



Appeal Decision

Site visit made on 6 March 2025

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 21 March 2025

Appeal Ref: APP/U5360/X/24/3350464

55 Dynevor Road, London, N16 0DL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Avtar Gill against the decision of the Council of the London Borough of Hackney.
 - The application ref 2023/1862, dated 11 August 2023, was refused by notice dated 21 December 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is the use of the roof of the rear extension as a terrace.
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Decision

1. The appeal is dismissed.

Main Issue

2. Whether the evidence suggests the flat roof has been used as a roof terrace, continuously, for 10 years or more prior to 11 August 2023.

Reasons

3. Evidencing a material change of use over a period of 10 years is generally very difficult unless there has been some material change to the appearance of the land relating to that use. The main problem is evidence of continuous use. This is because once the unlawful use is no longer active the land reverts to its lawful use and the clock starts again. In this case the flat roof has no lawful use, other than as a flat roof, and that is its use unless a different use is taking place. Thus for example, using the roof to occasionally access the garden does not establish a material change of use because most of the time the roof is just being used as a roof. Similarly, occasionally sitting on the roof for a coffee in the sun does not establish a material change of use, unless that is happening most days of every month of the year.
4. There is also the problem that some minor changes, such as putting pots of herbs on the roof, are not sufficient to establish a material change of use as they are simply de minimis. Looked at another way, the Council could not issue an enforcement notice requiring a householder to cease using a flat roof as an amenity space simply because they put some plant pots on it.
5. Bearing this in mind the occasional access of the garden across the roof by using an extendable ladder and the growing of some herbs in pots is insufficient to demonstrate a permanent change of use. It seems from the appellant's own

submissions and those of his family, friends and previous tenants that the railings and fixed ladder were not in place until 2016. There is also an invoice for the metal railings dated to June 2016. Once that permanent change had been made, the evidence of use as a sitting out area, and as a roof garden increases and I would agree with the Council the use became established sometime from 2016 onwards. However, that is not 10 years.

6. I have absolutely no doubt as to the sincerity of the evidence from the many people involved but as explained above it is insufficient to demonstrate a material change of use over 10 years. Whether or not the use causes any harm is not relevant in LDC cases as they are concerned only with the narrow legal issue of what uses have been happening on the land.

Conclusion

7. The material change of use has not been established and I shall dismiss the appeal.

Simon Hand

INSPECTOR