

<b>LDC Report</b>	30/08/2018
<b>Officer</b>	<b>Application Number</b>
Tony Young	2018/3057/P
<b>Application Address</b>	<b>Recommendation</b>
Flat B, Flat 1st Floor 78 Fleet Road London NW3 2QT	Grant Certificate of Lawfulness (Existing)
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Use of the 1st floor rear roof as a roof terrace, including the installation of black metal railings.	
<b>Assessment</b>	
<p>The application site is located approximately halfway along Fleet Road on the northern side, opposite Lawn Road to the south.</p> <p>The building is not listed but sits in the Mansfield Conservation Area.</p> <p>Flat B (also known as and referred to as Flat 2) is located at 1<sup>st</sup> floor level and has a rear flat roof area accessible through a bedroom window. The application seeks to demonstrate that on the balance of probability the 1<sup>st</sup> floor rear flat roof has been in use as a roof terrace (including the installation of black metal railings) for a consecutive period of at least four years before the date of the application, such that its continued use would not require planning permission.</p>	
<b>Applicant's Evidence</b>	
<p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>• Cover letter from MZA Planning (agent) dated 28/06/2018 (ref. YM/Portmann/0418/rk), asserting that the contents and evidence provided demonstrate that the 1st floor flat roof has been in use as a roof terrace (including installation of black metal railings) for a consecutive period of more than 4 years;</li> <li>• Appendix 1 - Decision notice (ref. PL/9500769/R2) dated 08/09/1995 confirming that planning permission was granted 07/09/1995 (for works as described in 'Council Evidence' section below);</li> <li>• Appendix 2 – Signed statutory declaration from Ms. Clare Persey (former owner of Flat 3) dated 14/06/2018, asserting that 1st floor flat roof was used as a roof terrace (including railings and fencing) between October 2001 and September 2012;</li> <li>• Appendix 3 - Signed letter from Sangeetha Lengar (current owner of Flat 3) dated 25/04/2018, asserting that that the flat roof adjacent to Flat 2 was used as a roof terrace (including railings and fencing) since September 2012;</li> <li>• Letter from Nelson Solicitors dated 23/01/2007, that refers to a roof terrace used as a wholly private recreational area associated with Flat 2.</li> </ul>	

The applicant has also submitted the following plans and photographs:

- A site location plan outlining the application site
- Existing 1<sup>st</sup> floor plan drawing (ref. 0911/002);
- Existing front and rear elevation drawing (ref. 0911/003);
- Historic photographs - 2001-present (appendices 4 and 5).

### **Council's Evidence**

There is relevant planning history but no relevant enforcement action on the subject site.

9500769 - The erection of a mansard roof extension and enlargement of the extension at the rear first floor level and works of conversion to provide 1 x 1-bedroom flat and 1 x 2-bedroom maisonette. Granted planning permission 07/09/1995

Valuation Office Agency (VOA) records show council tax banding details for residential use at Flat 1<sup>st</sup> Floor since 06/11/2001.

### **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 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 1<sup>st</sup> floor rear flat roof has been in use as a roof terrace (including the installation of black metal railings) 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 1<sup>st</sup> floor rear flat roof was in use as a roof terrace (including the installation of black metal railings) 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.

**Recommendation: Approve**