

<b>LDC (Existing) Report</b>		<b>Application number</b>	2020/1524/P
<b>Officer</b>		<b>Expiry date</b>	
Katrina Lamont			
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
3 Leverton Place London NW5 2PL			
<b>Conservation Area</b>		<b>Article 4</b>	
Kentish Town			
<b>Proposal</b>			
Installation of planter on roof of existing ground floor rear extension (retrospective).			
<b>Recommendation:</b>		Refuse and Warning of Enforcement Action to be Taken	
<b>Assessment</b>			
<b>Site description</b>			
<p>The application site is located on the northern side of Leverton Place, in between the junctions with Leverton Street to the east and Kentish Town Road to the west. The application building is a three storey single family dwellinghouse, and forms the east end of a terrace row of 3 residential properties.</p> <p>On the eastern side of the application site is a row of 10 Grade II listed terraced properties at 5-23 Leverton Street. To the rear, the site adjoins a playground at Falkland Place.</p> <p>The application property, together with the adjacent ones at Nos. 1 and 2 Leverton Place, are located within Kentish Town Conservation Area and are considered to make a positive contribution to the Conservation Area. The site is also within the Kentish Town Neighbourhood Forum Plan area.</p>			
<b>Recent planning history:</b>			
<p><b>2019/4325/P</b>- Alterations to reduce area of green roof and add parapet to ground floor extension granted planning permission under application 2018/3529/P dated 27/11/2018 for Installation of railings and privacy screens on the flat roof of ground floor rear extension to create a terrace, and installation of green roof on the remaining flat roof, all to single family dwellinghouse.- <b>Granted 03/02/2020</b></p>			
<p><b>2017/0362/P</b> - Non material amendments to works under planning permission 2016/1088/P dated 11/05/2016 for a rear ground floor extension, rear first floor infill and second floor part width extensions and changes to rear elevation fenestration details; namely alterations to the rear elevation first floor window – <b>Granted 09/02/2017</b></p>			
<p><b>2017/3353/P</b> - Installation of balustrades and privacy screens on the flat roof of ground floor rear extension to provide terrace, to single family dwelling (Class C3) – <b>Refused 11/10/2017</b></p>			

## **and appeal dismissed 08/05/2018**

**2016/1088/P** - *Erection of rear ground floor extension. Erection of rear first floor infill and second floor part width extensions. Changes to rear elevation fenestration details – Granted 11/05/2016*

### **Assessment**

The application seeks confirmation that an existing planter located on the roof of a single storey rear extension is not development.

The applicant has put forward no evidence to demonstrate that the planter would not meet the definition of development as defined by Section 55 of the Town and County Planning Act 1990 (as amended).

#### Section 55 Meaning of “development” and “new development”

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

[F1(1A) For the purposes of this Act “building operations” includes—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.

The courts have held that operational development comprises activities, which result in some physical alteration to the land, which has some degree of permanence (Parkes v SoS for the Environment 1978). Other cases, (including Skerritts of Nottingham Ltd v SoS for the Environment Transport and the Regions 2009), have identified three primary factors, or tests, as being relevant to whether or not operations required planning permission. The three factors to consider are size, permanence and physical attachment.

The timber planter spans the width of the flat roof of the single storey rear extension measuring approximately 4.3m in length, 0.3m in width and 0.4m in height. While the planter might appear small when considered in isolation, size is a relative term and the planter sits on a relatively small flat roof creating a sense of enclosure and is considered sizable in relation to the flat roof. The planter can be described as ‘structure or erection’, which performs the function of creating a low wall or enclosure. It should be noted that the rear elevation provided does not appear to show the planter.

With regards to the issue of permanence, it is the Councils understanding that the planter has been in place since 2018. It seems logical that the applicant intends to keep the planter in situ. It has been established that permanence does not have to mean forever.

It is not clear if the planter is physically attached to the roof however even if it is not, it is considered unlikely that it can be moved with ease without having to remove its contents. It is therefore considered that the physical weight of the planter keeps it in a fixed position on the roof. Furthermore, there is currently no permitted access out onto the roof as per conditions

applied to planning permission 2019/4325/P granted on 3 February 2020.

In addition, condition 4 of planning permission 2019/4325/P requires the planter to be removed within 4 months of the decision being issued – before 3 June 2020. The condition stipulates that:

*You must implement the amendments hereby approved as well as the following, within four months from the date of this decision:*

- a) Gates fitted to roof level terrace enclosure shall be replaced by approved railings;*
- b) Astro-turf fitted to roof shall be replaced by approved living green roof;*
- c) *Wooden planters at the rear of the roof shall be removed.***

One letter of objection has been received which outlines concerns regarding loss of privacy through overlooking. These issues were addressed as part of planning application 2019/4325/P. There is no permitted access onto the roof and the planter must be removed as per the condition 4 above. Failure to remove the planter before 3 June 2020 will result in further enforcement action being taken, and an informative will be attached to the decision notice.

In conclusion the Council considers that the planter box is operational development requiring planning permission as defined by s55 of T&CPA taking into account size, degree of permanence and physical attachment to the building and as such this Certificate of Lawfulness should be refused.