

LDC (Proposed) Report		Application number	2020/0566/P
Officer		Expiry date	
Tony Young		01/04/2020	
Application Address		Authorised Officer Signature	
49 Willow Road London NW3 1TS			
Conservation Area		Article 4	
Hampstead		Article 4 direction area (basements) & (heritage & conservation)	
Proposal			
Use of rear/side 1st floor flat roof for sitting out purposes.			
Recommendation:		Issue Certificate	
<p>Introduction</p> <p>The application site is an end of terrace property, located on the western side of Willow Road, and on a junction with Gayton Road, Well Walk and Flask Walk.</p> <p>The application is made under Section 191 of the Town and Country Planning Act 1990 for a Certificate of Lawfulness for the use of the rear/side 1st floor flat roof for sitting out purposes. The applicant seeks confirmation that the proposed use is lawful.</p> <p>Applicant's Evidence</p> <p>Site location plan; Cover letter (including annexes A-F) from Michael Burroughs Associates (ref. E4354) dated 31/02/2020.</p> <p>Council's Evidence</p> <p>The host building is not listed and sits within the Hampstead Conservation Area. The building is identified as making a positive contribution to the special character and appearance within the conservation area (<i>Hampstead Conservation Area appraisal and management strategy</i>, adopted October 2011).</p> <p>Assessment</p> <p>With regard to applications for a Certificate of Lawfulness, the Secretary of State has advised local planning authorities that the burden of proof 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 "<i>balance of probability</i>", 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.</p>			

Planning permission was granted in 29/09/1961 (ref. TP80649/12353) for the '*Alterations and additions at No. 49 Willow Road, Hampstead.*' as shown on drawing no. 20/17.

The current application submission includes photographs that show an existing rear extension with flat roof built as part of the above approval. This is also supported by historic Ordnance Survey plans and a cover letter as evidence of its' existence since at least 1966.

It is noted that before 1968 that there was no time limit on the duration of planning permissions. As such, the exact date when the relevant building works were begun is irrelevant to the assessment of this current application by virtue of the above planning permission (ref. TP80649/12353) having been granted prior to 1968 and the absence of any conditions attached to this approval which might set a time limit on when construction had to begin.

Though the planning officer hasn't been able to visit the site during the current COVID-19 virus restrictions, the Council has no reason or evidence to dispute the fact that there is an existing rear extension with flat roof at the property and that this was built as part of the implementation of the above planning approval.

The matter then turns to the main purpose of the application which is the lawfulness or otherwise of the use of this flat roof for sitting out purposes. Section 55 of the Town and Country Planning Act 1990, defines the term development to include building operations and the making of material change in the use of any buildings or other land. Sub-section (2) then sets out the type of uses that shall not be taken to involve development of land. One of these, in sub-section 55(2)(d) of the Act, is stated as being "*the use of any buildings or other land within the curtilage of a dwellinghouse for the purpose incidental to the enjoyment of the dwellinghouse.*"

The act of sitting out on the 1st floor flat roof in a way incidental or ancillary to the existing residential use is not therefore considered to make any material change of use to the dwelling house. As such, the use of the roof for sitting out in this way is not regarded as development that would require planning permission by virtue of section 55(2)(d) of the Act.

Furthermore, there are no conditions attached to the above approval or to any historic planning approvals relating to the application site that would prevent the use of the flat roof in this way. It is also noted that some physical works that might be regarded as facilitating the use of the flat roof for sitting out purposes have been carried out. These include the provision of an external door that provides access to the 1st floor roof space and a high side wall. These works were also approved under planning permission (ref. TP80649/12353) referred to above.

It is therefore considered that the use of the 1st floor rear flat roof for sitting out purposes is lawful as it does not constitute development for which planning permission would be required. In this respect, it is recommended that a certificate of lawfulness be granted.

RECOMMENDATION: Grant certificate of lawfulness