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Planning statement: Certificate of lawfulness application for existing use of rear flat roof as a roof terrace for first floor flat, and associated balustrade and screening at first floor level, at First and Second Floor flat, 27 Dickenson Road, London N8 9ER

For: Ms Vanessa Gardiner

By: Neil Quinn MRTPI, AFA Planning Consultants

Date: 26 May 2023

London:

The Lansdowne Building
2 Lansdowne Road, Croydon
London. CR9 2ER

Gloucestershire (Postal Address):

Unit 1, Nailors Court
The Slipway, Back of Avon
Tewkesbury. GL20 5UR

Cambridgeshire:

Fenice Court,
Phoenix Business Park, St Neots
Cambridgeshire. PE19 8EP

1. INTRODUCTION

- 1.1 We have been instructed by the applicant, Ms Vanessa Gardiner, to make the above certificate of lawfulness application in order to regularise the existing use of the roof terrace at first floor level to the above property.
- 1.2 As the evidence outlined below clearly demonstrates, the flat roof has been used as a terrace for approximately 18 years, since 2005, by the applicant and her family and is therefore lawful and immune from enforcement action under the relevant planning legislation.

2. SITE DESCRIPTION

- 2.1 The application relates to a three storey mid-terrace property on the northern side of Dickenson Road, in the Crouch End ward of LB Haringey. The property has been divided into two self-contained flats, with the ground floor occupied by one flat and the upper floors as the second unit.
- 2.2 The property is from the Edwardian period, and has been modestly extended and altered with a ground floor rear extension and a wooden trellis/ balustrade above, forming a terrace to the flat roof above. The property slopes downwards from south to north, and there are clear and uninterrupted views of Alexandra Palace from rear facing windows and the terrace on upper floors.
- 2.3 The surrounding area is largely residential in nature. The site is not located within a conservation area, although it is in a Critical Drainage Area.

3 PLANNING HISTORY

- 3.1 Planning permission granted for the conversion of 27 Dickenson Road into two self-contained flats in September 1987 under LPA ref. 1987/0366.

4 SUMMARY OF APPLICATION

- 4.1 The application seeks to establish that the flat roof of the rear extension to 27 Dickenson Road, i.e. the area at first floor level, has been used as a terrace by the owners and occupiers of the upper floors of 27 Dickenson Road for a continuous period of more than four years from the date of the application, and as such would be lawful and immune from enforcement action.

5 LEGISLATIVE BACKGROUND

- 5.1 The statutory framework relevant to this application is Section 191 of the Town and Country Planning Act (TCPA) 1990. This states that in order to ascertain whether (a) any existing use of buildings or other land is lawful, or (b) any operations which have been carried out in, on, over or under land are lawful, a certificate of lawfulness (or

Lawful Development Certificate) application can be made for the purpose to the LPA specifying the land and describing the use and/ or operations.

- 5.2 Annex 8 of the TCPA provides detailed advice on the certificate of lawfulness process and how applications should be assessed. Paragraph 8.12 confirms that the onus of proof in an LDC application is firmly on the applicant. Paragraph 8.15 expands on the relevant legal tests, stating that evidence should be considered on “*the balance of probability*”. Furthermore, case law on such matters has established that 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).
- 5.3 Section 171(B) of the TCPA is also of relevance. This outlines that the timeframe for lawfulness in relation to a residential use is four years or more. If use can be established for this time period (using the tests outlined above), a certificate must be granted and as such the use and associated works would be deemed immune from enforcement action.

6 SUPPORTING EVIDENCE TO CORROBORATE APPLICATION

- 6.1 The applicants’ supporting evidence can be summarised in three main sections:

- a) A statutory declaration from the applicant and owner/ occupier of the property, Ms Vanessa Gardiner;
- b) Photographs taken by the applicant showing the terrace in use over previous years;
- c) Historical aerial photography showing the terrace in situ between May 2012 and March 2019.

- 6.2 These components are scrutinised in more depth individually below.

Statutory declaration from the applicant

- 6.3 It is commonly accepted that a statutory declaration, sworn under oath in front of a solicitor, can be attributed significant weight in the assessment of LDC applications. In this case, the declaration comes directly from the applicant and provides a significant amount of detail and precise chronology on when the terrace was established, the frequency of use and types of activities undertaken on it.
- 6.4 As outlined within the declaration, the applicant confirms that the terrace (i.e. the breezeblocks and wooden structure sitting above it, surrounding the flat roof) was in place at the time of her purchasing the flat in 2003, and is of the firm belief that it was first established in 2002 by the previous owners of the property.
- 6.5 The declaration goes into great depth as to when the terrace was first established and its history over a 20 year period, from when the applicant first moved into the property. It is important to note that the breezeblocks, wooden trellis, tiles and planter around the terrace were in situ since the applicant purchased the property and moved into it. The terrace has also been permanently accessed from the first floor window of the downstairs bedroom.
- 6.6 The declaration goes onto provide a brief chronology of how the terrace has been

used, importantly including photographic evidence of different occasions has been used by her partner and young son, including during the recent pandemic. This demonstrates that the terrace has been consistently and continuously used over this 20 year period, and for this reason should carry significant weight in the Council's assessment.

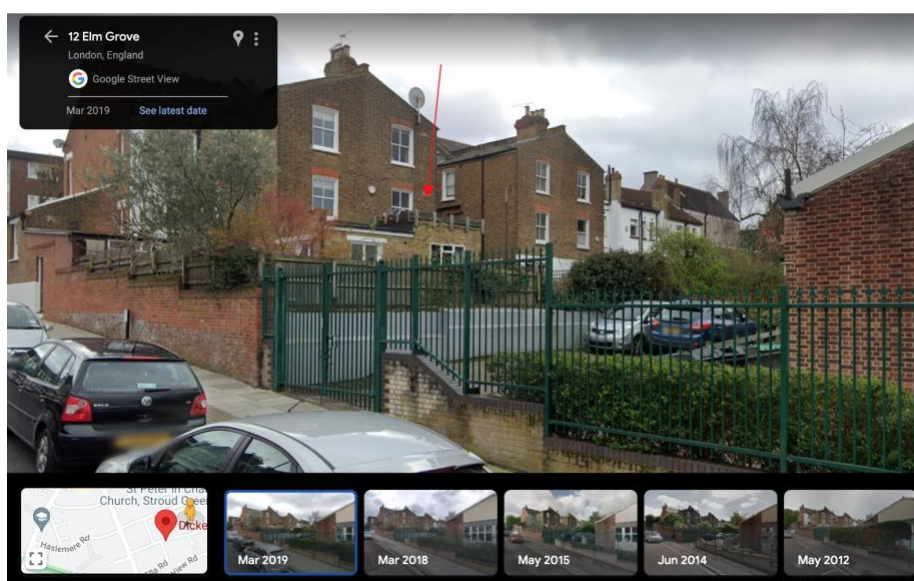
Applicant photographs showing the terrace in use

- 6.7 A number of photographs have been supplied within the statutory declaration, and are included separately within the submitted documents, which clearly show the terrace in use consistently for the entirety of the period in question. These show the terrace used as a play area and a vital outside amenity space during summer months, as well as for storage of bikes and other items including children's toys, during winter months.
- 6.8 The photographs also show the breezeblocks and the wooden structure and planters around the terrace, which have clearly been in situ for many years, with a weathered appearance to them. This adds further weight to the applicant's statements made within the statutory declaration that the flat roof has been in consistent use as a terrace since they first owned and occupied the property.
- 6.9 It is considered that significant weight should be afforded to this element of the supporting evidence submitted by the applicant, and that this corroborates the other material presented that the flat roof has been in established use as a terrace for at least 20 years.

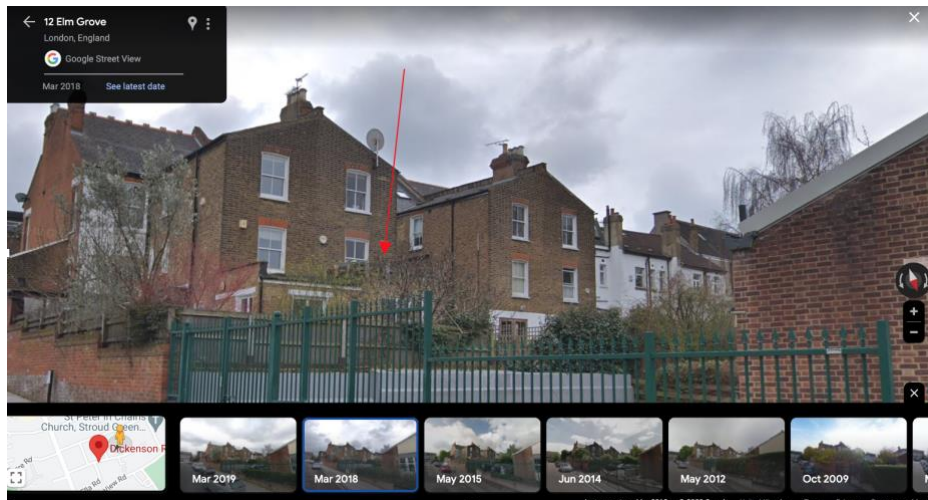
Historical photography showing terrace in situ

- 6.10 The third section of supporting evidence comes in the form of street view images from Google Maps at various times over the last 10 years. Fortunately, the terrace and associated balustrade to the flat roof of the rear extension is visible in views from Elm Grove to the north-east of the site. This is clearly present on a consistent basis at various times between May 2012 and March 2019, as illustrated in the images below:

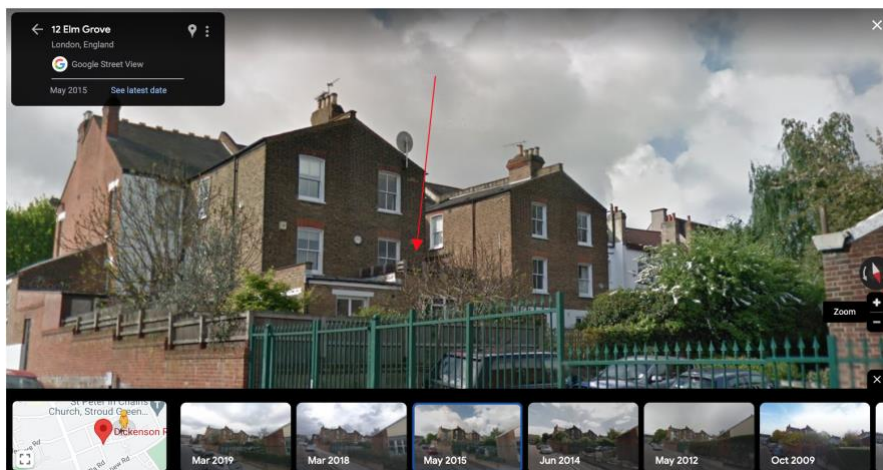
March 2019:



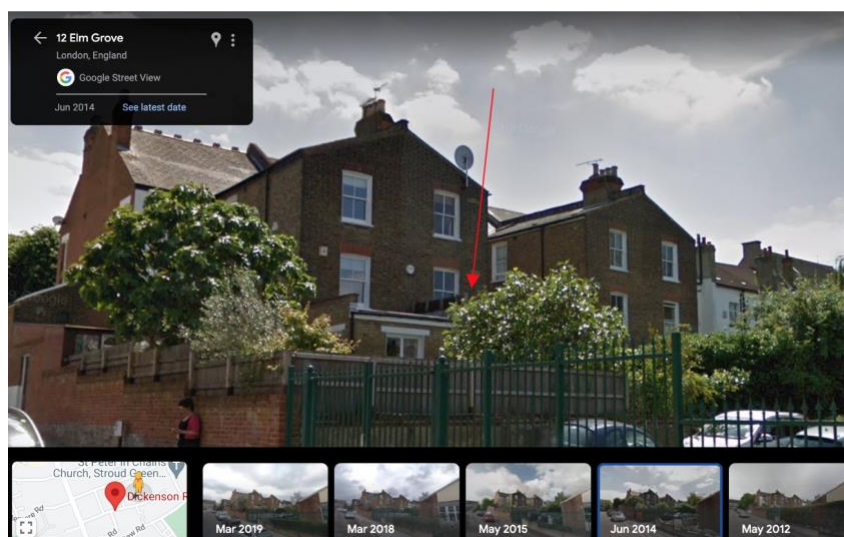
March 2018:



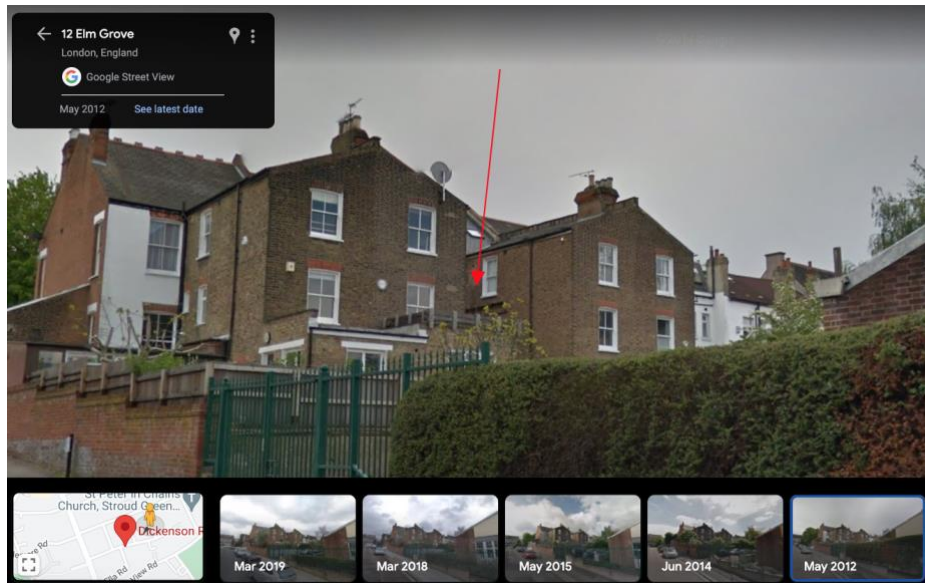
May 2015:



June 2014:



May 2012:



- 6.11 These set of images clearly demonstrate the presence of the same wooden balustrade and structures around the flat roof of the rear extension since at least May 2012. These images also support the other evidence submitted in terms of the applicant's own photographs, and the statements given within the statutory declaration. It is considered that significant weight should be afforded to this independent evidence in confirming that a certificate should be issued.

7. SUMMARY/ CONCLUSIONS

- 7.1 The application seeks to certify that the use of the rear flat roof as a terrace for the occupiers of the first and second flat, 27 Dickenson Road, is lawful by virtue of being continuously used for a period of four or more years prior to the date of the application being submitted.
- 7.2 The evidence submitted in support of the application is robust and comprehensive, with the detailed statements made by the applicant within the statutory declaration being corroborated by the photographic evidence submitted by both the applicant and independently via Google street view images. The terrace has clearly been in use for a period of at least 20 years.
- 7.3 It is not believed that the council possesses any evidence or information to contradicts the documents which have been submitted with this application.
- 7.4 On this basis, it is considered that the evidence presented is sufficiently precise and unambiguous to demonstrate that, on the balance of probabilities, that the terrace has been in use for a continuous period of more than four years prior to the date of this application. The application meets the tests of section 191 of the TCPA, and a certificate of lawfulness should duly be issued.