

LDC Report	10/12/2021
Officer	Application Number
Fast Track Team	2021/5067/P
Application Address	Recommendation
Rear of 205-207 Haverstock Hill London NW3 4QG	Grant Certificate of Lawfulness (existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Continued use of Ventilation duct at rear of property for use as extraction for ground floor restaurant.	
Assessment	
<p>The application site is located to the rear of 205-207 Haverstock Hill, London, NW3 4QG</p> <p>The application relates to the existing use or operation of ventilation ductwork (providing an exhaust outlet for the kitchen extraction system) at the rear of the ground floor property.</p> <p>The building is not listed and is located in the Belsize Conservation Area.</p> <p>The application seeks to demonstrate that the ventilation duct has been in use since 1985. The ventilation duct and use was given temporary approval in 1983 and renewed in 1985 and 1991. The 1991 permission (reference 8905844) including a condition which states that: The limited period for the retention of the duct shall be until 30.09.1996 by which date the structure shall be removed.</p> <p>Therefore, this latest temporary approval expired on 30.09.96.</p> <p>In accordance with section 171B of the Town and Country Planning Act 1990, in most cases, development becomes immune from enforcement if no action is taken:</p> <ul style="list-style-type: none"> • within 4 years of substantial completion for a breach of planning control consisting of operational development; • within 4 years for an unauthorised change of use to a single dwellinghouse; • within 10 years for any other breach of planning control (essentially other changes of use). <p>In respect of operations in non-compliance with a planning condition the operation becomes immune from enforcement action if there has been continuous operation for a period of 10</p>	

years. Therefore, the applicant is required to demonstrate, on balance of probability that the existing ventilation duct has existed for a period of 10 or more years from 30/09/1996

The applicant seeks to demonstrate that the ventilation ductwork has remained in place and operational. It was operated continuously as a restaurant from 1985 to 2020. The premises is now being advertised for let as a restaurant property.

The evidence submitted supports these dates proving a greater than 10 year use. The ventilation duct has existed for a period of 10 years or more such that the continued use would not require planning permission.

Applicant's Evidence

The applicant has submitted the following information in support of the application:

- 1991 Approval for duct
- 1985 Approval for duct
- Statutory Declaration (Austin Christopher Stanniland)
- Statutory Declaration (Ronald Max Laser)
- Statutory Declaration (Jamie Richard Sanfelix)
- Decision Notice for Application Ref. PL/8500844/
- Decision Notice for Application Ref. PL/8905844/

The applicant has also submitted the following plans:

- Rear Elevation Plan (Illustrating Ductwork) (Drawing No. 345/04A)
- Site Location Plan (Drawing No. CPS01)

Council's Evidence

The Council's – aerial photography 2012, 2014, 2020

There was enforcement action on the subject site.

EN08/0565 - Four external infra-red heaters below fascia board heating outside tables. – Breach ceased.

EN15/0517- Plastic windows in block – No Breach found

EN19/0283 - Investigate the shopfronts and windows – No Breach found

History

35222 – Permission granted on 20/12/1983 on until 1/1/1986 by which date the extraction duct shall be removed.

8500844 - Permission granted 13/05/1985 on until 1/01/1990 by which date the extraction duct shall be removed.

8905844 - Permission granted 16/07/1989 on until 30/09/1996 by which date the extraction duct shall be removed.

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.

As per the most recent permission, it has been in breach of the time limit condition for over 10 years. After 10 years the development becomes immune from enforcement if no action is taken. No enforcement action has taken and the ventilation duct is now immune from any enforcement action. -

The Council does not have any evidence to contradict or undermine the applicant’s version of events. The duct is visible on aerial photography from 2012, 2014 and 2020

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the ventilation duct/extraction unit has existed and been in use for a period of more than 10 years as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Recommendation: Approve