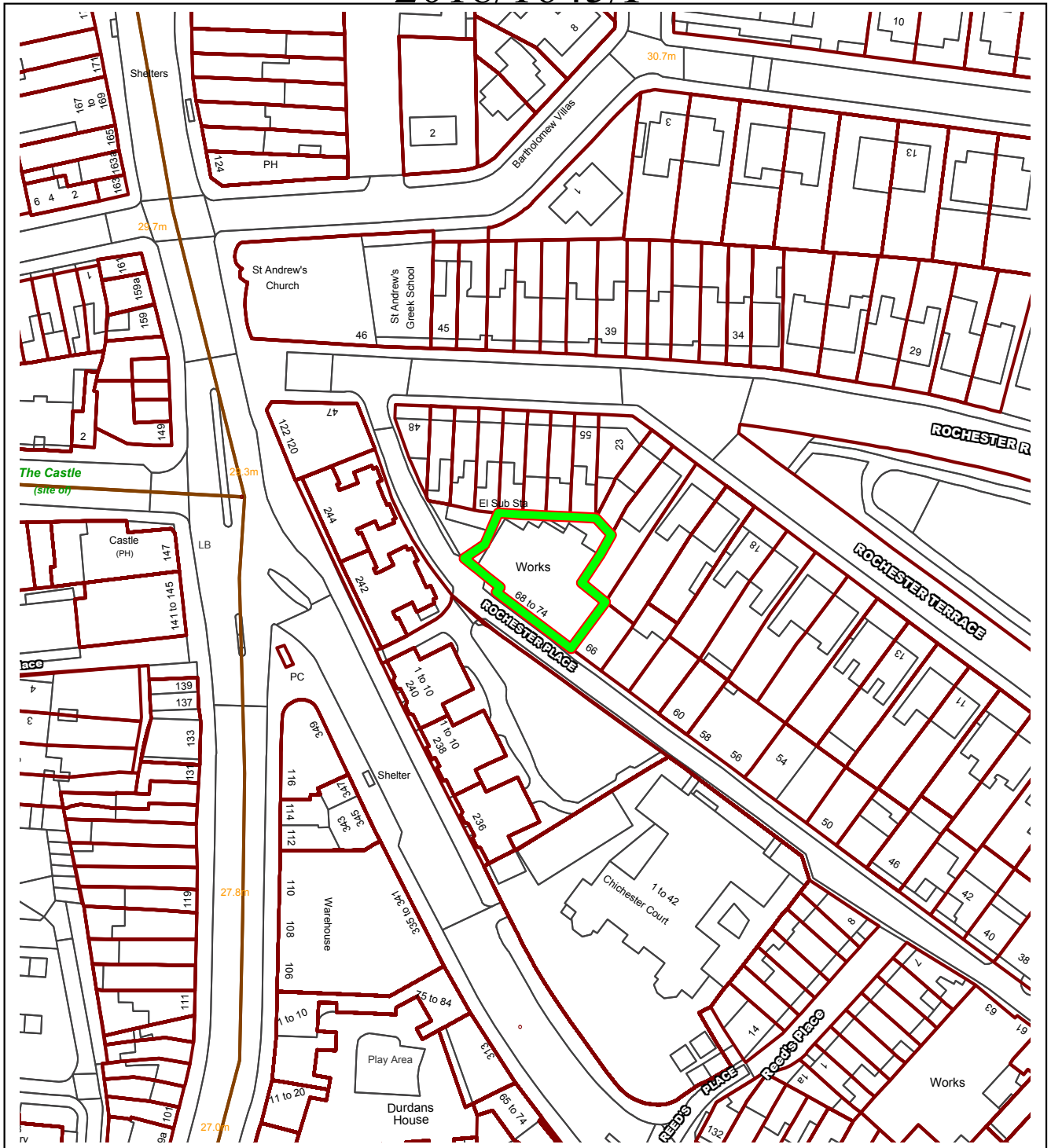


72 Rochester Place, NW1 9JX 2018/1645/P



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1. Location of AC units on main roof



2. Historic aerial photo dated before 2014



3. View from 51 Rochester Road

Delegated Report		Analysis sheet		Expiry Date:		04/07/2018	
(Members Briefing)		N/A / attached		Consultation Expiry Date:		N/A	
Officer				Application Number(s)			
Oluwaseyi Enirayetan				2018/1645/P			
Application Address				Drawing Numbers			
72 Rochester Place London NW1 9JX				Refer to Draft Decision Notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal(s)							
Retention of 2x Air Conditioning units on main roof.							
Recommendation(s):		Grant certificate					
Application Type:		Certificate of Lawfulness (Existing)					

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified		No. of responses	0	No. of objections	0
Summary of consultation responses:	No consultation was undertaken on this application. There is no statutory requirement to consult third parties or neighbours on certificates of lawfulness applications.					
CAAC/Local groups* comments:	<p><u>Rochester Terrace Gardens Residents Association</u></p> <p>1, The applicant has not demonstrated that they have been there for more than 10 years, and the enforcement enquiry was started less than 10 years from the time the units were allegedly purchased.</p> <p>2, Amenity: the application is invalid as there is no acoustic report and it is unacceptable (and contrary to planning law) that the noise aspect of the application is not tested. The ac units are surrounded by residential dwellings and may need acoustic screening.</p> <p>3, Design: the positioning of the units could not be worse from a design point of view, they are highly conspicuous, unsightly and contrary to local and national planning policy. The units are harmful to the character and appearance of the building, its surroundings and the adjacent conservation area. I attach photographs from my bedroom, living room and other key rooms in the house. They can also be seen from the public realm and many private views.</p> <p>4, The owners/lessees of this site have a history of persistently flouting planning regulations as evidenced by this application and other Planning Enforcement applications e.g. EN17/0532 and showing unneighbourly contempt for the residential neighbours. Last year they erected a rear extension without planning permission, although it was required, the work was very noisy, disruptive, carried out at anti social hours with no regard for immediately adjacent neighbours.</p> <p>5, If the owners/leaseholders had any concern for their adjacent occupiers they would as a minimum submit an acoustic report and offer to move them in to a less visually harmful location with proper visual and acoustic screening.</p> <p>Case Officer's Response:</p> <p>1.The applicant only needs to demonstrate that the air-conditioning units structure has been in use for 4years. The assessment of a Lawful Development Certificate is based on the evidence provided to show that enforcement action can no longer be taken against the development. It is not based on the planning merits of the development.</p> <p>Town and Country Planning Act 1990, Part VII, Certificate of lawful use or development, Section 191 Certificate of lawfulness of existing use or development (2) states:</p> <p><i>For the purposes of this Act uses and operations are lawful at any time if—</i></p> <p><i>(a)no enforcement action may then be taken in respect of them (because the time for enforcement action has expired or for any other reason);</i></p> <p>Town and Country Planning Act 1990, Part VII, Section 171B, Time limits states:</p> <p><i>(1)Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years</i></p>					

	<p><i>beginning with the date on which the operations were substantially completed</i></p>
	<p>2&3 Amenity and Design: The assessment is for a certificate and considers the time the development has been in situ, it cannot consider amenity and design.</p> <p>4. The enforcement case EN17/0532 is the only case opened under this address, which relates to a complaint concerning a roller shutter, light pollution and two air conditioning units. This application is as a result of the enforcement enquiry.</p> <p>5. The council is unable to require amendments to be made to the A/C units retrospectively or require an acoustic report to be included in the documents submitted for the assessment of this Lawful Development Certificate</p>
<p>Councillor Beales</p>	<p>Cllr Beales did comment that if constrained in terms of planning matters, environmental health officers could deal with this case, from noise perspectives</p> <p>Case officer's Response: The Councils Environmental health officer was consulted who advised that it is highly unlikely that these A/C units will be producing harmful noise levels. Due to the distance away from noise sensitive receptors.</p>

Site Description

The application site is a two storey mid-terrace property located within a low mews type terrace along Rochester Place. The terrace lies to the east of the junction of Kentish Town Road and Royal College Street, south-west of Rochester Terrace, and is characterised by a variety of commercial buildings, offices and warehousing. To the rear of the site are the rear gardens of residential dwellings. The building is not listed but sits within the Rochester Conservation Area (adopted December 2001).

The application relates to 2x Air-Conditioning (AC) units, which have been installed on the main roof of the property without planning consent.

The application seeks to demonstrate that the AC units have been in position on the property for a period of 4 years or more and would therefore be lawful through the passage of time. As such the applicant is required to demonstrate, on the balance of probability that the existing equipment has been in situ for a period of 4 or more years.

Relevant History

70-72 Rochester Place, NW1 9JX

PEX0200838 - The installation of two floor mounted external air conditioning units at the rear of the building ground level – **Refused 04/04/2003**

Reason for refusal: The proposed air conditioning units by reasons of their location and siting on the rear flank wall, their proximity to the rear garden amenity space and habitable rooms of the adjacent residential properties would give rise to a loss of amenity on grounds on noise and visual amenity.

68-74 Rochester Place, NW1

36707 - Erection of an acoustic enclosure for air conditioning equipment and associated works including the part raising of a boundary wall. – **Granted 12/09/1983**

PE9900926 - Change of use and conversion of first floor from Class B1use (office light industrial) to use as a bed sit flat incorporating the erection of a rear extension at first floor level, a shared entrance area and garage on the ground floor and associated external alteration – **Refused 20/12/2000**

Reason for refusal: The proposal would result in a loss of employment floor space within Class B1 of the Town and Country (Use Classes Order) 1987 and would be prejudicial to the retention of employment use within adjacent parts of the building.

EN17/0532 – Complaint involves a roller shutter, light pollution and two air-conditioning units. Investigation has been opened, this application is submitted for the AC unit following this enforcement investigation.

Relevant test

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 of the evidence on such matters is 'the balance of probability', the applicant is not required to discharge the stricter, criminal burden of proof, namely 'beyond all reasonable doubt'. The local planning authority is advised that if it has no evidence of its own 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. 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 such an application.

In light of this, the evidence needs to demonstrate that the AC Units has been in place continually for at least a period of 4 years prior the date of the submission of the certificate (4th April 2014).

Assessment

1. The Applicant's Evidence

1.1. The applicant has submitted the following documentation as part of their application:

- A site location plan outlining the boundary of the site.
- Proof of purchase (sales invoice)
- Install notice (Daikin Industries Ltd Ref: R410a)
- Service reports
- Photographs of the equipment in situ

2. Assessment:

2.1 In order to defend the applicant's version of events, the above evidence has been submitted which shows that the existing plants has been in situ and in continuous use for a period exceeding 4 years.

2.2 The applicant has submitted proof of purchase with invoice dated 8 June 2007. The install notice with serial No./year dated 2007 and service reports of 2 units dated 16/04/2014; 29/09/2014; 01/04/2015; 12/03/2015; 25/09/2015; 09/03/2016; 27/02/2017; 29/09/2017; 21/01/2018 and 22/02/2018. Demonstrating consistent servicing for the last 4 years. It is considered the evidence submitted confirms the installation and position of the air conditioning units has been in place for more than 4years.

2.3 A historic aerial photo, which is dated before 2014 (see photos section) accords with the equipment on site and the Council does not have any evidence to contradict or undermine the applicant's version of events.

2.4 The information provided by the applicant is deemed sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the AC units has existed in situ for a period of more than 4 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

3. Conclusion:

3.1 The evidence submitted demonstrates that on the balance of probability, the air-condition units have been in place continually for a period of at least four years

4. **Recommendation:** The application for a certificate of lawfulness should be granted.

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 16th July 2018, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.

Ms Richens-Moody
72 Rochester Place
London
NW1 9JX

Application Ref: **2018/1645/P**
Please ask for: **Oluwaseyi Enirayetan**
Telephone: 020 7974 **3229**

12 July 2018

DRAFT

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Existing) Granted

The Council hereby certifies that on the 21 May 2018 the use described in the First Schedule below in respect of the land specified in the Second Schedule below, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Retention of 2x Air Conditioning units on main roof.

Drawing Nos: Site location plan; Proof of purchase (Sales Invoice No. 42649); Install notice (Daikin Industries Ltd Ref: R410a); Service reports, Photos.

Second Schedule:

72 Rochester Place
London
NW1 9JX

Reason for the Decision:

- 1 The evidence submitted demonstrates on the balance of probability that the two air conditioning units installed on the main roof of building has been existing on the site for more than 4 years. It is therefore considered that the extension is lawful.

Executive Director Supporting Communities



You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Director of Regeneration and Planning

Notes

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful on the specified date and thus, was not*/would not have been* liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use*/operations*/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.