



Delegated Report

Lawful Development Certificate (Existing)

Application No:	20220892
Location:	66 Granville Road, Gravesend Kent DA11 0JT
Description:	Application for a Lawful Development Certificate in respect of the continued use of the existing roof terrace on top of the single storey extension.
Applicant:	Mr D'Souza
Site Visit:	Desktop Assessment

Submitted Documents/Plans

- Application Form
- Drawing P1 (Site Location Map, Existing and Proposed Block Plans)
- Drawing P2 (Existing Plans)
- Drawing P4 (Existing Elevations)
- Drawing P3 (Proposed Plans)
- Drawing P5 (Proposed Elevations)

Supplementary Information

- Covering Letter
- Google Site image 2008
- Google Site Image 2012
- Google Site Image 2014
- Google Site Image 2017
- Google Site Image 2018

Proposal

This application is made under section 191 of the Town and Country Planning Act (1990) (as amended) for a Certificate of Lawfulness to confirm the continued use of the existing roof terrace on top of the single storey extension.

Relevant Planning History

Reference	Description	Outcome	Decision Date
19880387	Change of use of store to shop and installation of new door and window in the side elevation and erection of 6ft high double gates	Permitted	17.10.1988
19930664	Erection of a single storey rear extension to form bathroom, alterations to first floor to retain an additional bedroom and additional enclosure of yard to form store.	Permitted	07.02.1994
19920436	Change of use from shop,workshop, store & offices to	Permitted	06.10.1992

	residential dwelling and installation of bay window.		
19930241	Change of use from first floor stores to living room, bedroom and bathroom/w.c.	Permitted	18.06.1993
20220892	Application for a Lawful Development Certificate in respect of the continued use of the existing roof terrace on top of the single storey extension.	Under consideration at the time of writing this report	

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Legislation

The Town and Country Planning Act (1990) (as amended) Section 191: Certificate of Lawfulness of existing use or development.

Procedure for determination

This application seeks a determination by the LPA as to the whether the use of the existing roof terrace on top of the single storey extension is a lawful use as it has been used for such a purpose for more than 10 years as set out under s.171B (1) of the Town and Country Planning Act 1990.

The single storey rear extension was granted permission in 2014 (ref. 19930664). Whilst there were some conditions attached to this consent, there was no such condition which prohibited the use of the roof of the extension being used as a roof terrace.

National Planning Guidance on determining applications of Lawful Development Certificates for existing uses or development is clear in stating that the onus is on the applicant to provide sufficient information to demonstrate that the use of development is lawful beyond any reasonable doubt. Furthermore, in the case of an application for existing uses, 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 applicants evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

To confirm the lawful status of the roof terrace, the LPA need to be satisfied that the terrace has been in use for more than 10 years and that there were no specific conditions attached to the planning consent for the single storey rear extension which prohibited the use of the roof of the extension to be used as a terrace.

Analysis

This application is for an LDC and not for a planning permission. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests with the applicant and the evidence submitted must be sufficiently precise and unambiguous to enable the local planning authority to understand exactly what is involved. The decision must be made on the balance of probability. The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009).

The application site is an end of terrace house which was in previous use as a commercial unit with a

garage to the rear. Over time the commercial use ceased and the property was changed into residential use. The single storey rear extension was also formed to conjoin the front and rear buildings of the plot. The site adjoins a public footpath and there is also a rear access way. There is currently an underdetermined planning application (at the time of writing this report) for "Conversion of the existing garage into a habitable room, new external door to access existing roof garden, addition of balustrade to the existing roof terrace to bring it in line with building regulations, maintenance and repair of windows - most to be replaced to same dimensions - a bay window for the living space and celestial windows fitted above the garage conversion".

The evidence provided to support this application consists of google street view maps dating back to October (2008). The provided images have been corroborated by the case officer carrying out their own google searches. It is clear from a 2008 Google Street View image that there are pot plants which have clearly been maintained over the years kept on the roof, these plants cannot otherwise be accessed unless you walk the roof. The 2008 images also shows what appears to be a stool on the roof.

It is difficult to see any further garden furniture by way of google street view, however later images from google earth pro do show there is a widespread usage of the roof with what appears to be garden furniture however the only available image is from November 2019.



Therefore, notwithstanding the Local Planning Authorities investigation, the evidence provided in this case is considered to, on the balance of probabilities, prove that the roof terrace has been in existence since at least 2008 and would be lawful through the passage of time.

Conclusion

On the balance of probabilities and in the absence of any evidence to the contrary, it is considered that the roof terrace is lawful by reason of Section 171B (3) of the Town and Country Planning Act 1990, as amended.

The use is therefore lawful by reason of Section 191(2) (a) of the Act and Certificate of Existing Use is duly issued.

Recommendation: Grant Lawful Development Certificate

Case Officer:	Mrs Sharon Sahota	Team Leader:	Mr Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	7 th October 2022	Dated:	11 th October 2022

Gravesham Borough Council