

LDC Report	18/12/2018
Officer	Application Number
Matthew Dempsey	2018/5126/P
Application Address	Recommendation
1st And 2nd Floor Flat, 7 Fairhazel Gardens London NW6 3QE	Grant Certificate of Lawfulness (Existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Installation of railings at 2 nd floor to rear extension, with French doors to access terrace.	
Assessment	
<p>The application site is located within a terrace of mixed use properties, with commercial properties fronting Fairhazel Gardens at ground floor level with residential units above.</p> <p>The application relates to a flat which sits above 'The Arches' wine bar & restaurant at the end of the terrace. The flat is accessed via a door on Coleridge Gardens, a small mews lane off Fairhazel Gardens.</p> <p>The building is not listed and is located in the South Hampstead Conservation Area.</p> <p>The application seeks to demonstrate that the railings to the rear roof terrace at 2nd floor level and French doors to provide access have existed 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 railings enclosing the roof terrace have 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"> • Design and access statement, including Google Street view images from 2009. • A Surveyors report (prepared by Countrywide Surveyors) from 1998 confirming existence of roof terrace and railings in situ. <p>The applicant has also submitted the following plans:</p>	

- A site location plan outlining the application site.
- Existing floor plans, elevation and section of the property.

Council's Evidence

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

A site visit to the property was undertaken on the 22/11/2018. The officer was satisfied that the railings around the roof terrace had been in place for some time and that the doors to access the terrace had also been installed some time ago. The property was occupied by the applicant.

Whilst attending the site visit the case officer met a member of the public, who worked in the offices to the rear of the application site, and they were able to confirm anecdotally that the railings surrounding the roof terrace had been in place for over 10 years.

The case officer has been able to corroborate information provided by the applicant with historic images to confirm the existence of the railings going back to at least 2009.

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 2nd floor rear roof terrace has existed in residential use 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

