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| LDC (Existing) Report | | Application number | 2021/3376/P |
| Officer | | Expiry date | |
| Tony Young | | 06/09/2021 | |
| Application Address | | Authorised Officer Signature | |
| Flat C 10 Oakford Road London NW5 1AH | | | |
| Conservation Area | | Article 4 | |
| n/a | | Article 4 direction area (basements) | |
| Proposal | | | |
| Use of flat roof area over rear wing as an amenity roof terrace | | | |
| Recommendation: | | Issue Certificate | |
| Introduction | | | |
| <p>The application site is a mid-terrace property located on the north-west side of Oakford Road, near the junction with Lady Somerset Road to the south-west, and within the Kentish Town Neighbourhood Area. The building is not listed or located in a conservation area.</p> <p>Flat C is an upper floor flat, occupying the 1st floor and converted loft space. There is a 2-storey over basement level flat roof on the rear projection, accessible via a window from a half-landing associated with Flat C.</p> <p>The application seeks to demonstrate that, on the balance of probability, the rear flat roof has been in use as an amenity terrace area associated with Flat C for a continuous period of at least four years before the date of the application, such that its continued use would not require planning permission.</p> | | | |
| Applicant's Evidence | | | |
| <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • Planning Statement from 4D Planning (Chartered Town Planners and Architectural Technicians) dated July 2021, asserting that the contents and evidence provided demonstrate that Flat C has had use of the rear flat roof as an amenity terrace area for a continuous period of more than four years; • Document A – Statutory declaration and plan from Jonathan Charles Henry Myer (previous owner) dated 27/03/2017, asserting that the rear flat roof associated with Flat C has been in use as an amenity terrace area for a period of approximately 30 years up to 2017; • Document B - Statutory declaration and plan from Judith Houston (current owner/applicant) dated 09/06/2021, asserting that the rear flat roof associated with Flat C has been in use as an amenity terrace area for a period of approximately 3 years since purchasing the property (Flat C) in 2018; • Document C - Building Survey Report from Flettons Facilities Management Ltd. (ref. 10CNW51AH) dated 18/04/2018, containing survey photographs showing the rear flat roof area which is the subject of this application; | | | |

- Document D – Various photographs from Judith Houston (current owner/applicant) showing the rear flat roof area associated with Flat C in use as an amenity terrace area.

The applicant has also submitted the following plans:

- A site location and block plan drawing outlining the application site (ref. 4D-109-E00);
- Existing ground and 1st floor plan drawing (ref. 4D-109-E01);
- Existing loft and roof level plan drawing (ref. 4D-109-E02);
- Existing front and rear elevation drawing (ref. 4D-109-E03);
- Existing side (left) elevation drawing (ref. 4D-109-E04);
- Existing side elevation drawing (ref. 4D-109-E05);
- Existing sections AA and BB drawing (ref. 4D-109-E06);
- Existing 3D section images and isometric view drawings (ref. 4D-109-E07 and E08);
- Pre-existing ground and 1st floor plan drawing (ref. 4D-109-PE01);
- Pre-existing loft and roof level plan drawing (ref. 4D-109-PE02);
- Pre-existing front and rear elevation drawing (ref. 4D-109-PE03);
- Pre-existing side (left) elevation drawing (ref. 4D-109-PE04);
- Pre-existing side elevation drawing (ref. 4D-109-PE05);
- Pre-existing sections AA and BB drawing (ref. 4D-109-PE06);
- Pre-existing 3D section images and isometric view drawings (ref. 4D-109-PE07 and PE08).

Council's Evidence

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

36148 - The erection of a roof extension to provide one additional habitable room for use as part of the top flat. Granted planning permission dated 11/07/1983

Assessment

In 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 “*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 current application submission includes photographs that show the relevant rear extension with a flat roof and associated safety barriers as existing in 2018. This is supported by historic drawings attached to planning approval (ref. 36148) which confirms the existence of the rear flat roof since at least 1983. The submission also provides a plan from 2017 which includes annotation describing the relevant rear flat roof area as a ‘roof terrace (access via window).’ There are no conditions attached to the above approval or to any historic planning approval(s) relating to the application site that would prevent the use of the flat roof area in this way.

In regard to the continuous use of the rear flat roof as an amenity terrace area for the required four year period, it is noted in Paragraph 1.4 of the supporting Planning Statement that there was a period of approximately one year when the property (Flat C) was unoccupied. This was a period from 2017 when the previous owner moved out of the property and before it was then purchased by the current owner/applicant in 2018.

In an appeal case (*Panton v Secretary of State of the Environment, Transport and the Regions* [1999] 78 P. & C.R. 186), the Inspector held that a use which is inactive or dormant can be capable of being an existing use (within the terms of section 191(1) of the Town and Country Planning Act 1990) if it has not been lost by an operation of law.

There is no evidence to suggest in the current application that the use as an amenity terrace area had been lost by an operation of law during the inactive period of approximately one year when the property was on the market and unoccupied; the flat roof remaining available for use as an amenity terrace area during this time.

It is therefore considered that the information provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the rear flat roof has been in use as an amenity terrace area associated with Flat C for the required period of at least four years before the date of the application. This being the case, and given the fact that the Council does not have any evidence to contradict or undermine the applicant's version of events, the continued use as an amenity terrace space would not require planning permission. In this respect, it is recommended that a Certificate of Lawfulness be granted.

RECOMMENDATION: Grant Certificate of Lawfulness