

<b>LDC Report</b>	04/11/2022
<b>Officer</b>	<b>Application Number</b>
Kristina Smith	2022/4079/P
<b>Application Address</b>	<b>Recommendation</b>
119 Flat B Castlehaven Road London NW1 8SJ	Grant certificate of lawfulness (existing)
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Retention of railings at roof level	
<b>Assessment</b>	
<p>The application site is located on the western side of Castlehaven Road at the junction with Grafton Crescent.</p> <p>The application relates to a 3-storey building in commercial use at ground floor with two residential flats at first and second floor levels.</p> <p>The building is not listed and is not within a Conservation Area.</p> <p>At roof level, the property comprises decorative white railings that run around the edge of the site, allowing the roof to be safely used as a terrace. The applicant is demonstrating that the railings have existed this way for a period of 4 years or more such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing railings at roof level have existed for a period of 4 or more years.</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>Existing photographs PH1-PH3 comprising 4 photographs from street level and 2 aerial photos showing the railings in place</li> <li>Existing street view photographs 2009-2022. This schedule of photographs includes 10 photos (2009, 2012, 2013, 2014, 2015, 2016, 2018, 2019, 2021 and 2022) showing the railings in place on Google Streetview since 2009.</li> <li>Existing site and roof plans</li> </ul>	

## **Council's Evidence**

### Planning history:

There is no planning or enforcement history that relates to the railings at roof level.

### **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 Council does not have any evidence to contradict or undermine the applicant's version of events. The information provided by the applicant is deemed sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the railings at roof level have existed for a period of more than 4 years as required under the Act.

**Recommendation: Approve**