

LDC (Existing) Report		Application number	2022/4522/P
Officer		Expiry date	
Tony Young		13/12/2022	
Application Address		Authorised Officer Signature	
41 Savernake Road London NW3 2JU			
Conservation Area		Article 4	
Mansfield		Article 4 Direction (basements)	
Proposal			
1st and 2nd floor level rear roof terraces with balustrades.			
Recommendation:		Issue Certificate	
Introduction			
<p>The application site is a 3-storey, semi-detached dwelling house located on the south side of Savernake Road, near the junction with Estelle Road to the west. The building is not listed and is located in Mansfield Conservation Area.</p> <p>The application seeks to demonstrate that, on the balance of probability, 1st and 2nd floor level rear roof terraces with balustrades were completed and have been in existence for a continuous period of at least four years before the date of the application, such that their retention would not require planning permission.</p>			
Applicant's Evidence			
<p>The applicant has submitted the following documents in support of the application:</p> <ul style="list-style-type: none"> • Statutory declaration from Marlene Glover Slack (owner of host property) dated 25/08/2022, asserting that 1st and 2nd floor level rear roof terraces have been in existence since June 1984; • Cover Letter from OPEN London UK (agent) received 18/10/2022, containing various Google aerial images and a photograph originally submitted to the Council on 10/01/2012 and associated with a planning application (ref. 2012/0347/P) in relation to Flat 2, 35 Savernake Road. <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> • A site location and block plan drawing outlining the application site (ref. 22018-000 rev P1); • Various existing drawings (ref. (22018-)001 rev P1, 002 rev P1, 003 rev P1, 004 rev P1, 005 rev P1, 006 rev P1, 007 rev P1). 			
Council's Evidence			
<p>There is relevant planning history, as follows, but no relevant enforcement action on the subject site:</p> <p><u>2012/0347/P</u> – Erection of a second floor rear extension with roof terrace and enlargement or rear dormer to existing flat (Class C3) - <u>granted planning permission dated 13/03/2012</u></p>			
Assessment			

In regard to applications for a Certificate of Lawfulness, 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, nor any from others, to contradict or otherwise make the applicant's version of events less probable, 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 applicant's evidence includes a statutory declaration from Marlene Glover Slack (owner of host property) dated 25/08/2022, asserting that both 1st and 2nd floor level rear roof terraces as shown on the accompanying application drawings have been in existence and used continuously as roof terraces since June 1984.

4 x Google aerial images have also been provided as evidence and show the relevant 1st and 2nd floor level flat roof areas at the rear in 1999, 2003, 2006 and 2022 respectively. The images show some objects on each roof space which suggests some use of the flat roof areas when the images were taken; however, it is not clear from the images whether there are any balustrades in place which might indicate a more active use of the roof areas as terrace spaces, rather than, say, simply for storage or planting.

The applicant's evidence also includes an historic photograph associated with a planning approval (ref. 2012/0347/P) which shows the rear of neighbouring properties (including the host property) in 2012. Council records confirm the inclusion of the historic photograph referred to by the applicant in the application submission for 35 Savernake Road (2012/0347/P). However, while the photograph does appear to show railings at 2nd floor level which would indicate the use of the flat roof as terrace space, other annotation states that a balustrade at 1st floor level is covered in planting. It is therefore not possible to confirm the existence of a timber balustrade as asserted by the applicant given that it is not visible from the photograph.

Nonetheless, the Council notes from images in March 2018 provided by the web-based mapping platform, Google Maps, that railings are clearly visible around a 2nd floor level rear roof at the host property in views from Estelle Road. In addition, the Council's photographic library includes images taken in March 2010 which confirm the existence of both a 1st floor level rear terrace with timber balustrade and a 2nd floor level rear roof terrace with railings at the host property.

Finally, it is noted that there are no conditions attached to any historic planning approval(s) relating to the application site that would prevent the relevant external works from being carried out.

It is therefore considered that the information provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the 1st and 2nd floor level rear roof terraces with balustrades which are the subject of this application were completed and have been in existence for the required period of at least four years before the date of this application and appear to have remained as such until the present time. This being the case, and given the fact that the Council does not have any evidence to contradict or undermine the applicant's version of events, their retention would not require planning permission. In this respect, it is recommended that a Certificate of Lawfulness be granted.

RECOMMENDATION: Grant Certificate of Lawfulness

