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PLANNING STATEMENT TO ACCOMPANY AN APPLICATION FOR A CERTIFICATE OF LAWFUL DEVELOPMENT

SITE: 82a Uplands Road London N8 9NJ

APPLICANT: Ms Jennifer Yvonne Wisdom

APPLICATION DESCRIPTION: Certificate of Lawful Development in respect of the continued residential use of a roof terrace as part of a leasehold dwelling

LOCAL AUTHORITY: Haringey Borough Council

Application Description:

This statement has been prepared on behalf of the Applicant to accompany an application for a Certificate of Lawful Development in respect of the continued use of the roof terrace at 82 Uplands Road London N8 9RJ ("the Roof Terrace") and the application is submitted in accordance with section 191 of the Town and Country Planning Act 1990, as amended.

The purpose of this application statement is to demonstrate that based on the irrefutable evidence presented, and in accordance with the applicable legislation in force, the Roof Terrace been in continuous residential use since 1987 (some 36 years), which is clearly more than the four or ten years whichever is deemed necessary in relation to this particular unusual case required by law. An assessment of this application will show that the strength of the applicant's evidence presented with this statement is compelling and certainly more than satisfies the civil law test based on balance of probability.

In order to satisfy a Local Planning Authority that a Certificate should be granted, the Courts have held that the relevant test of the evidence submitted by an applicant should be the civil law test of the balance of probability. We will demonstrate throughout this statement that this test is unequivocally met when considering the evidence in the Applicant's favour and we remind you that when assessing this application, you must do so based on the evidence alone, rather than considering planning merits or policy in force.

We respectfully request that a lawful development certificate is issued to regularise the existing use of the Roof Terrace as part of the property known as 82a Uplands Road, London.

This application establishes that the proposal is lawful under the definition of the Act.

The Legislation and Burden of Proof

The applicant is seeking a Lawful Development Certificate under Section 191 of The Town and Country Planning Act 1990 in respect of the use of a roof terrace for a continuous period well in excess of four years.

Section 191(1)(a) of The Town and Country Planning Act 1990 states that if any person wishes to ascertain whether any existing use of a building or land is lawful, they may make an application to the Local Planning Authority specifying the land and describing the use. This application is made in accordance with this section of the legislation.

Section 191(2) of The Town and Country Planning Act 1990 stipulates that for the purpose of the Act, a use is lawful if the time for taking enforcement action has expired and they do not contravene any of the requirements of an enforcement notice in force. Applying this section of the legislation to the facts of this application, we can clearly demonstrate in the evidence presented that the use of the Roof Terrace has been continuous for over four and ten years, whichever is considered to apply and therefore, the time for taking enforcement action has expired and as no enforcement notice has been issued to date, a certificate of lawful development/use can be issued.

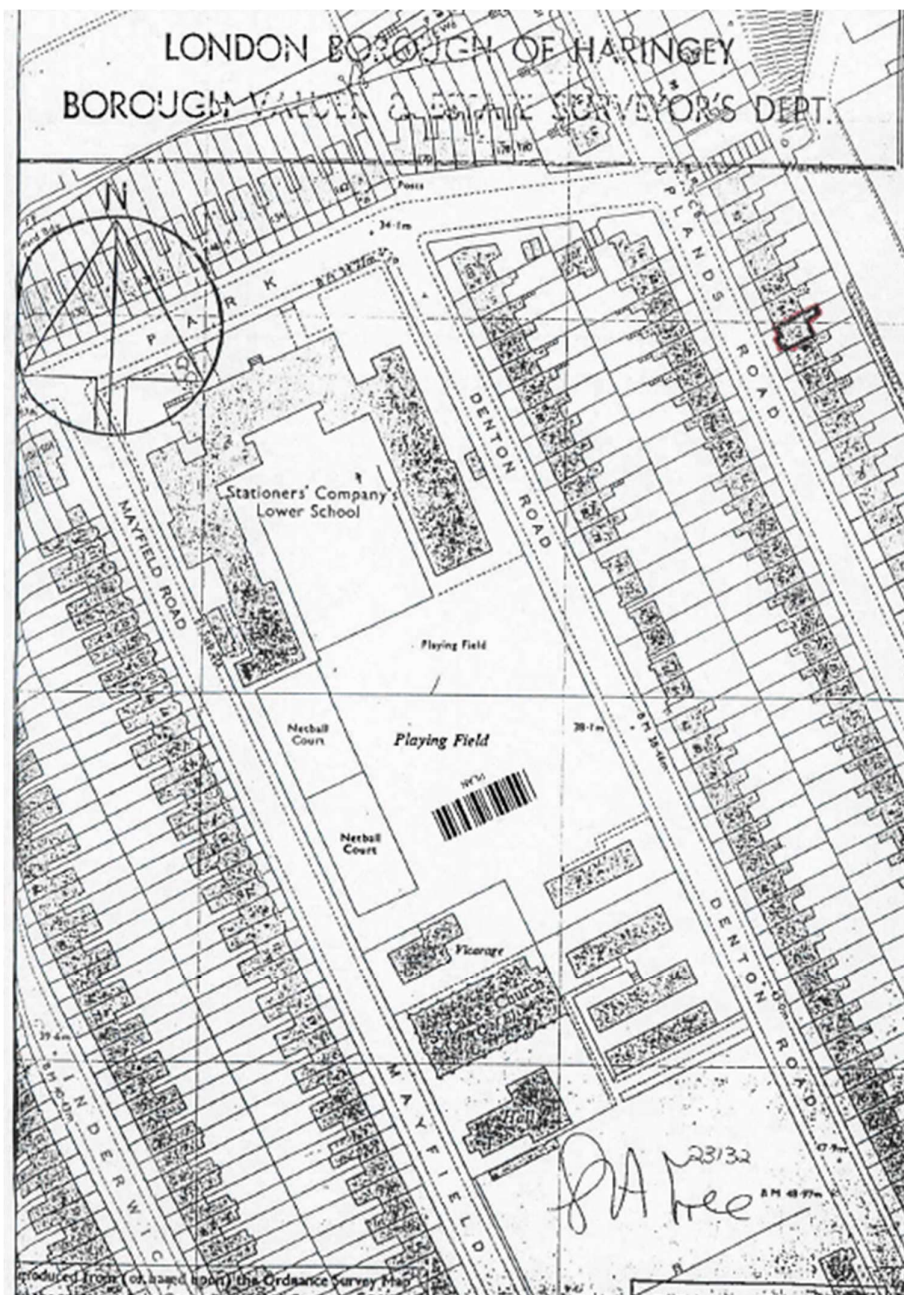
Section 191(4) of The Town and Country Planning Act 1990 sets out that if, on an application the Local Planning Authority is presented with information satisfying them of the lawfulness at the time of the application of the use, they shall issue a Lawful Development Certificate. Based on the weight of the evidence presented within this application, we are confident the Local Planning Authority will be satisfied that the use of the Roof Terrace is lawful and a Certificate will be granted.

Guidance states that *"where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, an LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see F W Gabbitts v SSE and Newham LBC [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".*

Upon assessment of the evidence presented in this statement, it will become clear that the Applicant has overwhelmingly exceeded the burden of proof as it is clear the Roof Terrace has been used as part of the period for a period in excess of 35 years and for the purposes of the Act continuously for the past ten years.

Background and Site Description:

The Property is a leasehold first floor maisonette currently held on a lease dated 14th February 2019 for a remaining term of 184 years. The original lease granted to the Applicant in 1988 was for a term of 125 years from the 25th July 1988. The signed plan from the original lease is show below:



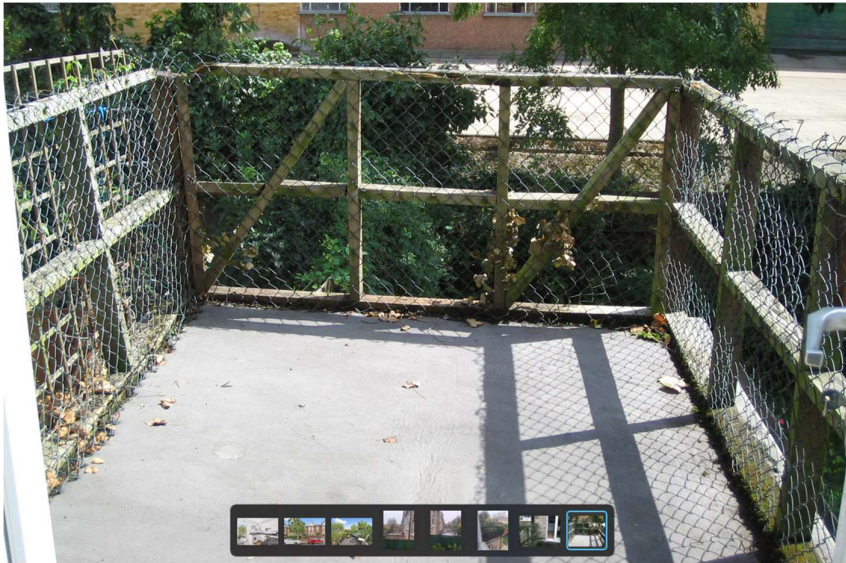
It can be seen on this plan the inclusion of roof terrace area to the rear of the property shown as jutting out on the left hand side.

The Applicant was formerly a tenant of the property in 1987. She purchased the leasehold interest in 1988 under the Council's Right to Buy Scheme.

The Roof Terrace was in situ when the applicant was a tenant of the property and looking at the above plan it appears clear that the demise included the same in 1988.

The Council as Landlords of the freehold had fenced the roof terrace prior to the occupation of the Applicant and have maintained the same as part of the Service Charge paid by the Applicant under the term of her lease.

The fencing as erected and subsequently maintained by Council is shown in the Photo below:



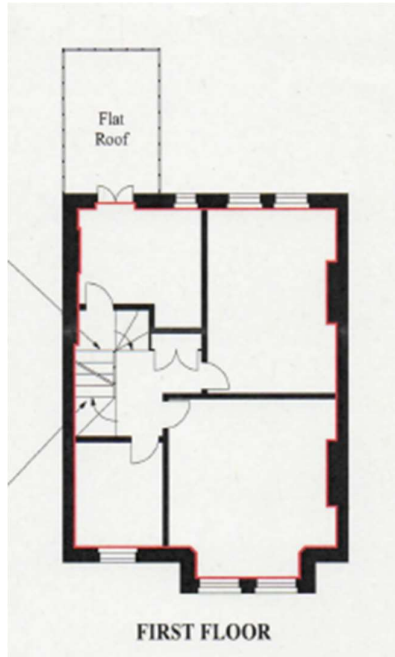
During 2001 The Applicant has improved the area and made it safer by repairing the fencing and flooring. As shown in the photo below:-



No structural works have been carried out to the roof terrace by the Applicant during her tenancy and ownership of the Property. The roof terrace was in situ and in use already when she acquired the property always believing it to be part of the property.

On extending the lease in 2019 Haringey Council refused to include the Roof Terrace stating that it was not part of the original demise. The Applicant was advised to obtain the necessary Planning Permission for the use of the terrace hence this application.

The revised plan of the first floor of the flat in the 2019 Lease is now as follows:-



Evidence to verify this application

This section of the statement sets out the Applicant's evidence which verifies that the Roof Terrace has been in continuous as part of the property for over ten years. It is clear when assessing the extensive evidence and applying the civil law test of the balance of probability that the burden of proof which the Applicant has to meet in order to be granted a Lawful Development Certificate has been significantly exceeded.

1. Sworn Statutory Declaration

A sworn Statutory Declaration by the Applicant is presented with this application and is included in full in Appendix 1.

The Applicant's evidence is clear and concise and outlines the use of the Roof Terrace since 1987.

1. The roof terrace was already in situ and in use when the Applicant became a tenant of the Property in 1987
2. The roof terrace was confirmed to be part of the Lease demise by Haringey Council in 1995 as evidenced in a letter from them within the Statutory Declaration
3. The Council have carried out repairs to the Roof Terrace in their capacity as Landlords.
4. The Applicant has not carried out any structural works to the roof terrace only improvements and repairs.

Conclusions:

The evidence presented with this application is clear, precise and unambiguous as detailed in the Statutory Declaration by the Applicant.

In order to grant a Certificate of Lawful Development, the Applicant must prove that the Roof Terrace has been used as part of the property for over four years. The Statutory Declaration and supporting evidence presented with this application demonstrate that without any shadow of doubt this was the case. On that basis, the Applicant has exceeded the civil law test of the balance of probabilities.

An assessment of the overwhelming evidence presented can only come to one conclusion and that is that a Lawful Development Certificate should be issued and on that basis, we respectfully request that this application is approved accordingly.

Recommendation:

The Planning Authority is respectfully requested to approve this application and grant the certificate of lawful use.

HEAL Planning
11 St. Mary's Place
Shrewsbury
SY1 1DZ

Appendix 1 Sworn statutory declaration of the Applicant in support of this application

STATUTORY DECLARATION made under the Statutory Declaration Act 1835

I, Jennifer Yvonne Wisdom of 82a Uplands Road London N8 9NJ being over the age of 18 years old do solemnly and sincerely DECLARE and say as follows:

1. I purchased the Leasehold property known as 82a Uplands Road London N8 9NJ ("the Property") on the 25th July 1988 under the local authority "Right to Buy" Scheme and was granted a lease for 125 years commencing on the 25th July 1988 ("the Original Lease"). The plan showing the property edged red contained in the Original Lease is annexed hereto and called "JYW1".

2. Prior to my purchase in July 1988 I was the tenant of the flat. When I moved into the flat as a tenant in 1987 it benefitted from a roof terrace with access to the same via French doors from the kitchen area. The roof terrace had been fenced by Haringey Council and was for the sole use of this property. It is located on the flat roof of the bathroom belonging to the flat below. The structure is identical to neighbouring properties on both sides of Uplands Road and I believe forms part of original construction when the property was converted from a single dwelling into Flats.

3. When I purchased the Flat in 1988, to the best of my knowledge and belief, the roof terrace was included in the demise as shown on the plan annexed hereto called "JYW1".

4. In July 1995 I queried the use of the roof terrace and received a letter in response from Haringey Council dated 27th July 1995 confirming that the roof terrace is included as part of my leasehold interest. A copy of this correspondence is annexed hereto and called "JYW2".

5. Haringey Council as Freeholders of the Flat have included repairs to the roof terrace as part of the service charge payable for the flat. Annexed herewith is an invoice for a repair to the balcony fence dated October 1995 called "JYW3".

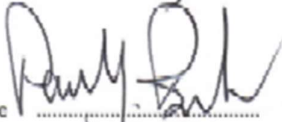
6. During my ownership of the property I have not carried out any structural works to the roof terrace or made any additions to the same. The only alterations have been improved flooring (rubber type mats), metal fencing and screening. I have also added some potted plants as shown in the photo annexed herewith called "JYW4".

7. During my occupation and ownership of the property over the last 36 years I have used the roof terrace as part of my property.

And I make this Declaration consciously believing the same to be true in accordance with the provisions of the Statutory Declarations act 1835.

DECLARED at **405/7 HOLLOWAY ROAD**
LONDON N7 6HG

on 18th May 2023

Before me 
Solicitor/Commissioner for Oaths

PAUL J. BAKER
SOLICITOR
405/7, HOLLOWAY ROAD
LONDON, N7 6HG

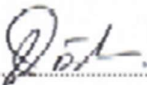
Signed 
Jennifer Yvonne Wisdom

Exhibit "JYW1" Referred to in the Statutory Declaration of Jennifer Yvonne Wisdom

Sworn this

18th day of May

2023

Before me

A Solicitor/Commissioner for Oaths

PAUL J. BAKER

SOLICITOR

405/7, HOLLOWAY ROAD

LONDON, N7 6HG

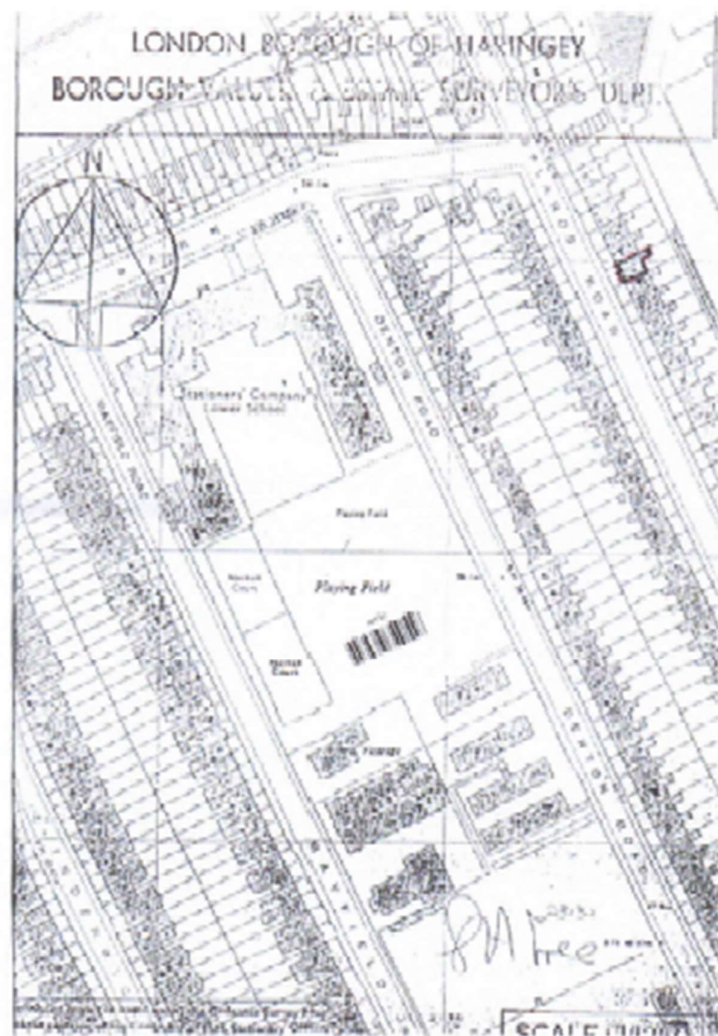


Exhibit "JYW2" Referred to in the Statutory Declaration of Jennifer Yvonne Wisdom

Sworn this 18th day of May 2023

Before me
A Solicitor/Commissioner for Oaths

PAUL J. BAKER
SOLICITOR
405/7, HOLLOWAY ROAD
LONDON, N7 6HG

Mrs Yvonne Wisdom
Holloway
London
N7 6HG
27th June 1995

Fax: 0181 862 1736

Attn: Ms Sally Dyett
through various
Haringey Council
Hornsey Town Hall
The Broadway
NO 9H

Dear Ms Dyett,

Following a conversation with one of your colleagues this morning, I was advised that you will be returning to the office in approximately 2.5 weeks. This requires is not urgent, so please respond as soon as you are able.

My question is: Do I own the roof terrace/balcony?

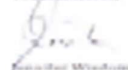
The roof terrace is accessed through my kitchen french doors, and is located above the kitchen of the ground floor flat.

If you have any questions please do not hesitate to contact me:

Home: 0181 340 0940
Home fax: 0181 340 2991

I look forward to hearing from you when you return from your holiday.

Yours sincerely


Jennifer Wisdom

HARINGEY COUNCIL

Technical and Environmental Services

Hornsey Town Hall, The Broadway, Crouch End N8 9J
Tel 0181 975 9700

Valuation and Estates

Tel 0181 975 9700 Fax 0181 502 1730
Manager 0181 862 1707

Our Ref: VAL/DMG/NLN

Please contact: Sally Dyer

On extension: 1654

Date: 27 July 1995

Ms J Wisdom
92a Uplands Road
LONDON
N8 9NJ

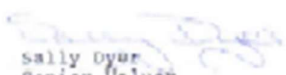
Dear Ms Wisdom

92a Uplands Road, N8

Thank you for your letter of 27 June. I apologise for the delay in replying, but as you were told I was on leave when it arrived. I am enclosing a copy of the first floor plan which shows the roof terrace included as part of your leasehold interest. You therefore have the sole right to use it (as a roof terrace).

I hope this answers your question. Please contact me if you need further information.

Yours sincerely


Sally Dyer
Senior Valuer

LONDON BOROUGH OF HARINGEY
BOROUGH VALUER & ESTATE SURVEYORS DEPT.



Stationers' Company
Lower School

Playing Field

Playing Field

Page 111

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2252

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SCALE INDEX

Exhibit "JYW2" Referred to in the Statutory Declaration of Jennifer Yvonne Wisdom

Sworn this

day of

2023

PAUL J. BAKER
SOLICITOR
405/7, HOLLOWAY ROAD
LONDON, N7 6LG

Before me

A Solicitor/Commissioner for Oaths

LONDON BOROUGH OF HARINGEY - RIGHT TO BUY - 1985 ACT

ESTIMATED SERVICE CHARGE PAYABLE FOR THE YEAR 1995/96

NAME : J.Y. WISDOM
ADDRESS : 82A UPLANDS ROAD, N8

REFERENCE NO. : 10402

SECTION 1 - SERVICES

1. Cleaning	0	
2. Graveling / Cleaning	0	
3. Concierge	0	
4. Lift Maintenance	0	
5. Communal Lighting and Power	0	
6. Maintenance of Grounds	0	
7. Cleaning Refuse Chambers	0	
8. District Heating - Fuel Cost	0	
9. District Heating - Maintenance	0	
10. Insurance	112	17/1/0
11. TV Aerials	0	17/1/0
12. Controlled Entry System	0	17/1/0
13. Administration Charge	0	17/1/0
14. Ground Rent	10	17/1/0

Section 1 Total

120

SECTION 2 - OTHER REPAIRS/IMPROVEMENTS

Day to Day Repairs (excluding the flat)	108
Exterior Decorations	78

Section 2 Total

186

TOTAL SERVICE CHARGE PAYABLE FOR 1995/96

312

This represents 4 quarterly charges of

78.00

LIST OF BLOCK AND ESTATE REPAIRS FOR 1995/6

09-Jul-97

BLOCK NO: BL000752

AREA: 12

STREET: UPLANDS ROAD

DATE COMPLETED: 05/10/95 JOB NUMBER: H43224/0

DETAILS: 120 CARPENTRY N.S.J.

CUT NOTCHES/DRILL HOLES IN SOLE PLATE
(GUTTER SIDE ONLY) OF TIMBER RAIL FENCE TO BALCONY TO
ENABLE WATER TO DRAIN AWAY.

INVOICE AMOUNT: £25.00

CHARGE BLOCK: Y CHARGE ESTATE:

Exhibit "JYW4" Referred to in the Statutory Declaration of Jennifer Yvonne Wisdom

Sworn this 18th day of May 2023

Before me
A Solicitor/Commissioner for Oaths

PAUL J. BAKER
SOLICITOR
405/2, BENTLEY WAY ROAD
LONDON, N7 6HG

