

<b>LDC Report</b>		03/11/2022	
<b>Officer</b>		<b>Application Number</b>	
Nora-Andreea Constantinescu		2022/2897/P	
<b>Application Address</b>		<b>Recommendation</b>	
Flat 2 136 Fordwych Road London NW2 3PB		Grant certificate of lawful development	
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b>			
Use of ground floor room as a self-contained studio flat (Class C3).			
<b>Assessment</b>			
<p>The application site is located on the southern side of Fordwych Road and relates to part of the ground floor. The building is not listed and is located within Fortune Green and West Hampstead Neighbourhood Area Plan.</p> <p>The property is in residential use and the application site has previously been used as a bedsit within a house with shared facilities, along with the other rooms within the building. The application seeks to demonstrate that the room at ground floor level called 'Flat 2' has been in residential use as a self-contained flat (Class C3) for a period of 4 years or more, such that it would be immune to enforcement action and the continued use would not require planning permission.</p> <p>As such, the applicant is required to demonstrate, on balance of probability that the existing residential unit has existed for a period of 4 or more years.</p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>• Council Tax confirmation letters for Mr A Booker for the years 2008/2009; 2009/2010; 2010/2011; 2011/2012; 2012/2013; 2013/2014; 2014/2015; 2015/2016; 2016/2017; 2017/2018; 2018/2019; 2019/2020; 2021/2022; 2022/2023.</li> <li>• Letter from occupier (Mr Andrew Booker) confirming the self-contained nature of Flat 2 since 2008 until now.</li> </ul> <p>Utility bills</p>			

- Southern Electric – July 2011 to 2017. Refer to it as a Flat.
- Thames Water – June 2008 to 2022. Refer to it as a Flat.
- Property consultants Foxtons – letter confirmation stating that they marketed the property known as Flat 2 for sale in March 2008 as a self-contained flat and particulars.
- Property consultants Abacus Estates – letter confirmation stating that they marketed the property known as Flat 2 for sale in March 2008 as a self-contained flat and particulars.
- Wilmotts Chartered Surveyors – letter confirmation stating that they have are responsible for management of the building which they say includes 9 self-contained units, including Flat 2,
- Solicitor and Land Registry documents dated 2008 and lease.

The applicant has also submitted the following plans:

- A site location plan outlining the application site.
- Plan of Flat 2 with measurements.

### **Council's Evidence**

Relevant planning history for the property is given below:

**2017/3127/P** - Flat 5, 136 Fordwych Road - Use as a self-contained studio flat (Class C3) at first floor level. – **Granted 19/07/2017**

**9101017** - Retention of eight non self-contained bedsits on ground and first floor – **Granted 04/06/1992**

**9101018** - The conversion of the loft into a non self-contained residential unit – **Granted 04/06/1992**

Council tax department have confirmed that the liability for Council Tax for Flat 2 started on 1<sup>st</sup> September 2000. It has been in payment continuously since then.

### **Assessment**

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.

Evidence has been submitted in the form of utility bills, council tax records, a letter from the owner/occupier, property consultant’s letters confirming sales advertisement and particulars, in order to demonstrate that the use of the ground floor room has been used as self-contained flat, continuously for the last 4 years.

The land registry documents indicate that the property was sold in 2008. The lease and land registry documents show the room and its layout as a self-contained flat. The layout shown aligns with that shown in other documents which have been submitted.

The bills submitted show continuous use of the premises for residential purposes since 2008 (although they don't in themselves demonstrate conclusively that it was a self-contained unit). The Council Tax records submitted are consistent with the Council's own Council Tax records.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the ground floor room, Flat 2, has been used as a self-contained flat for a period of more than 4 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

**Recommendation: Grant certificate of lawful development**