

LDC (Existing) Report		Expiry date: 02/10/2024	
Officer Gary Wong		Application Number 2024/3301/P	
Application Address Flat 4 74 Fortune Green Road London NW6 1DS		Recommendation Grant Certificate of Lawfulness	
Conservation Area N/A		Article 4 None relevant	
Proposal Installation of a door, glass balustrade and artificial grass to the rear roof at third floor level.			
Assessment <p>The application site is a 3-storey plus roof space mid-terrace property located on the east side of Fortune Green Road at No. 74, just north of the junction with Achilles Road and Ajax Road. The property originally included a mix of uses consisting of a retail unit on the ground floor and basement floor with a maisonette on the first and second floor. Recent planning history shows that appeal was allowed in 2021 (2020/2121/P) for a proposed change of use of basement and rear part of ground floor from retail to residential, comprising 1 x 2-bedroom self-contained flat. The maisonette on the first and second floor was granted permission in 2019 for the conversion to 3 self-contained flats comprising 2 x one-bedroom flats and 1 x studio flat (2018/4601/P).</p> <p>The application relates to the top floor flat which has direct access to the rooftop of the building. The building is not listed nor within any conservation area.</p> <p>The application seeks to demonstrate that the installation of a door, glass balustrade and artificial glass to the rear at third floor level has existed for a period of 4 years or more such that these structures would be lawful.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • A letter from Best Home Solutions Ltd dated 15 July 2024 confirming that they were employed by 74 Fortune Green Road Limited for such installation in March 2020. • A statutory declaration dated 5 August 2024, from Mr. Arik Amar, the Director of Best Home Solutions Ltd., confirming his company completed works mentioned under this application in March 2020 and such works still exist without any alterations upon his visit on 15 July 2024. • Three images of the involved door, glass balustrade and artificial glass taken in March 2020 following completion of the works as provided by Best Home Solutions Ltd. 			

The applicant has also submitted the following documents:

- A site location plan outlining the application site.
- A planning statement from Henry Planning Consultancy & Development.

Council's Evidence

Relevant planning history or enforcement history at the subject site:

Planning history:

2018/2812/P – Erection of a mansard roof extension with front and rear dormers to provide ancillary residential floor space (Class C3) – Granted 29/09/2018

2018/4601/P - Infill of existing void at first and second floor level associated with sub-division of existing maisonette to form 3 x self-contained flats consisting of 2 x 1 bed and 1 x studio flats. – Granted subject to a Section 106 Legal Agreement 22/01/2019

2018/4600/P - Excavation of the existing cellar for a new basement extension under the footprint of the building, installation of new shopfront and alterations to the rear fenestration. – Granted subject to a Section 106 Legal Agreement 11/04/2019

2019/1816/P - Details of secure cycle storage required by condition 3 of permission 2018/4601/P dated 22/01/2019 for infilling of existing void at first and second floor level associated with sub-division of existing maisonette to form 3 x self-contained flats consisting of 2 x 1 bed and 1 x studio flats. – Granted 28/05/2019

2019/3748/P - Change of use of ground floor retail unit (Class A1) to residential (Class C3) comprising a 1 bedroom self-contained flat. – Prior Approval required and refused 02/10/2019

2020/0087/P - Change of use of part of the rear ground floor retail unit (Class A1) to residential (Class C3) comprising of 1 x studio flat. - Granted subject to a Section 106 Legal Agreement 01/05/2020

2020/2408/P - Variation of conditions 2 (approved drawings) of planning permission 2018/4601/P dated 22.01.2019 for: infill of existing void at first and second floor level associated with subdivision of existing maisonette to form 3 x self-contained flats consisting of 2 x 1 bed and 1 x studio flats. Namely, changes to the internal layout and alteration to the mansard roof extension to the rear elevation. - Granted subject to a Section 106 Legal Agreement 24/09/2020

2020/2121/P - Change of use of basement and part of ground floor from retail (Class A1) to residential (Class C3) comprising one 2 bed self-contained flat. – Appeal allowed 21/05/2021

2021/2914/P - Details pursuant to conditions 2 (waste and recycling facilities), 3 (cycle parking facilities), 4 (water consumption measures) and 5 (carbon dioxide emission reductions) of planning permission 2020/2121/P for 'change of use of basement and rear part of ground floor to provide one dwelling' allowed on appeal on 21/05/2021. – Granted 17/07/2024

Enforcement history:

EN20/0609 - Replacement of the rear dormer window with new door and installation of glazed balustrade for the use of the flat roof as a terrace – Enforcement record created on 04/08/2020 and Enforcement Warning Notice served on 09/07/2024

Additional information:

- The Council's Geographic Information System (GISMO) provides aerial images from 2020 which show works completed at roof level which appear consistent with those that are the subject of this application and as shown on photos submitted by the applicant.
- The Council's photographic record taken in July 2020 shows that the related works have existed by that time.

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 (DOE Circular 10/97, 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.

According to the evidence submitted by the applicant, the related works were completed in March 2020. The Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024 set out transitional arrangements for development which becomes immune from enforcement if no enforcement action is taken within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024.

According to the Acts, the related works would become lawful if no enforcement action was taken before March 2024. Section 171A of the Town and Country Planning Act 1990 defines that the issue of an enforcement warning notice in relation to land in England under section 172ZA, the issue of an enforcement notice defined in section 172 and the service of a breach of condition notice defined in section 187A would constitute taking enforcement action. The Council's record shows that enforcement action (via an Enforcement Warning Notice) was taken on 09/07/2024 after the related works had become lawful in March 2024. As such, it is considered the building works involved in this Certificate of Lawfulness (Existing) application are lawful as they have existed for a period of more than 4 years as required under the Act.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the installation of a door, glass balustrade and artificial grass to the rear roof at third floor level has existed for a period of more than 4 years as required under the Act. Furthermore, the Council does not have any evidence to contradict or undermine the applicant's version of events. As such, it is recommended that a Certificate of Lawfulness be granted.

Recommendation: Grant Certificate of Lawfulness