

Delegated Report		Analysis sheet	Expiry Date:	14/02/2024
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Sofie Fieldsend			2023/5361/P	
Application Address			Drawing Numbers	
4 Railey Mews London NW5 2PA			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Erection of railings to facilitate a roof terrace.				
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 site is a two storey mid terrace dwelling. It is not listed but it is within the Kentish Town conservation area.

Relevant History

APPLICATION SITE:

None relevant.

Assessment

Background

The certificate seeks to demonstrate that on the balance of probability the flat roof has been in use as a roof terrace including the installation of railings 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. The roof terrace is accessed by an accessible rooflight.

Applicant's Evidence

1. Supporting Statement by future planning and development dated Dec 2023
2. Statutory Declaration by Damon Earnshaw dated 18th Dec 2023
3. Statutory Declaration by Mary Fitzpatrick dated 4th Dec 2023
4. Drawing number RAI 20
5. Site photographs dated June 2018 and 31st October 2023
6. Maintenance Invoice by Fitzpatrick team developments dated 17.7.18

Council's evidence

Judging the evidence submitted and the history of the site, officers are satisfied that the roof terrace and associated railings have been in place for a period of 4 or more years continuously.

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 roof as a roof terrace with associated railings. 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 20/12/2019 ("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 main roof was in use as a roof terrace with associated railings installed 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 main roof was in use as a roof terrace with associated railings installed 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.