiry Date : 01/09/2022
Officer Adam Greenhalgh	Application Number 2022/2889/P
Application Address 304 West End Lane, NW6 1LN	Recommendation Grant Certificate of Lawfulness
1st Signature	2nd Signature (if refusal)
Proposal	
Existing use as six flats	
<u>Application site</u>	
The site comprises a three storey red brick/tiled residential building on the west side of West End Lane at its junction with Crediton Hill. It is situated within a residential area within the West End Green Conservation Area.	
<u>Relevant Planning History</u>	
11869 - The formation of an additional room at 2nd floor level, as an extension to the existing 2nd floor flat – granted 1971	
8688 - conversion of the first and second floor maisonette into 2 self-contained flats – granted 1970	
<u>Proposal</u>	
The application seeks a Certificate of Lawfulness for the existing use of the building as 6 flats, as per application drawings: SBI.678: 001, 002 & 003	
<u>Applicant's evidence</u>	
<ul style="list-style-type: none"> • Gas Safety Certificate – Flat 1, Flat 2, Flat 3, Flat 4 – 03/12/2015 • Gas Safety Certificate – Flat 5 – 17/10/2014 • Gas Safety Certificate – Flat 6 – 18/08/2014 • Energy Performance Certificate – Flat 1, Flat 2, Flat 3, Flat 4 – 02/12/2015 • Energy Performance Certificate – Flat 5, Flat 6 – 02/06/2014 & 12/06/2014 • Council Tax Bands for Flat 1, Flat 2, Flat 3, Flat 4, Flat 5, Flat 6 – 27/10/2021 • Tenancy Agreement – Flat 1 – 18/03/1996 • Tenancy Agreement – Flat 2 – 17/11/1997 	

- Tenancy Agreement – Flat 3 – 01/06/2002
- Tenancy Agreement – Flat 4 – 03/02/1996
- Tenancy Agreement – Flat 5 – 01/12/2006
- Tenancy Agreement – Flat 6 – 01/03/2009
- Affidavit of owner (Andrew Fisher) regarding the use as 6 flats since 1966 (04/07/2022)

Council's Evidence

- Planning history
- Council Tax records

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 that the existing use of the building as 6 flats, as per the application drawings: SBI.678: 001, 002 & 003 has continued on a continuous basis for the 4 year period prior to the date of the application.

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 Gas Safety Certificates submitted by the applicant indicate that the 6 flats existed in 2014/2015. The Energy Performance Certificates submitted by the applicant indicate that the 6 flats existed in 2014/2015. The tenancy agreements submitted by the applicant indicate that the 6 flats have existed since 1996 - 2009. The affidavit submitted by the applicant indicates that the 6 flats have existed since 1996.

And significantly, the Council’s Council Tax Records confirm that the 6 flats have existed since Council Tax records show 6 flats (1-6) listed at 304 West End Lane since our records go back; 1 April 1996 and the Valuation Office Agency records also show 6 flats since 1993.

On the balance of probability, it is considered that the property has been in use as the 6 flats indicated on the application drawings for the whole of the relevant period. There is no evidence at this time of any intervening uses, or that the use as 6 flats was abandoned. As such the use as 6 flats is lawful and the Certificate of Lawfulness should be granted.

Recommendation: Grant Certificate of Lawfulness

