

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	<b>05/07/2023</b>
		N/A	<b>Consultation Expiry Date:</b>	N/A
<b>Officer</b>			<b>Application Number(s)</b>	
Alex Kresovic			2023/1871/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
20 Cressy Road London NW3 2LY			Refer to Draft Decision Notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
Retention of roof terrace to rear outrigger and associated access dormer to main rear roof slope.				
<b>Recommendation(s):</b>	Grant Certificate of Lawfulness (Existing)			
<b>Application Type:</b>	Certificate of Lawfulness (Existing)			
<b>Conditions or Reasons for Refusal:</b>	Refer to Draft Decision Notice			
<b>Informatives:</b>				

## Site Description

The building comprises a red brick three-storey terrace building. The subject site is located within the Mansfield Conservation Area and is identified as a building that makes a positive contribution to the character and appearance of the Conservation Area.

## Relevant History

### APPLICATION SITE:

**CTP/E9/3/8/18063** – Erection of a single-storey extension at rear of 20 Cressy Road, NW3 to provide a conservatory and a bathroom for the ground floor flat. **Conditional Planning Permission Granted on 08 February 1974.**

**CTP/E9/5/8/17376** – Change of use of the ground floor of 20 Cressy Road, NW5 into a flat, including works of conversion, and the erection of a single storey rear extension to provide a bathroom and a conservatory. **Refused on 20 December 1973.**

## Assessment

### Background

The certificate seeks to demonstrate that on the balance of probability the roof terrace to rear outrigger has been in use as a roof terrace (including associated access dormer to main rear roof slope) for a consecutive period of at least four (4) years before the date of the application, such that its continued use would not require planning permission.

### Applicant's Evidence

1. Statutory declaration from Ms Vivien Daphne Freeman
2. Aerial photography showing terrace dating back to 1999.

The applicant has also submitted the following:

1. Planning statement prepared by allPlanning
2. Location plan dated 10 May 2023

### Council's evidence

Judging the evidence submitted and the history of the site, officers are satisfied that the roof terrace (including associated access dormer to main rear roof slope) has been in place for a period of 4 or more years continuously.

Google street view images and Google map images show the roof terrace (including associated access dormer to main rear roof slope) in place since at least 1999.

### 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 (Planning Practise Guidance para. 006), 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 application for the certificate relates to the existing use or operation of the existing roof terrace (including associated access dormer to main rear roof slope). The application is made on the basis that the use is lawful because it is now immune from enforcement action because it has occurred for a continuous period of more than four years, before the date of the application – in other words since at least 10 May 2019 (“the relevant period”).

The Council does not have any evidence to contradict or undermine the applicant’s version of events. The statutory declaration and other supporting information support the assertion that the existing roof terrace (including associated access dormer to main rear roof slope) has been in use as a roof terrace for a consecutive period of at least four years before the date of the application.

The information provided by the applicant is therefore deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the outrigger roof was in use as a roof terrace (including associated access dormer to main rear roof slope) for a consecutive period of at least four years before 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.

### **Conclusion**

Recommendation: Grant Certificate of Lawfulness (Existing)