


<b>LDC Report</b>	<b>05/12/2022</b>
<b>Officer</b>	<b>Application Number</b>
Fast Track Team	2021/5438/P
<b>Application Address</b>	<b>Recommendation</b>
Flat 2nd And 3rd Floor 58 Parliament Hill London NW3 2TL	Refuse Certificate of Lawfulness (existing) and warning of enforcement action.
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
To confirm the existing fencing around a roof terrace ('the Development'), on the third floor of the building are lawful.	
<b>Assessment</b>	
<b>Application site</b>	
<p>The application site is a four-storey semi-detached building, located on the eastern side of Parliament Hill road. The certificate application is in relation to the 2<sup>nd</sup> and 3<sup>rd</sup> floor flat of the property. The building is not listed and is located in the South Hill Park Conservation Area and it is covered by Hampstead Neighbourhood Plan.</p> <p>The application site has a roof terrace in situ for more than four years. Different types of enclosure have been installed along the years as shown in Image 1 below; red is the front boundary fence, pink the southern boundary fence, blue the one surrounding rear and part of north elevation, and purple for the other part of north elevation. The applicant seeks to demonstrate that on balance of probability, all existing fences surrounding the terrace have been in use for a period exceeding 4 years.</p>	
	
<b>Image 01.</b>	

## Applicant's Evidence

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

- Grounds for Determination of Application(3)
- JV 002 Statement from previous owner Joseph Velosa
- JV 003 Background to correspondence with John Sheehy - LB Camden Planning in 2015
- JV 001 Email from John Sheehy - LB Camden Planning in 2015

The applicant has also submitted the following plans:

- Site Location Plan
- Third Floor Roof Drawing

The applicant also submitted the following pictures in support of the application:

A1) Four years or more old photo before commencement of works looking south-west



A2) Four years or more old photo before commencement of works looking north-west.



B1) Post commencement of works - Current image of the boundary fence looking south-west



B2) Current image 2022 – looking north



**Council's Evidence:**

Enforcement case ref no EN15/1167: Barrier built on the roof terrace - replaced existing bamboo fence with wood and plastic wall.

Case opened in 2015 in relation to the front fence indicated with red in the image below. The existence and use of the fence was established at the time of the enforcement investigation, see photos C1) and C2). In 2015 the same fence has been damaged and rebuilt, see photo C3).

In photo A2 from the applicant, a structure covered in planting appears on the southern boundary of the roof, to be in situ for more than 4 years. This is indicated with pink on Image 02.

Recent photos from the applicant, photo B1, shows the structure replaced with a new one and covered in artificial planting. As this structure would have been in situ for more than four years, its replacement with a similar structure of similar height is considered lawful.



C2) The fence at the front is established, pic dating from 2007 below (from complainant EN15/1167). (nb this fence is also visible in the 2007 aerial pic above).



C3) The fence was rebuilt in 2015 after damage, see image below.



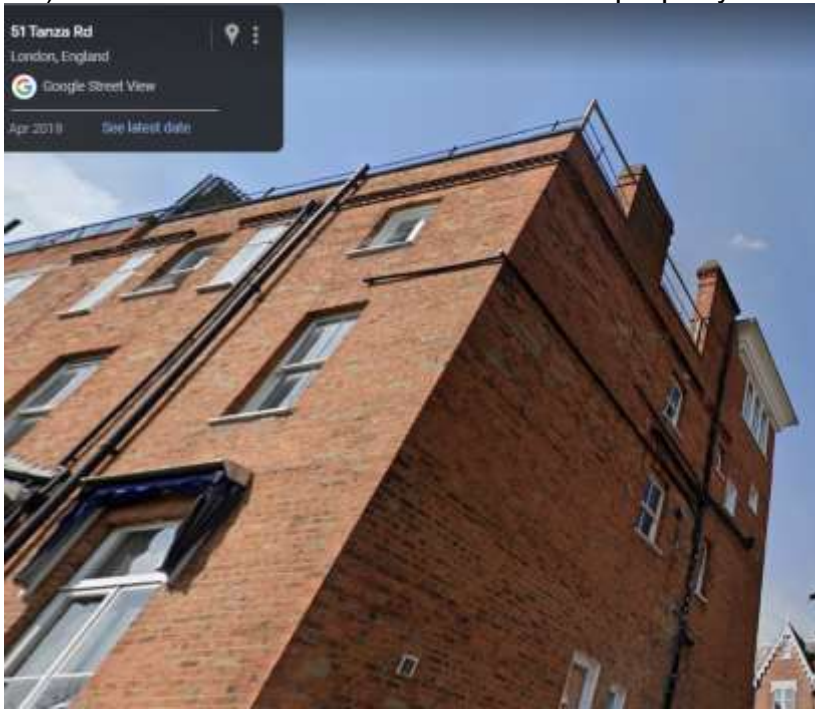
## **Unlawful Build – Boundary fence – Post EN15/1167**

In association with the current photos from the applicant B1) and B2), Google streetview shows additional boundary enclosure around the terrace.

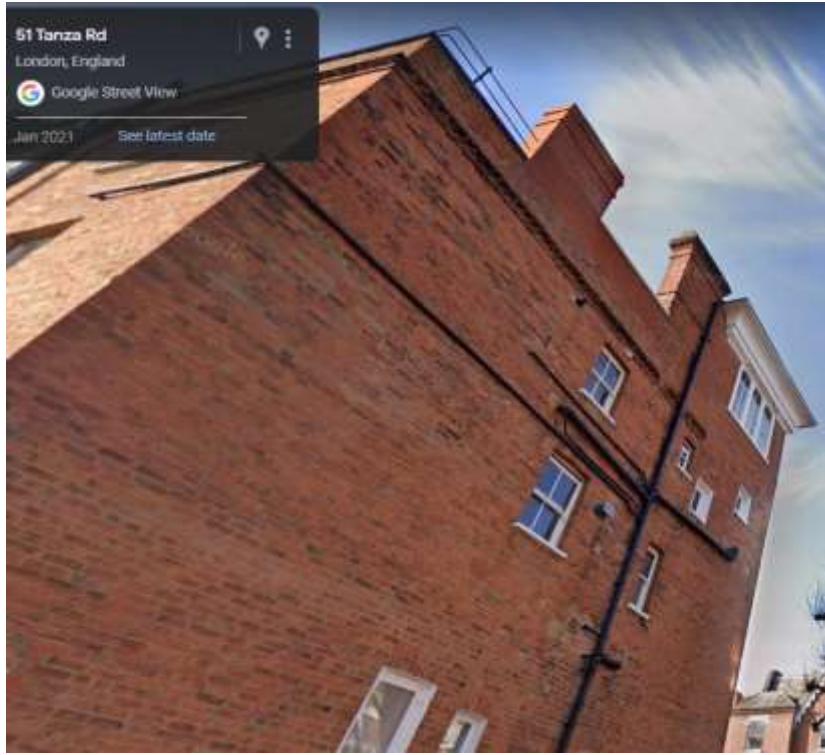
D1) Left - rear of the property 2021 showing railings at roof level; Right – rear of the property 2022 showing solid enclosure at roof level.



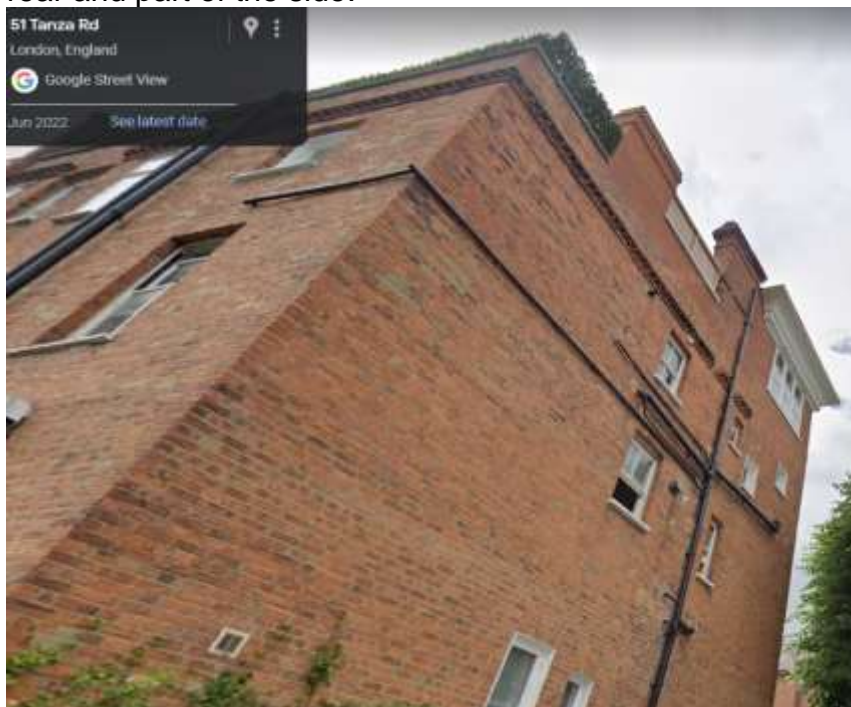
D2) 2019 - Rear and side elevations of the property showing railings at roof level



D3) 2021 - Rear and side elevations of the property showing wider chimney rebuilt and new brick infill to which a fence is later added.



D4) 2022 - Rear and side elevation of the property showing the wider chimney rebuilt, brick infill and additional timber fence over towards the front of the building and green mesh panels along rear and part of the side.



## History

There is no relevant planning history.



## 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.

It has been established that based on the evidence submitted this demonstrates continued existence of fences along the front and southern fences (indicated with red and pink in Image 2) at roof level for more than four years. The council’s tax records show that the flat has been in existence since 2007 and therefore the use of the terrace and fencing was in association with the residential use.

The Council does not have any evidence to contradict or undermine the applicant’s version of events in relation to this part of terrace enclosure.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the existing fence, indicated with red and pink in Image 2 were investigated under enforcement application EN15/1167 and have existed in situ for a period of more than 4 years as required under the Act. However what is being applied for is all fences at roof level.

In relation to the other boundary alterations, installation of solid boundary surrounding the terrace, rebuilding of chimney, brickwork infill with fence of top, as indicated with light blue and purple in Image 1, and shown in photos D1)-D4), insufficient information has been provided to demonstrate these have been undertaken more than 4 years prior to the submission of the application. . Google streetview images clearly show the property in 2019-2021 without fencing along the northern elevation. It shows the alterations to the chimney and the raising of the brick parapet wall and addition of the solid fence in 2022.

Due to their nature, size and location they do not benefit from permitted development rights. Furthermore, given their recent installation they do not benefit from lawfulness by the passage of time. Whilst a fence was previous in place prior to 2019, given the significant gap between its removal, the fact it was higher than the fence it replaced, it is would be considered development for which planning permission is required. The information from the applicant clearly shows the unlawful installation of the solid boundary to the terrace currently in situ.

As such, these works have been installed unlawfully and would not be permitted under the current certificate of lawful development. Given that the current submission refers to all enclosures at roof level, it is concluded that it has not be demonstrate sufficiently precise and unambiguous that ‘on balance of probability’ all boundaries have been in situ for a period of more than 4 years. An informative would be added to inform the applicant, the boundary alterations indicated in Image 02 with blue and purple to advise that an enforcement investigation has been opened.

**Recommendation:**

Refuse lawful development certificate for existing fencing at roof level.