

<b>LDC Report</b>		<b>Date of application - 02/02/2022</b>
<b>Officer</b>		<b>Application Number</b>
Fast Track JL		2022/0390/P
<b>Application Address</b>		<b>Recommendation</b>
Flat 1st Floor 2 Oseney Crescent London Camden NW5 2AU		Grant certificate
<b>Proposal</b>		
Installation of uPVC window to the rear at first floor level.		
<b>Assessment</b>		
<p>The application site is a building that has been split into flats.</p> <p>The application seeks to demonstrate that a uPVC window, on the first floor at the rear, was installed more than four years before the date of this application (before 02/02/2018 – “the relevant date”) and is therefore immune from enforcement action. Development immune from enforcement action is lawful.</p> <p><b>Applicant’s Evidence</b></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>• Photo of the window dated 18/08/2013 (date taken confirmed in the meta data).</li> <li>• Inventory and Schedule of condition prepared by Ashworth Group dated 26/08/2016</li> </ul> <p><b>Council’s Evidence</b></p> <p>2018/3564/P – application for second floor flat included a photo dated 27/07/2018 (after the relevant date) showing the window as uPVC.</p> <p>2017/3415/P – application for the upper ground flat included no photos of the rear elevation, but on the elevation drawing dated June 2017 (before the relevant date) it shows a heavier frame for the first-floor window which is similar to the frame profile of the uPVC windows, although the material is not labelled. The other windows labelled as metal framed are shown much thinner in profile.</p> <p><b>Assessment</b></p> <p>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</p>		

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 are not relevant to the consideration of an application for a certificate of lawfulness.

The Council does not have any evidence to contradict or undermine the applicant’s version of events. The photograph, and particularly the detailed Inventory, demonstrate that the rear first floor window was already uPVC prior to the relevant date. This appears to be corroborated by the 2017 application for the flat below. The 2018 application shows that there was certainly a uPVC window in place only six months after the relevant date. Overall, and on the balance of probability, it appears the rear first floor uPVC window was in situ for more than four years prior to the date of the application.

**Recommendation: Approve**