

Planning Statement

Site: Flat 4, 74 Fortune Green Road, NW6 1DS

Proposal: Certificate of lawfulness confirming existing door, glass balustrade and artificial grass to the rear roof at third floor level are lawful.

For the purposes of the 1990 Planning Act, uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Section 171B of the 1990 Planning Act, outlines the time limits that enforcement action can be taken against a breach of planning control. The relevant period for operational development is four years for development that existing before 25 April 2024.

In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "*the balance of probability*". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a local planning authority (LPA) should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt".

Moreover, the Court has held (see *F W Gabbitas v SSE and Newham LBC* [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "*independent*" evidence in order to be accepted. If the local planning authority (LPA) have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

Where the breach of planning control comprises a material change of use, as is the position in this case, continuity of the use over a four-year period is required to attain immunity from enforcement action (and therefore lawfulness).

In this case the applicant has submitted evidence which demonstrates on the "*balance of probability*" that the existing door, glass balustrade and artificial grass to the rear roof at third floor level are lawful because they have been in place for a period exceeding four years.

Assessment

The declaration of Arik Amar dated 5 August 2024, confirms the existing door, glass balustrade and artificial grass to the rear roof at third floor level were completed in March 2020.

The site visit made by Arik Amar on 15 July 2024 confirms the same door, glass balustrade and artificial grass to the rear roof at third floor level, are still in place.

In the event the Council do not have evidence to contradict the version of events presented by the applicant, then case law dictates that the applicants evidence should be accepted.

Conclusion

The evidence provided demonstrates on the balance of probability that the door, glass balustrade and artificial grass to the rear roof at third floor level have been in place for a period exceeding four years, therefore, are lawful.