

<b>LDC Report</b>		<b>Expiry Date: 27/01/2023</b>
<b>Officer</b>		<b>Application Number</b>
Jaspreet Chana		2022/5299/P
<b>Application Address</b>		<b>Recommendation</b>
45 C Gascony Avenue London NW6 4NB		Approve
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
Use of the second to fourth floors of the property as 6 self-contained flats (Class C3)		
<b>Assessment</b>		
<p>The application site is located on the north west side of Gascony Avenue. The application relates to the upper floors of the property. The building is not listed and is not located within any Conservation Area.</p> <p>The application seeks to demonstrate that flats 1 – 6 45C Gascony Avenue have existed for a period of 4 years or more such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing residential units have existed in continuous use for a period of 4 or more years prior to the date of this application (2 December 2022). That means the relevant date in this case is 3 December 2018.</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>• Site Location Plan (Exhibit A),</li> <li>• Statutory declaration from Marte De Leon dated 13/12/2020 (Exhibit B),</li> <li>• Statutory declaration from Cheryl Bilog dated 14/12/2020</li> <li>• Layout details 0001, layout details 0002, layout details 0003,</li> <li>• Letter from London Borough of Camden Naming and numbering of street and buildings dates 20/01/2018</li> <li>• Building control BC/67660 Final Certificate for 45C/1 Gascony Avenue dated 19/12/2017</li> <li>• Building control BC/67660 Final Certificate for 45C/2 Gascony Avenue dated 19/12/2017</li> <li>• Building control BC/67660 Final Certificate for 45C/3 Gascony Avenue dated 19/12/2017</li> <li>• Building control BC/67660 Final Certificate for 45C/4 Gascony Avenue dated 19/12/2017</li> <li>• Building control BC/67660 Final Certificate for 45C/5 Gascony Avenue dated 19/12/2017</li> <li>• Building control BC/67660 Final Certificate for 45C/6 Gascony Avenue dated 19/12/2017</li> </ul>		

## **Council's Evidence**

### Planning History:

*45C Gascony Avenue -*

2011/6052/P - Use of building as three self-contained residential flats (1 x 1-bed, 1 x 3-bed, 1 x 4- bed) – Granted on 25/01/2012.

2016/2835/INVALID - Change of use from 2x self-contained flats (C3) to 8x HMO (house in multiple occupation) units (C4) at ground, 1st, 2nd and 3rd floor levels. – Withdrawn on 27/06/2016.

2020/5870/P - Use as 6 self-contained flats (Class C3) – Withdrawn - 02/12/2022.

### Council Tax records:

Council Tax Officers have stated that the liability for Council Tax for flats 1- 6 45C Gascony Avenue started on 08/01/2018. It has been in payment continuously since then.

### Site visit:

A site visit to the property was not undertaken due to coronavirus restrictions.

## **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.

It appears from the evidence above that the proposed works may have occurred sometime between October and December 2017, with the flats being completed and ready for use in January 2018. The final certificates of completion with building control were signed off in December 2017 and the flats then started paying council tax in January 2018. The naming and numbering also commenced from January 2019. Given this, it is probable that the flats have been in residential use continuously since January 2018 which is prior to the relevant date of 3 December 2018, and more than 4 years before the date of this application.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the 6 units on 2nd to 4<sup>th</sup> floor have existed in residential use for a period of more than 4 years prior to the date of the application, as required under the Act.

Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

**Recommendation: Approve**

