

LDC Report	24/05/2022
Officer	Application Number
Fast Track Team	2022/0454/P
Application Address	Recommendation
Flat 4 57 Parliament Hill London NW3 2TB	Grant Certificate of Lawfulness (existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Continued use of existing roof terrace with associated railings, fencing, and roof access hatch.	
Assessment	
<p><i>The application site is located on the top floor of Flat 4, 57 Parliament Hill, London, NW3 2TB.</i></p> <p><i>The application relates to the existing use or operation of existing roof terrace with associated railings, fencing, and roof access hatch.</i></p> <p><i>The building is not listed and is located in the South Hill Park Conservation Area.</i></p> <p><i>The application seeks to demonstrate that the roof terrace has been in use for 4 years or more.</i></p> <p><i>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:</i></p> <ul style="list-style-type: none"> <i>• within 4 years of substantial completion for a breach of planning control consisting of operational development;</i> <i>• within 4 years for an unauthorised change of use to a single dwellinghouse;</i> <i>• within 10 years for any other breach of planning control (essentially other changes of use).</i> <i>• 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 years.</i> <p><i>Therefore, the applicant is required to demonstrate, on balance of probability that the existing roof terrace with associated railings, fencing, and roof access hatch has existed for a period of 4 or more years.</i></p> <p><i>The evidence submitted supports these dates proving a greater than 4 year use/operation. The roof terrace with associated railings, fencing, and roof access hatch has existed for a period of 4</i></p>	

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:

- Statutory declaration (Mr Christopher Pitchford)
 - Exhibit CCPG2 - Drawing No. 218/013
 - Exhibit CCPG3 - Benham Reeves Property Details(roof terrace)
 - Exhibit CCPG4 - Bleriot – Work Report
- Statutory declaration (Mr Joshua Wilson) – 3/02/2022
 - Exhibit JW1 – Picture of roof terrace
- Statutory declaration (Ms Barbara Galloway)
- Copy of planning permission CTP/E8/4/30/19089 - Granted 3/04/1974

The applicant has also submitted the following plans:

- Copies of drawing nos. D3A and D4A (Planning Permission - CTP/E8/4/30/19089)
- Existing top floor and Roof plans, Section, and Site location plan - Drawing no. 10636/TP/01
- Existing rear and side elevation - Drawing no. 10636/TP/02

Council's Evidence

The Council's – aerial photography 2014 showing the roof terrace and associated railings, fencing, and roof access hatch.

There was no enforcement action on the subject site.

History

- **E8/4/30/34852(R1)** - Formation of a roof terrace at the rear at first floor level using the roof of the existing ground floor extension. (this related to the 1st floor only) - **Granted (Conditional) - 15/11/1982**
- **CTP/E8/4/30/19685** – Change of top floor plan, rear elevation and roof access to permission No. CTP/E8/4/30/18089(R) dated 3/04/1974 - **Withdrawn as not considered to be materially different to CTP/E8/4/30/18089(R) - 13/01/1975**
- **CTP/E8/4/30/18089(R)** – Change of use of 57, Parliament Hill, N.W.3 and works of conversion to provide four flats, formation of a mansard roof at the rear of the third floor and the formation of a roof terrace. - **Granted 08/04/1974**

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.

The application for the certificate relates to the existing use or operation of the existing roof terrace with associated railings, fencing, and roof access hatch. The application is made on the basis that the use is lawful because it is now immune from enforcement action because it has occurred for a continuous period of more than four years, before the date of the application – in other words since at least 1996 and 04/02/2022 (“the relevant period”).

The Council does not have any evidence to contradict or undermine the applicant’s version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the top floor roof terrace with has existed and been in use for a period of more than 4 years as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Recommendation: Approve