

LDC (Existing) Report	Application number	2025/0781/P
Officer	Expiry date	
Sam FitzPatrick	21/04/2025	
Application Address	Authorised Officer Signature	
58 South Hill Park London NW3 2SJ		
Conservation Area	Relevant article 4	
South Hill Park	None relevant.	
<b>Proposal</b>		
Use of the flat roof of the roof extension as a terrace, including installation of associated railings, decking, and access.		
<b>Recommendation:</b>	<b>Grant Lawful Development Certificate (Existing)</b>	

## 1.0 Site Description

1.1 The application site is located on the west side of South Hill Park, just south of the fork that establishes the distinctive loop of this road. The building is not listed though is situated within South Hill Park Conservation Area, and is recognised as making a positive contribution to the character and appearance of the conservation area.

## 2.0 Proposal

2.1 The building is in use as a single dwellinghouse and was granted consent for a partial mansard roof extension in 2017, which included a roof terrace to the rear, set within the butterfly roof. The extension has been constructed to include a terrace to the flat roof of the mansard, including metal balustrading, timber decking, and an opening rooflight. This application seeks to demonstrate that, on the balance of probability, the flat roof of the roof extension has been in use as a roof terrace (including the installation of the associated elements) for a consecutive period of at least four years before the date of the application, such that its continued use would not require planning permission.

## 3.0 Applicant's evidence

3.1 The applicant has submitted the following information in support of the application:

- Planning statement including:
  - A copy of the original permission for the roof extension (dated 24/11/2017);
  - Google Street View imagery showing the roof terrace balustrading (dated November 2020);
  - Google Street View imagery showing the scaffolding used for construction works at the property (dated April 2019);
  - Camera photographs taken by the applicant showing installed roof terrace (dated 21/12/2020).
- Drawings including roof plan (001), section (002), and elevations (003, 004) showing the application site and roof development as constructed.

#### 4.0 Council's evidence

4.1 There is the aforementioned relevant planning history relating to the consented roof extension (see below), but no relevant enforcement action or history at the site.

**2017/5149/P** – Erection of third floor roof extension and alteration to roof form including the creation of a rear facing roof terrace. **Planning permission granted 24/11/2017.**

4.2 In accordance with the images provided as part of the applicant's planning statement, Google Street View images show the roof terrace and associated balustrading in place since at least November 2020.

#### 5.0 Assessment

5.1 The Secretary of State has advised local planning authorities that the burden of proof in applications for a certificate of lawfulness is firmly with the applicant (Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, paragraph 8.12). The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application of this kind.

5.2 The application for the certificate relates to the existing use or operation of the flat roof of the consented mansard roof extension as a roof terrace, with associated railings, roof access, and timber decking. The application is made on the basis that the use is lawful because it is now immune from enforcement action, as it has occurred for a continuous period of more than four years before the date of the application – in other words, since 24/02/2021 ("the relevant period").

5.3 The applicant has provided information to demonstrate that the railings and roof terrace have been in place since at least November 2020, following completion of the consented roof extension. The Council does not have any evidence to contradict or undermine the applicant's version of events. The supporting information supports the assertion that the flat roof of the roof extension has been in use as a roof terrace (including the installation of associated elements) for a consecutive period of at least four years before the date of this application.

5.4 The original permission for the roof extension (ref. 2017/5149/P) did not include any conditions that would restrict the use of the roof as a terrace or amenity space. As such, the operations are not in non-compliance with a planning condition, wherein the period of continuous operation would be ten years, rather than four.

5.5 The information provided by the applicant is therefore deemed to be sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the flat roof of the consented roof extension was in use as a roof terrace (including the installation of associated elements) for a consecutive period of at least four years before the date of the application, as required under legislation. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events. As such, the recommendation is to grant a certificate of lawfulness.

**Conclusion:** Grant Certificate of Proposed Lawful Development.