

<b>LDC Report</b>	27/06/2012
<b>Officer</b>	<b>Application Number</b>
Connie Petrou	2012/2447/P
<b>Application Address</b>	<b>Recommendation</b>
Flat 1 62-64 Crediton Hill London NW6 1HR	Approve
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
The retention of existing roof terrace and metal railings to existing residential flat (Class C3).	
<b>Assessment</b>	
<p>The application site is located on the east side of Crediton Hill. The building is not listed and is located in the West End Green Conservation Area. The property was converted into 7 self contained flats in 1989.</p> <p>The application relates to the roof terrace in connection with the 3<sup>rd</sup> floor flat.</p> <p>The application seeks to demonstrate that the roof terrace has existed for a period of 4 years or more such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing roof terrace has existed for a period of 4 or more years.</p> <p><b>Applicant's Evidence</b></p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> <li>• Signed affidavit from Kenneth Kaoru Yamada (previous owner of flat) stating that the terrace has existed and has been in full use 1989</li> <li>• Photographs dated 17 October 2007</li> <li>• Cover letter from Gerard Welikala dated 01/05/12 stating that no subsequent changes to this terrace have been made beyond everyday maintenance.</li> </ul> <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> <li>• A site location plan outlining the application site</li> <li>• Existing scaled drawings of the terrace</li> </ul>	

## **Council's Evidence**

There is no relevant planning history or enforcement action on the subject site.

## **Assessment**

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 (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 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.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the roof terrace has existed for a period of more than 4 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

**Recommendation: Approve**

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