

Delegated Report		Analysis sheet	Expiry Date:	11/09/2023
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Alex Kresovic			2023/2919/P	
Application Address			Drawing Numbers	
91 Leverton Street London NW5 2NX			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Erection of roof extension with access to roof terrace at front part of the roof				
Recommendation(s):	Grant Certificate of Lawfulness (Existing)			
Application Type:	Certificate of Lawfulness (Existing)			
Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				

Site Description

The application site is an unlisted three-storey terrace building located within Kentish Town Conservation Area. The surrounding area is predominantly residential, characterised by a mix of terraced houses and apartment buildings.

Relevant History

9300698 - Erection of a roof extension. **Refused on 08/04/1994.**

Assessment

Background

The certificate seeks to demonstrate that on the balance of probability the top floor roof extension has been in use as a roof extension (including associated third floor bedroom with ensuite bathroom and a balcony/patio area to the front (east). The patio is accessed by a set of triple glazed sliding doors; the northern wall also comprises triple glazed windows) 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. Planning Statement prepared by Planning Direct dated 17/07/2023;
2. Site location plan;
3. Existing architectural plans (floor plans, elevations, sections);
4. Solicitor letter's dated 1993 & 2004;
5. Letter to LPA dated 1993;
6. Letter to Planning officer dated 1993;
7. Decision Notice (refusal) dated 08/04/1994;
8. Roof contractor letter dated 2001;
9. Satellite images dated 1999, 2003, 2013, 2015, 2017, 2018, 2019, 2020, 2021, and 2022; and
10. Sworn Statements dated 2023.

Council's evidence

Judging the evidence submitted and the history of the site, officers are satisfied that the top floor roof extension has been in place for a period of 4 or more years continuously.

Google street view images and Bing map images show the top floor roof extension in place since at least 2009.

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 top floor roof extension. 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 17 July 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 top floor roof extension has been in use as a roof extension 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 roof terrace was in use as a roof extension (including associated third floor bedroom with ensuite bathroom and a balcony/patio area to the front (east). The patio is accessed by a set of triple glazed sliding doors; the northern wall also comprises triple glazed windows) 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