

Delegated Report		Analysis sheet	Expiry Date:	30/10/2023
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Alex Kresovic			2023/3642/P	
Application Address			Drawing Numbers	
Flat 2nd And 3rd Floor 58 Parliament Hill London NW3 2TL			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Building works (brickwork and fencing on the north elevation of the roof terrace) were substantially completed more than four years before the date of this application.				
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 a four-storey semi-detached building, located on the eastern side of Parliament Hill Road. The certificate application is in relation to the 2nd and 3rd floor flat of the property. The building is not listed and is located in the South Hill Park Conservation Area, and it is covered by Hampstead Neighbourhood Plan.

The application site has a roof terrace in situ for more than four years. Different types of enclosure have been installed along the years.

Relevant History

APPLICATION SITE:

2021/5438/P - Retention of existing fencing around the third-floor roof terrace. **REFUSED 12 January 2023.**

EN15/1167 - Barrier built on the roof terrace - replaced existing bamboo fence with wood and plastic wall. **Completed 04 December 2015.**

Assessment

Background

As per section 171B of the Town and Country Planning Act 1990 on enforcement time limits:

"no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed".

The certificate seeks to demonstrate that on the balance of probability that the flat on 2nd & 3rd Floor of 58 Parliament Hill has completed building works, that consisting of, brickwork and fencing on the northern elevation of the existing roof terrace, more than four (4) years before the date of this application – in other words at least before 03 September 2019 ("the relevant period").

Applicant's Evidence

1. Location Plan dated 03-Sep-2023;
2. Statement from previous owner of property dated 03/11/2021;
3. Correspondence with Council Officer dated 24 Nov. 2015;
4. Google Imagery dated 2008, 2012, 2014 & 2018;
5. Contractor Quotes dated 23 Apr. 2019;
6. Invoice payment dated 22-05-2019;
7. Images of works to fence and brickwork being completed.

Council's evidence

The Council does not have any evidence to contradict or undermine the applicant's version of events.

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 supporting information submitted in support of the application maintains that the building works, that consisting of, brickwork and fencing on the northern elevation of the existing roof terrace, have been completed more than four (4) years before the date of this application.

The information provided by the applicant is therefore deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' that the building works have been completed more than four (4) years before the date of this 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