

LDC (Proposed) Report		Application number	2022/4261/P
Officer		Expiry date	
Tony Young		30/11/2022	
Application Address		Authorised Officer Signature	
27 Sherriff Road London NW6 2AS			
Conservation Area		Article 4	
No		Yes (basements)	
Proposal			
Change of use from house in multiple occupation (Class C4) to residential dwellinghouse (Class C3).			
Recommendation:		Grant Certificate of Lawfulness	

1.0 Introduction

- 1.1 The application site is located on the northern side of Sherriff Road, opposite the junction with Hilltop Road to the south.
- 1.2 The host property is currently in use as a house in multiple occupation (HMO) and has an HMO Licence issued by the London Borough of Camden on April 2018 under Section 64 of the Housing Act 2004.
- 1.3 The application seeks confirmation that a proposed change of use from a small HMO (Use Class C4) to a single dwellinghouse (Use Class C3) is lawful such that planning permission would not be required.

2.0 Responses

- 2.1 Given the nature of certificate of lawfulness applications, and in particular that purely matters of legal fact are involved in their determination, the Council does not have a statutory duty to engage in a formal consultation process.
- 2.2 Notwithstanding this, it is Council practice to allow a short period of time for our local residents and amenity groups to comment should they choose to do so. As such, the details of the application were made available online.
- 2.3 During this period, a local resident used the online forms to object to the proposal as follows: *'What happens to the current residents? Turfed out so the developer can make a fortune. Far too much development in NW6 and very little to rent. Recently have seen a few HMOs owners putting in applications to remove their HMO status.'*
- 2.4 Having carefully considered the response, no evidence has been provided to contradict or undermine the applicant's proposal or assertions. Therefore, while the above

concerns are noted, they are not a consideration in this type of application where purely legal issues are involved in its determination.

3.0 Applicant's Evidence

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

- Cover Letter from Bell Cornwell Chartered Town Planners (ref. 2543) dated 04/10/2022, in support of the certificate of lawfulness application;
- HMO Licence (ref. no. 085110) issued 04/04/2018, confirming the granting of a licence for the application site as a house in multiple occupation for a maximum of 7 persons;
- Statutory Declaration from Mr. Fereydoun Manteghi (former property manager) dated 22/12/2022, asserting that there were up to 6 tenants with individual tenancy agreements (listed in schedule referred to as 'FM1') residing in the property between December 2006 and December 2022; and
- Tenancy Agreements and occupancy schedule (referred to as 'FM1') received 23/12/2022, in relation to 6 individual tenants of Flats 1-6 occupying the property, starting their tenancies at various dates between 01/03/2013 and 05/01/2019.

3.2 The applicant has also submitted the following plans:

- Site location plan outlining the application site in red (ref. 022/EX/-001)
- Existing and proposed drawings numbered (022/EX/-)002, 100, 101, 102, 120, 140, 141, 142, 161; (022/PR/-)200 rev A, 201 rev A, 220; and
- Unnumbered floor plans received 23/12/2022.

4.0 Background information

4.1 The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) allows for the change of use of houses in multiple occupation (Use Class C4) to dwellinghouses (Use Class C3). and vice versa, under Class L of Part 3 of Schedule 2.

4.2 For the purposes of this application, the meaning of a '*house in multiple occupation*' (HMO) is defined in Section 254 of the Housing Act 2004 as set out in a number of 'tests', including 'the standard test' (s254(2)) and 'the converted building test' (s254(4)). Schedule 14 of the same Act specifically excludes buildings occupied by only 2 people from the definition.

4.3 Additionally, in planning terms, Class C4 is defined in the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010, which introduced it, as: '*Use of a dwellinghouse by not more than six residents as a "house in multiple occupation"*'.

4.4 The combined effect of this is that, regardless of whether the standard test or the converted building test is applied, to be an HMO within Class C4 of the Use Classes Order, the property must, amongst other things, be occupied by between 3 and 6 persons who do not form a single household as their main residence, with at least one

person paying rent or other consideration. An HMO occupied by more than 6 persons would otherwise be defined as Sui Generis.

4.5 The evidence and drawings provided by the applicant in the original application submission indicate that the host property comprises 6 bedsits or non-self-contained units. The 4 units at ground and 1st floor levels contain kitchens and share bathroom facilities. The 2 units on the upper floor at attic level share both kitchen and bathroom facilities.

5.0 Council's Evidence

5.1 A current HMO licence issued on 04/04/2018 (ref. no. 085110) permits a maximum of 7 persons to occupy the subject property, and as such, would indicate that the property is a Sui Generis HMO in planning terms (rather than a 'small' or Class C4 HMO). As a consequence, and notwithstanding the applicant's supporting evidence and drawings which show the existing floor layout and number of units, a change of use under Class L of Part 3 of Schedule 2 would not be possible.

5.2 In light of this, the applicant submitted additional evidence in support of the application proposals in the form of a statutory declaration from the former property manager (Mr. Fereydoun Manteghi), asserting that there were no more than 6 tenants at any time residing at the property between December 2006 and December 2022 when he was in his role as manager. The declaration is supported by and refers to a occupancy schedule (referred to as 'FM1') which provides details of 6 individual tenants who have occupied Flats 1-6 at the property, starting their tenancies at various dates between 01/03/2013 and 05/01/2019.

5.3 In addition, the applicant has provided 6 separate tenancy agreements and associated personal information in relation to the 6 named tenants in support of the assertion that the property has been used continuously for the requisite period (a period of 10 years in this case) as a Class C4 HMO.

6.0 Assessment

6.1 In regard to applications for a Certificate of Lawfulness, 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, nor any from others, to contradict or otherwise make the applicant's version of events less probable, 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.

6.2 While a current HMO licence confirms that the subject property is licensed for 7 persons, the applicant's evidence provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that '*on the balance of probability*' the subject property has been used continuously for a period of 10 years as a Class C4 HMO as

defined under the above Order and for no other purpose. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

6.3 As such, a proposed change of use from an HMO (Use Class C4) to a single dwellinghouse (Use Class C3) is lawful under Class L of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), and as such, a Certificate of Lawfulness can be issued.

7.0 Recommendation: Grant Certificate of Lawfulness