

Officer's Report

Application Number	HGY/2023/1430
Type	Lawful development: Existing use
Location	Top Floor Flat, 27 Dickenson Road, Hornsey, London, N8 9ER
Proposal	Certificate of lawfulness in relation to retention of wooden screening around flat roof of rear extension which facilitates the use as first floor terrace.
Case Officer	Oskar Gregersen
Valid Date	30/05/2023
Applicant	MRS VANESSA GARDINER
Agent	Mr neil quinn

RECOMMENDATION

Approve

PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows:

- HGY/2022/4226 | Ground Floor Flat, 27 Dickinson Road, N8 9ER - Erection of single-storey side infill extension. Alterations to existing rear extension - Approve

There is no planning enforcement history in relation to this site.

REPRESENTATIONS

Planning Practice Guidance (PPG) on Lawful Development Certificates, sets out that:

"There is no statutory requirement to consult third parties. It may, however, be reasonable for a Local Planning Authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application." (Paragraph: 008 Reference ID: 17c-008-2014030).

No representations have been received.

RELEVANT PLANNING LEGISLATION

The application has been made under section 191 of the Town and Country Planning Act 1990 and relevant amendments. This is not a planning application but instead the applicant seeks confirmation that the proposed development is lawful.

Town and Country Planning Act 1990

Section 191 of the Town and Country Planning Act 1990 (as amended by section 10 of the Planning and Compensation Act 1991) states that:

"If any person wishes to ascertain whether any existing use of buildings or other land is lawful ...he may make an application for the purpose to the Local Planning Authority specifying the land and describing the use ... For the purposes of this Act uses ... are lawful at any time if –

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

If, on an application under this section, the Local Planning Authority are provided with information satisfying them of the lawfulness at the time of the application of the use, described in the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

National Planning Practice Guidance (PPG)

National Planning Policy Guidance issued by the Government in relation to Lawful Development Certificates explains the process for obtaining a lawful development certificate for existing or proposed use.

In this case, the Local Planning Authority is requested to grant a certificate confirming that: "(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990" Paragraph 001 Reference ID: 17c-001-20140306.

Paragraph: 009 Reference ID: 17c-009-20140306 of the PPG indicates:

"A Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process."

As such, the impact of the proposed development on the neighbouring amenity or the character of the area cannot be taken into consideration for the purpose of this submission.

Paragraph: 006 Reference ID: 17c-006-20140306 of the PPG indicates:

"The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a Local Planning Authority has no evidence itself, nor any 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."

EVALUATION

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.

In this case, a Certificate is sought on the grounds that the building outlined in red on the submitted plan has been, in part used as a terrace in for a continuous period of 4 or more years.

Applicant's evidence

The application form accompanying this application asserts that:

- The wooden screening around the flat roof extension of Ground Floor Flat 27 Dickinson Road has been in place since 30/05/2019.

The application is accompanied by the following evidence:

- Planning Statement
- Land registry title
- Supporting imagery
- Google earth imagery

The supporting imagery supports the existence of the wooden screening consistently for the past for years, however the most convincing evidence would come from google street view. The balcony can be seen in place from March 2009 – Present. This imagery is deemed to be sufficient to state that the wooden screening has been in place for more than four years, 30/05/19 - Present

The evidence presented to substantiate the statement of case is considered comprehensive in nature. On the balance of probability therefore it is considered that the evidence submitted by the applicant precisely and unambiguously demonstrates that the use of the roof of the extension of 27 Dickinson Road has been used as a roof terrace for a continuous period of four years before the date of this application.

RECOMMENDATION

Grant the requested Certificate of Lawfulness under section 191 of Town and Country Planning Act 1990.

Informatives:

- From the documentation and evidence provided, the Local Planning Authority is satisfied that, on the balance of probabilities the wooden screening around flat roof of rear extension in connection with use/ occupation of the Top Floor Flat, 27 Dickenson Road, Hornsey, London, N8 9ER has been in existence for a continuous period of four years before the date of this application. Therefore, the structure and associated use as a first-floor terrace are considered to be lawful.