

Officer's Report

Application Number	HGY/2023/1861
Type	Lawful development: Existing use
Location	10 Springfield Avenue, Hornsey, London, N10 3SU
Proposal	Certificate of Lawfulness: Existing rear roof terrace with wooden decking and timber balustrade that has been in continuous use since 2004.
Case Officer	Mercy Oruwari
Valid Date	13/07/2023
Applicant	Mr. & Mrs. Walkden
Agent	Mr Nathan Turner

RECOMMENDATION

Approve

RECOMMENDATION

GRANT CERTIFICATE

PROPOSED DEVELOPMENT AND LOCATION DETAILS

The application site is the purpose upper floor flat within a detached building, with a shared front garden and split independent rear gardens. The site is not located within any conservation area and does not fall within the curtilage of a listed building. The property backs onto the Alexanadra Park MOL

RELEVANT PLANNING AND ENFORCEMENT HISTORY PLANNING APPLICATION HISTORY

- HGY/2022/4468 - Formation of rear dormer, 2 x side dormers, 2 x front roof lights and removal of chimney. Externally insulate the building at first floor level. Replacement of hanging tiles and roof tiles throughout with synthetic slate tiles. Withdrawn
- HGY/2004/2049 - Creation of roof terrace to rear of property. Refused
- HGY/2004/1542 - Creation of a roof terrace to rear of property. Refused
- No enforcement notice issued.

CONSULTATION RESPONSE

No one was consulted regarding the application.

RELEVANT LEGISLATION AND GUIDANCE

The application has been made under section 191 of the Town and Country Planning Act 1990 (as amended). Section 191 of the 1990 Act provides for anyone to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition.

By virtue of section 191 (2), uses and operations are "lawful" if no enforcement action may be taken against them and they are not in contravention of any enforcement notice which is in force. And, by virtue of section 191(3), a failure to comply with any condition or limitation subject to which

planning permission has been granted is "lawful" if the time for taking enforcement action in respect of the failure has expired and it does not constitute a contravention of any enforcement notice or breach of condition notice which is in force.

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Development or other activity on land is lawful for planning purposes if it is within one of the following categories and does not involve a failure to comply with a condition or limitation subject to which planning permission has been granted:

- (1) it is not within the definition of "development" in section 55(1) and (1A) of the 1990 Act. (This might be because it is so insignificant that it can be disregarded (a "de minimis" operation, use or activity); or because it involves a change of use which is not, as a matter of fact and degree, materially different, for planning purposes, from a previous lawful use of land.); or
- (2) it is specifically excluded from the definition of development by section 55(2) (for example, a use of land for the purpose of "agriculture"); or
- (3) it is within the definition of "development" in section 55, but is exempted from the need for planning permission by the provisions of section 57; or
- (4) it benefits from an extant grant of planning permission under Part III of the 1990 Act (or the equivalent Parts of preceding Acts); or
- (5) it benefits from a general planning permission granted by the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995/418), or by a simplified planning zone or enterprise zone scheme; or
- (6) it benefits from deemed planning permission, whether under section 90 or by virtue of compliance with the requirements of an effective enforcement notice; or
- (7) it took place before 1 July 1948 (the "appointed day" Country Planning Act 1947); or
- (8) it is development by or on behalf of the Crown; or
- (9) the time for taking enforcement action has expired.

"Taking enforcement action" is defined in section 171A of the 1990 Act. It is the issue of an enforcement notice or the service of a breach of condition notice. The section also defines a "breach of planning control" (against which it is possible to take enforcement action) as the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted.

Section 171B of the 1990 Act specifies the time-limits for taking enforcement action which are as follows:

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of ten years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- (4) The preceding subsections do not prevent—

(a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or taking further enforcement action in respect of any breach of planning control if, during the period of ten years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

ANALYSIS/ASSESSMENT OF THE APPLICATION

This is not a planning application and the planning merits are not relevant to this submission. Rather the applicant seeks to prove by the submission of evidence that the rear roof terrace with wooden decking and timber balustrade has existed since 2004 and is therefore immune from enforcement action.

Section 191 of the Act indicates that the burden of proof lies with the applicant, but the relevant test is 'the balance of probability'. Local Planning Authorities (LPAs) are advised that unless the applicant's evidence is imprecise or ambiguous, or the LPA has evidence of its own which contradicts or undermines the applicant's version of events), a certificate should be issued.

The applicant must prove that the rear roof terrace referred to in the application was lawful for planning purposes on the date of the application. The evidence accompanying this application asserts that the rear roof terrace has existed and has been in continuous use since 2004.

In this case, a Certificate is sought on the grounds that rear roof terrace at 10 Springfield Avenue N10 has existed for more than 4 or more years.

Information provided by Applicant

The application is accompanied by the following evidence:

Evidence to Support – submitted with the application

1. Black Katz Letter of confirmation – Black Katz Lettings and Property Management agency confirms that they represented the applicant in letting their property in 2013. They confirm that that the rear roof terrace existed at that time.
2. Report and Valuation of property by A.C Holden – A report and Valuation document by A.C Holden Chartered Surveyors dated 10/08/2015 includes a note regarding the roof terrace off the lounge.
3. Inventory Report 11/12/2015 – This evidence is a non-official document and therefore does not carry any weight. However, the other accompanying evidence can be when considered.
4. Photographs of the rear roof terrace from various angles including from the rear garden.
5. Goole Earth images dated 19/07/2013 showing the roof terrace.

Assessment

The combined evidence proves that the rear roof terrace has existed for more than 4 years.

SUMMARY AND CONCLUSION

There is corroborative evidence submitted that suggest 10 Sprngfield Avenue, London, N10 3SU, has had the rear roof terrace for 4 years or more and has become immune from enforcement action and is therefore lawful.

RECOMMENDATION

GRANT CERTIFICATE