

Delegated Report LDC (Existing)		Analysis sheet	Expiry Date:	01/09/2022
		N/A / attached	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Sofie Fieldsend			2022/2888/P	
Application Address			Drawing Numbers	
23 Alvanley Gardens London NW6 1JD			See decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Use of the building as 5 self-contained flats (Class C3).				
Recommendation(s):		Approve Lawful Development Certificate		
Application Type:		Certificate of Lawfulness (Existing)		
Conditions or Reasons for Refusal:		Refer to Decision Notice		
Informatives:				

Site Description

The application site is a detached 2 storey residential (C3) property which was subdivided into 5 flats at some point in the past. It is not listed or within a Conservation Area but it is in the West Hampstead Neighbourhood Plan Area.

23a Alvanley Gardens is located to the rear and is not within the boundary of the site.

Relevant History

Application site

Flat 4

2012/4063/P - Erection of balustrade to form a terrace over existing flat roof of residential flat (Class C3). – **refused 15/10/2012**

2011/6068/P - Erection of balustrade, decking and screening in connection with the use of existing rear flat roof as terrace, and installation of rooflight to flat (Class C3). – **Refused 28/02/2012**

Flat 3

8401652 - Alterations to existing dormer and erection of new dormer – **Granted 19/12/1984**

No.23

9501919 - Creation of forecourt hardstanding for carspace and new means of vehicular access, as shown on plan 3060/A1 – **Approved 08/01/1996**

8501182 - The installation of a window at ground floor level in the flank elevation as shown on drawing no.AG-WH-2 and revised on 9th September 1985. – **Approved 19/09/1985**

CTP/F5/7/14/12382 - The formation of a self contained flat at 2nd floor level at No 23 Alvanley Gardens N.W.6. - **Refused 03/02/1972**

CTP/F5/7/14/14269 - Alterations and additional storey at rear of No. 23 Alvanley Gardens, NW6 to provide two additional self contained flats. - **Approved 23/11/1972**

TP/81804/NW/2434/2880 - The conversion of No. 23 Alvanley Gardens, Hampstead into two self-contained flats and one self-contained maisonette. – **Granted 20/06/1958**

Assessment

1. Proposal

This applications seek to demonstrate that the building has been in use as 5 self-contained units in their current layout for a period of 4 years or more, such that continued use would not require planning permission.

The applicant is required to demonstrate on the balance of probability that these self-contained residential units have existed continuously for a period of 4 years or more prior to the date of the application (5 July 2022). This relevant period is from 5 July 2018 to 5 July 2022 (hereinafter referred to as “the relevant period”).

2.0 Applicant's Evidence

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

- Appendix 1 – Gas safety certificates for each flat dated 6th December 2016.
- Appendix 2 – Energy performance certificates for each flat dated, 11th December 2012
- Appendix 3 – Valuation office records of Council tax banding for each flat
- Appendix 4 – Tenancy agreements for each flat dated 18th November 1996, 1st March 2000, 6th November 2007, 7th September 2009 and 1st March 2011
- Appendix 5 – Council Tax bills dated 20th June 1998 and 17th August 2001
- Appendix 6 – Sworn affidavit dated 4th July 2022

2.2 The applicant has also submitted existing floor plans showing one flat at ground floor and two at each upper floor level. The flat at ground floor is ‘ground floor flat’, flats 1 and 2 are at 1st floor and flats 3 and 4 are at 2nd floor.

3.0 Council's Evidence

3.1 Planning permission records show that the building received permission for subdivision into 3 flats in 1958 ref. TP/81804/NW/2434/2880 and in 1972 further permission was granted for the creation of two additional flats under ref. CTP/F5/7/14/14269. In 1984 ‘flat 3’ was recognised on site for a dormer extension ref. 8401652 and in 2012 ‘flat 4’ located at 2nd floor ref.’s 2011/6068/P and 2012/4063/P applied for a roof terrace which was refused. It is noted that the design and access statement submitted for ref. 2011/6068/P identifies that the building is divided into 5 flats.

3.2 Separate self-contained properties behind their own locked doors are required to be registered for Council Tax. Council Tax records indicate that five flats at property paid Council Tax (registered as Flat gnd flr, flat 1, flat 2, flat 3 and flat 4 since 1/04/1993).

3.3 Conversions of properties into flats require approval under the Building Regulations. While the Council's Building Control records show no record of this subdivision or the works required to facilitate this. There are records on file for flats 1-4 for the installation in each flat on 8/12/2012 under the following references:

- 13/CP/03045
- 13/CP/03046
- 13/CP/03047
- 13/CP/03048

4.0 Assessment

4.1 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.

4.2 The Council does not have any evidence to contradict or undermine the applicant’s version of events.

4.3. The information provided by the applicant is deemed to be sufficiently precise to demonstrate that ‘on the balance of probability’ the property has existed as 5 self-contained residential units for at least 4 years as required under the Act. Furthermore, the Council has no evidence to contradict or undermine the applicant’s version of events.

5.0 Recommendation

5.1 Grant Lawful Development Certificate