

LDC Report	18/09/2018
Officer	Application Number
Nora-Andreea Constantinescu	2018/3079/P
Application Address	Recommendation
Flat 2nd and 3rd Floor 28 Montpelier Grove London NW5 2XD	
1st Signature	2nd Signature (if refusal)
Proposal	
Use of the rear flat roof with balustrade above 3 rd floor as a roof terrace, for flat at 2nd and 3rd floors.	
Assessment	
<p>The application site is located on the eastern side of Montpelier Grove, and makes the end of terrace row. The application relates to the 2nd and 3rd floor flat and the terrace above. The building is not listed and is located in the Kentish Town Conservation Area.</p> <p>The application seeks to demonstrate that roof terrace and its balustrade expanding along the rear roofslope of the building has existed in situ for a period of 4 years or more, such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing terrace has existed for a period of 4 or more years.</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"> • Statutory Declaration dated 04/05/2018 from previous flat owner confirming the terrace has been continuously used as amenity space since acquired on 08/12/1981, including balustrade; • Signed testimony dated 21/06/2018 from the Leaseholder of the First floor flat, confirming the terrace has been continuously used as amenity space since acquired in the year 2000 including balustrade; • Aerial photo dated 19/09/2002, confirmed by Getmapping plc showing balustrade; • Street view photo dated June 2008 from Googlemaps showing balustrade; • Photos from the previous owner of the flat showing the terrace in use in 1984, including balustrade; • Photos from the previous owner of the flat showing the terrace in use in May 2008, 	

- supported by metadata information, including balustrade ;
- Current owner lease details dated 22/02/2018.

The applicant has also submitted the following plans:

- A site location plan outlining the application site;
- Lease drawings no. PL11093-02 showing the terrace;
- Pre-existing front and rear elevations 004_102 P1;
- Pre-existing roof plan and side elevation 004_101 P1;
- Existing front and rear elevations 004_112 P1;
- Existing roof plan and side elevation 004_111 P1.

Council's Evidence

Relevant planning history on the subject site:

31279 - 28 Montpelier Grove - The change of use to 3 self-contained dwelling units including works of conversion, the enlargement of the front dormer, enlargement of the existing ground floor extension and alterations to the roof at the rear. – Granted 28/11/1980

There is no enforcement records on the subject site.

A site visit to the property was undertaken on the 03/09/2018. The officer was satisfied that the terrace arrangement on site is the same as the one showing in the evidence provided by the applicant, including the balustrades, rooflight, hatch and tank.

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.

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

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the terrace located on the rear slope of the building and its balustrade has existed on site 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.

Recommendation: Approve