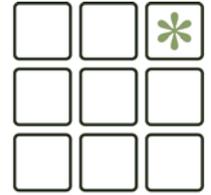


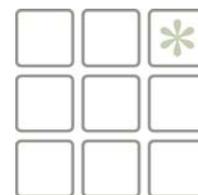
urban roof gardens



## Planning Statement

Application made under section 191 of the Town and Country Planning Act 1990 to confirm the Lawful use of:  
'The roof terrace' Serving 139B Whitfield Street, W1T 5EN

Written by Urban Roof Gardens  
on behalf of the Applicant, Dr Suresh Pushpanathan



## 1.0 Introduction

- 1.1 This Planning Statement has been prepared by Urban Roof Gardens on behalf of the applicant Dr Suresh Pushpanathan in support of an application for a Certificate of Lawful Existing Use/Development in respect of the property known as 139B Whitfied Street, W1T 5EN
- 1.2 The purpose of this statement is to clearly set out and consider all the evidence that is relevant to the application in order to demonstrate how the application accords with the relevant requirements under the Planning Act.

## The Application

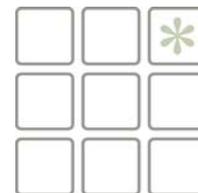
- 1.3 A Lawful Development Certificate is sought under Section 191 of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991) for:

*'The continued use of the terrace serving 139B Whitfied Street, W1T 5EN'*

- 1.4 The reason for the application is to regularise the situation. As will be set out within this statement the previous owners had undertaken these works to create the terrace and the applicant has subsequently bought and used the terrace for a continuous period in excess of four years.

## Site Description

- 1.5 The application property is a five-storey mid-terrace Victorian property that has been converted into restaurant and flats. Planning permission ref. M12/29/D/31059(R4) was granted in the 1980's for the property to be converted into four self-contained flats. Those flats include the flat subject of this application which is a three bedroom arranged over the third floor of the property.
- 1.6 Subsequent to this permitted conversion of the property part of the flat roof on the main building was converted to a terrace serving the flat arranged over the third floor (the application site). The access to the terrace is through the flat at the fourth floor. The actual date that the undertaken work to create the terrace is unknown. However, according to the Google satellite photos the terrace has been used since



before September 1999 (since 1984) until the present day.

1.7 The use of the terrace as described is now considered to be lawful by virtue of the fact that it concerns residential development and was converted and completed more than 4 years ago and has been used in association with the residential unit continuously throughout the last four years.

1.8 This Statement provides a summary of the background to the submission of this application and describes the information that is submitted in support. It is contended that the information that accompanies this statement establishes the lawful position.

1.9 This Planning Statement is to be read alongside the following documents:

- Sworn affidavit by Dr Suresh Pushpanathan and Dr Sarah McDonald
- Sworn affidavit by Dr June Crown occupier of 118 Whitfield Street
- Sworn affidavit by Dr Cecil Michael Skelly occupier of 139a Whitfield Street
- Sworn affidavit by Mr Andrew Wilkinson of Vault 139, Basement 139-143 Whitfield Street
- Site Location Plan; EX-00
- Existing drawings; EX-01 and 02 - Layout Plan, Sections and Elevations of 139 Whitfield Street, W1T 5EN
- Google Earth photos from September 1999, December 2003, December 2006, September 2008, June 2010, August 2011 and July 2013, and photos from July 2012 taken by the previous owners.

The above documents are included as appendices A-G of this statement.

1.10 The format of the Statement is as follows:

Section 2.0: Description of the Application Site and its Surroundings

Section 3.0: Planning Background

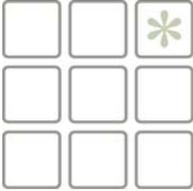
Section 4.0: Planning Policy

Section 5.0 Circumstances for Granting a Certificate

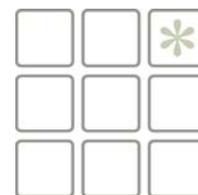
Section 6.0 The Evidence

Section 7.0 The Case

Section 8.0 Conclusions



Appendices A – G



## **2.0 Description of the Application Site and its Surroundings**

### Application Site Context

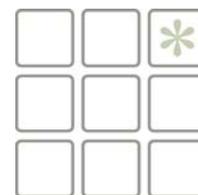
- 2.1 The application site and the wider context of the area are shown on the site location plan reference no EX-00
- 2.2 The application site comprises a mid-terrace Victorian property. The property is arranged over lower ground, ground, first, second and Third floors.
- 2.3 The site is located within a mixed area containing a variety of different uses including both residential and commercial uses, the University College Hospital, University College London, Fitzroy Square Garden and University of Westminster are located a short distance from the application site. The application site is a mid-terrace Victorian property located on the western side of Whitfield Street. The application site is located between Warren Street and Grafton Way.
- 2.4 Warren Street tube station is located within close proximity of the site.

### The Application Site

- 2.5 The application site comprises a mid-terrace property arranged over lower ground, ground, first, second and Third floors. The property has been converted into a restaurant and four self-contained flats, this application concerns the 'Third Floor Flat'. The terrace is located at the roof level and its access is via an access hatch and ladder at the top floor flat. The terrace is set back from the front elevation.

## **3.0 Planning Background**

- 3.1 The property was originally constructed as a single family dwelling and was subsequently converted into a restaurant and self-contained flats.
- 3.2 The property is located within Fitzroy Conservation Area but it is not a Listed Building.



#### **4.0 Planning Policy**

4.1 Planning policies are not relevant to the determination of a Certificate of Lawfulness of Existing Use or Developments (CLEUD) application, which is concerned with the fact of whether the use is lawful and not the planning merits of the use itself.

#### **5.0 Circumstances for Granting a Certificate**

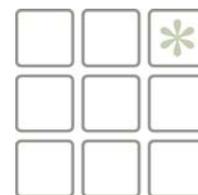
##### *Statutory Background*

5.1 Section 191 (1) of the Town and Country Planning Act (TCP 1990), as amended by Section 10 of the Planning and Compensation Act 1991, provides that if any person wishes to ascertain whether any existing use of a building is lawful they can apply to the local planning authority for a lawful development certificate. S191 (2) states that uses and operations are lawful at any time if: -

- No enforcement action may be taken in respect of them because they do not involve development, or because the time for enforcement action has expired; and
- They do not constitute a contravention of any of the requirements of any enforcement notice in force.

5.2 Section 171 B of the Act provides immunity from enforcement action after specified periods of time have elapsed. Sec 171B (3) sets out that in respect of enforcing against an unauthorised development or change of use involving a residential dwelling house the time period is 4 years. Case law states that the unlawful use must be continuous throughout the 4-year period for the application to be successful. The date for assessing when the existing use is lawful is the date of the application, which in this instance is September 1999.

5.3 There has been no enforcement action taken by the Council in regards to the use or construction of the terrace and it has been used by the occupiers of the property for a continuous period in excess of 4 years.



### *Requirements for a Certificate to be Issued*

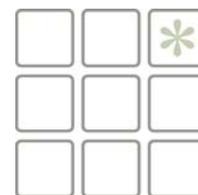
5.4 S191 (4) of the Act states that if, on application under this section, the local planning authority is provided with information satisfying them of the lawfulness at the time of the application, they must grant the certificate.

5.5 The onus of proving the lawfulness of an existing use or development rests with the applicant and the courts held in *Gabbittas v Secretary of State for the Environment* [1985] that the relevant test of the evidence is 'the balance of probability'. Moreover, the courts have held that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. Thus, if the local planning authority has no evidence of its own, or 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.

## **6.0 The Evidence**

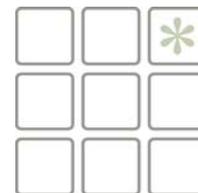
6.1 The following evidence is submitted that demonstrates that the terrace serving 139B Whitfield Street, W1T 5EN was constructed and has been used for a period in excess of 4 years.

- **Sworn affidavits of Dr Suresh Pushpanathan and Dr Sarah McDonald** - Dr Suresh Pushpanathan and Dr Sarah McDonald are the owner of 139B Whitfield Street, W1T 5EN and the roof. Dr Suresh Pushpanathan and Dr Sarah McDonald purchased the property in April 2010 and have owned and occupied the property since this time until the present day. . The terrace (identified on Plan EX-01 submitted with this application, Appendix E) was in existence and use in September 2009 by the previous owner. Dr Pushpanathan and Dr Sarah McDonald saw the terrace in September 2009 when they visited the application site as the then future purchasers. The terrace has been used by Dr Pushpanathan, Dr Sarah McDonald and their visitors to the property since this time. The works had been undertaken before they bought the property, was include erecting the fences, positioning garden furniture and planters associated with its use as an amenity area associated with the occupation of the flat. Being the owners and occupiers of the premises Dr Pushpanathan and Dr Sarah McDonald have an intimate knowledge of the circumstances and facts associated with this application. Dr Pushpanathan's



and Dr Sarah McDonald's declarations are witnessed by Tuckers Solicitors, on 17th and 5<sup>th</sup> March 2015, respectively.

- **Sworn affidavit by Dr June Crown occupier of 118 Whitfield Street-** Dr Crown is the owner and occupier of 118 Whitfield Street, London W1T SEN. Dr Crown occupied his property, which is adjoins the application site, since 1987. Dr Crown has therefore been aware of and had sight of the terrace since this time. Being the owner and occupier of the premises Dr Crown has an intimate knowledge of the circumstances and facts associated with this application. Dr Crown's declaration is witnessed by Tuckers Solicitors, on 3rd March 2015.
- **Sworn affidavit by Dr Cecil Michael Skelly occupier of 139a Whitfield Street-** Dr Skelly is the occupier of 139a Whitfield Street. The property occupied by Dr Skelly adjoins the application site. Dr Skelly has occupied his property since 1984 and he has therefore been aware of and had sight of the terrace since this time. Dr Skelly has occupied his property since before the works to create the terrace were undertaken and is able to confirm that they were carried out more than four years ago and can also confirm the continuous use of the terrace by his neighbour. Dr Skelly's declaration is witnessed by Tuckers Solicitors, on 4th March 2015.
- **Sworn affidavit by Mr Andrew Wilkinson occupier of Vault 139, Basement 139-143 Whitfield Street-** Mr Wilkinson has his own business at the basement of 139-143 Whitfield Street. Mr Wilkinson has occupied his property since 2008 and he has therefore been aware of the terrace since this time. Mr Wilkinson is able to confirm that they were carried out more than four years ago and can also confirm the continuous use of the terrace by his neighbour. Mr Wilkinson's declaration is witnessed by Tuckers Solicitors, on 24th March 2015.
- Google Earth photos from September 1999, December 2003, December 2006, September 2008, June 2010, August 2011 and July 2013, and photos from July 2012 taken by the previous owners. The Google Earth images taken in September 1999, December 2003, December 2006, September 2008, June 2010, August 2011 and July 2013 provide another reliable source of evidence confirming the existence of the roof terrace for more than 4 years. In addition to the satellite photos, there are other photos from July 2012, taken by the previous owner which shows the roof terrace.



## 7.0 The Case

7.1 The case subject of this statement is that the flat roof accessed from the Top Flat at 139B Whitfield Street was converted for use as a terrace without the benefit of planning permission. This work was carried out in 1984 and the terrace was first used as an outdoor amenity area associated with the residential occupancy of the dwelling from 1984 until the present day.

7.2 In accordance with Section 191 (2) of the Town and Country Planning Act as the application concerns development and change of use associated with a residential property (use class C3) and a period in excess of four years has expired since the work was carried out and the use commenced no enforcement action can now be taken. An application for a lawful development certificate is therefore being made.

7.3 This application is supported by two declarations made by neighbours who have an intimate knowledge of the subject of this application for a continuous period in excess of 4 years at the date the declarations were made. This evidence demonstrates beyond any reasonable doubt that the claims made are true.

7.4 The first and most important declarations (appendix A) are made by Dr Pushpanathan and Dr Sarah McDonald. Dr Pushpanathan and Dr Sarah McDonald are the owner and occupier of the application site. Dr Pushpanathan is the applicant in respect of this application.

7.5 The evidence submitted confirms the following key facts:

- The dates that the works to convert the flat roof area to a terrace area serving 139B Whitfield Street, W1T 5EN were undertaken
- The nature of the work undertaken
- The date when the use of the terrace first commenced.
- Confirmation that the terrace has been used for a continuous period since it was first converted to the present day.

## 8.0 Conclusions

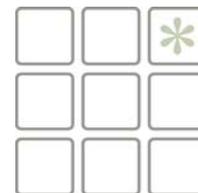


8.1 By virtue of section 191 (2), uses and operations are “lawful” if no enforcement action may be taken against them and they are not in contravention of any enforcement notice that is in force.

8.2 The time for taking enforcement action is defined in section 171A of the 1990 act. A breach of planning control becomes “immune” from planning enforcement action if no such action has been taken within certain time limits. In the case of a material change to a residential dwelling unit, the time for taking enforcement action is 4 years.

8.3 The terrace serving 139B Whitfield Street, W1T 5EN was converted in 1984 and has been used by the occupiers of this property as a residential amenity area since the work were carried until the present day. This mean the period for taking enforcement action has now expired (1988).

8.4 It is respectfully requested that on the basis of the evidence submitted with this application that a Lawful Development Certificate is issued confirming that the construction and use of the terrace is now lawful.



## Appendix A

### Statutory declaration by **Dr Suresh Pushpanathan** (applicant) and **Dr Sarah McDonald**

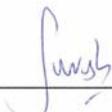
#### General Affidavit Before

Solicitor, Officer of the Court or other person entitled to administer Oaths

I, Dr Suresh Pushpanathan of 139b Whitfield Street, London W1T 5EN make oath and say as follows:

- I make this affidavit based on my personal knowledge, unless otherwise stated, and that the following facts and matters are accurate to the best of my knowledge.
- I purchased and have lived at this address since April 2010.
- There has been a roof garden in constant use on the roof above my property since I viewed the property in september 2009.
- I have had no problem with its use as a roof garden throughout this time.
- There has at no time been an objection from any parties, neighbours or the Council.

Witness my signature this 17 day of March 2015

  
\_\_\_\_\_

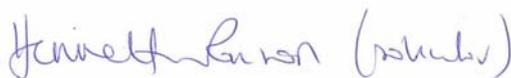
Dr Suresh Pushpanathan

Sworn at Tuckers Solicitors

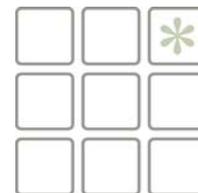
In the country of UK

On the 17 day of March 2015

**Tuckers Solicitors**  
39 Warren Street  
London  
W1T 6AF

Before me, 

Solicitor, Officer of the Court or other person entitled to administer Oaths



**General Affidavit Before**

**Solicitor, Officer of the Court or other person entitled to administer Oaths**

I, Dr Sarah McDonald of 139b Whitfield Street, London W1T 5EN make oath and say as follows:

- I make this affidavit based on my personal knowledge, unless otherwise stated, and that the following facts and matters are accurate to the best of my knowledge.
- I purchased and have lived at this address since April 2010.
- There has been a roof garden in constant use on the roof above my property since I viewed the property in September 2009.
- I have had no problem with its use as a roof garden throughout this time and support the application for a certificate of lawfulness.
- There has at no time been an objection from any parties, neighbours or the Council.

Witness my signature this 5<sup>th</sup> day of March 2015

Sarah McDonald

Dr Sarah McDonald

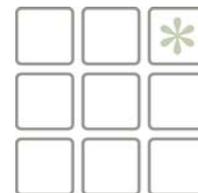
Sworn at Tuckers Solicitors

In the county of London

On the 5 day of March 2015

Before me, Ms. Makepeace (S.I.I.T.S)

**Tuckers Solicitors**  
39 Warren Street  
London  
W1T 6AF  
Solicitor, Officer of the Court or other person entitled to administer Oaths



## Appendix B

### Statutory declaration by **Dr June Crown occupier of 118 Whitfield Street**

#### General Affidavit Before

Solicitor, Officer of the Court or other person entitled to administer Oaths

I, Dr June Crown of 118 Whitfield Street, London W1T 5EN make oath and say as follows:

- I make this affidavit based on my personal knowledge, unless otherwise stated, and that the following facts and matters are accurate to the best of my knowledge.
- I purchased and have lived at this address since 1987
- There has been a roof garden in constant use on the roof above 139-143 Whitfield Street since 1998.
- I have had no problem with its use as a roof garden throughout this time and support the application for a certificate of lawfulness.
- There has at no time been an objection from any parties, neighbours or the Council.

Witness my signature this 3rd day of March 2015

June Crown

Dr June Crown CBE

Sworn at TUCKERS SOLICITORS

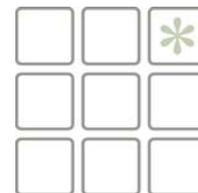
In the country of UNITED KINGDOM

On the 3 day of MARCH 2015

Before me, Henneth Brown (Solicitor)

**Tuckers Solicitors**  
39 Warren Street  
London  
W1T 6AF

Solicitor, Officer of the Court or other person entitled to administer Oaths



## Appendix C

### Statutory declaration by **Dr Cecil Michael Skelly occupier of 139a Whitfield Street**

#### General Affidavit Before

Solicitor, Officer of the Court or other person entitled to administer Oaths

I, Dr Cecil Michael Skelly of 139a Whitfield Street, London W1T 5EN make oath and say as follows:

- I make this affidavit based on my personal knowledge, unless otherwise stated, and that the following facts and matters are accurate to the best of my knowledge.
- I purchased and have lived at this address since 1984.
- There has been a roof garden in constant use on the roof above my property since 1998.
- I have had no problem with its use as a roof garden throughout this time and support the application for a certificate of lawfulness.
- There has at no time been an objection from any parties, neighbours or the Council.

Witness my signature this 4<sup>th</sup> day of MARCH 2015

Dr Cecil Michael Skelly

Sworn at LONDON ~~Tuckers~~ **Tuckers Solicitors**  
39 Warren Street  
London  
W1T 6AF

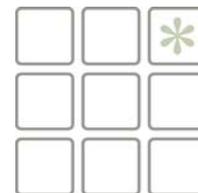
In the country of UNITED KINGDOM **Tuckers Solicitors**  
39 Warren Street  
London  
W1T 6AF

On the 4 day of MARCH 2015

Before me, MARIAN ELLINGWORTH

**Tuckers Solicitors**  
39 Warren Street  
London  
W1T 6AF

Solicitor, Officer of the Court or other person entitled to administer Oaths



## Appendix D

Statutory declaration by **Mr Andrew Wilkinson occupier of Vault 139, Basement 139-143 Whitfield Street**

### General Affidavit Before

Solicitor, Officer of the Court or other person entitled to administer Oaths

I, Mr Andrew Wilkinson of Vault 139, Basement 139-143 Whitfield Street, London W1T 5EN make oath and say as follows:

- I make this affidavit based on my personal knowledge, unless otherwise stated, and that the following facts and matters are accurate to the best of my knowledge.
- I have operated a business from this address since 2008.
- There was a well established garden in use on the roof above my property when I first viewed it in 2008.
- I have had no problem with its use as a roof garden throughout this time and support the application for a certificate of lawfulness.

Witness my signature this 24 day of MARCH 2015

Mr Andrew Wilkinson

Sworn at TUCKERS SOLICITORS

In the country of UK

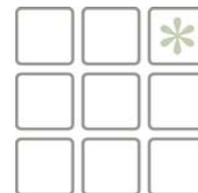
On the 24 day of MARCH 2015

Before me,

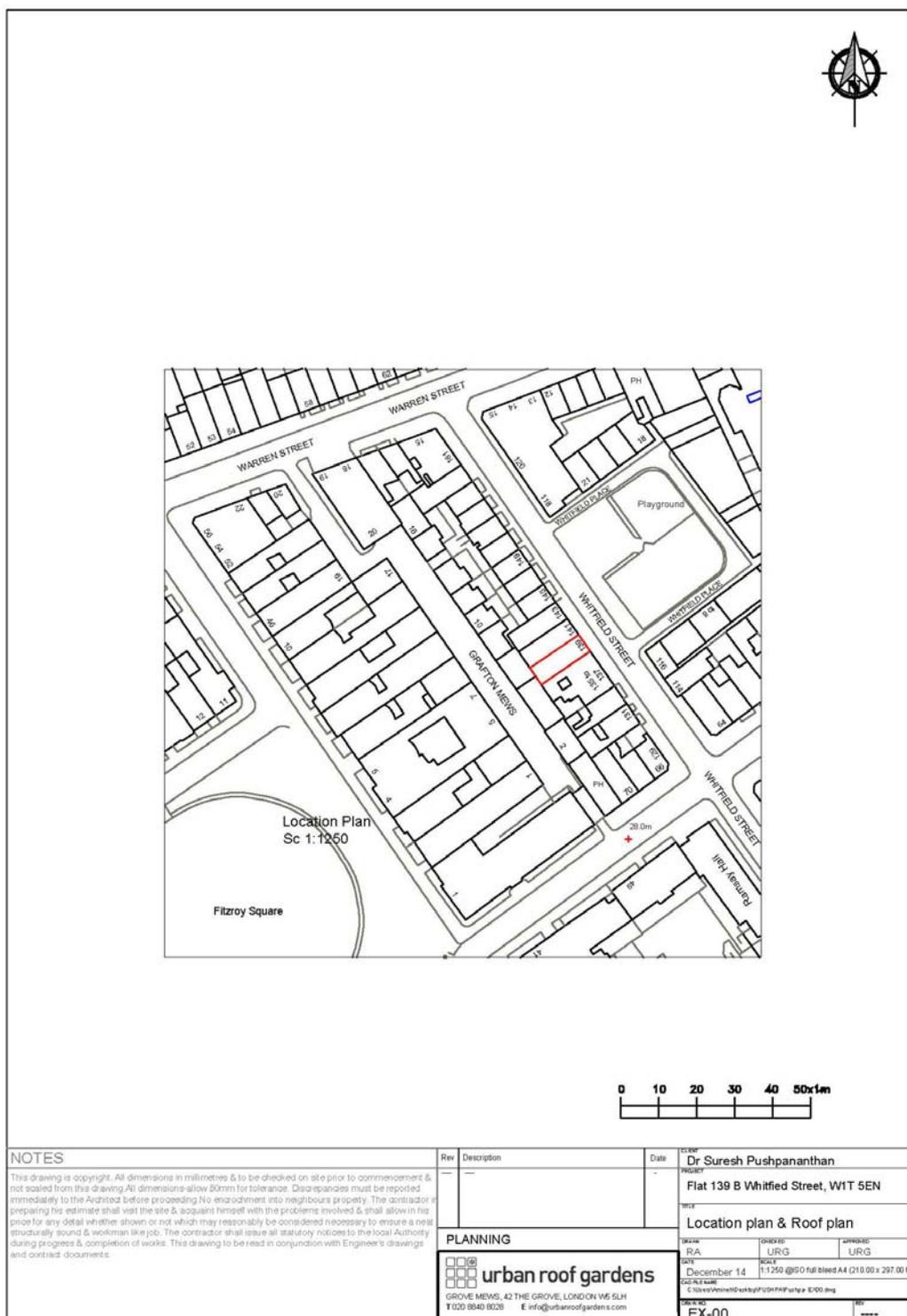
MISS MUNA DOL (SOLICITOR)

**Tuckers Solicitors**  
39 Warren Street  
London  
W1T 6AF

Solicitor, Officer of the Court or other person entitled to administer Oaths

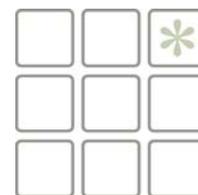


**Appendix E**  
**Site Location Plan**





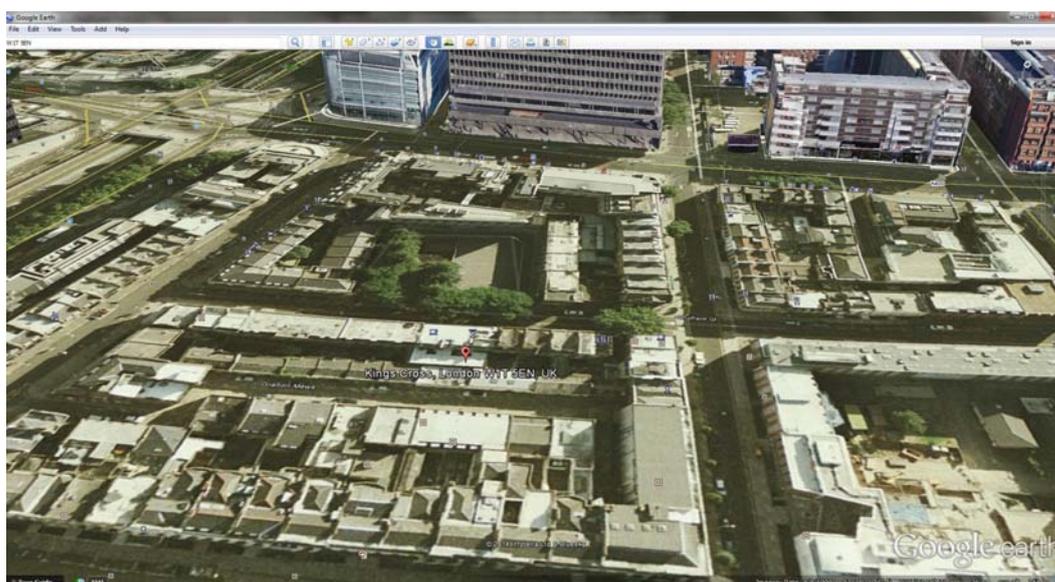




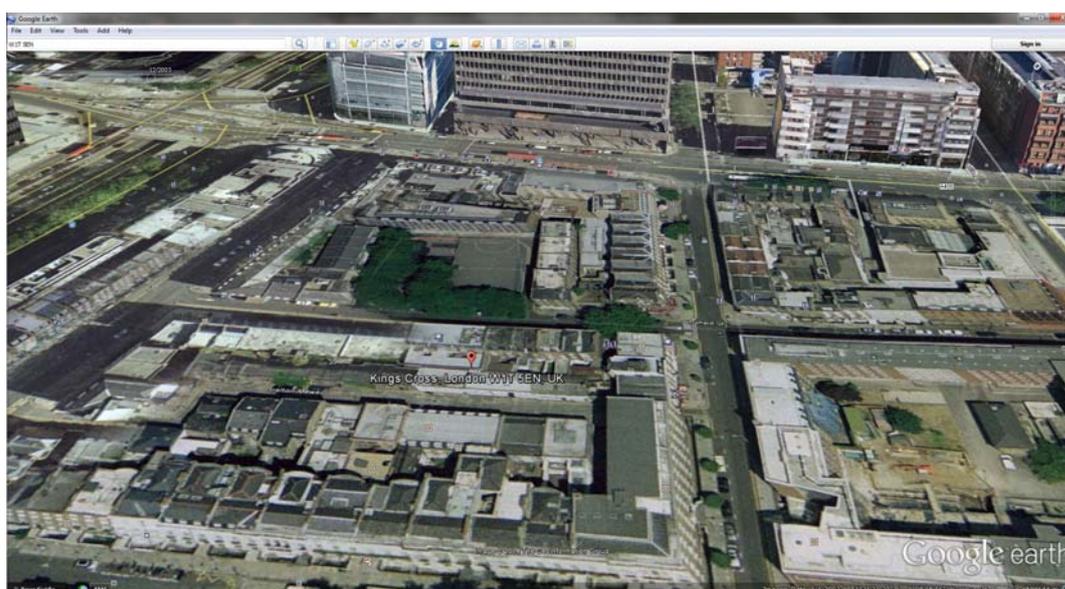
## Appendix G

Photos of the terrace

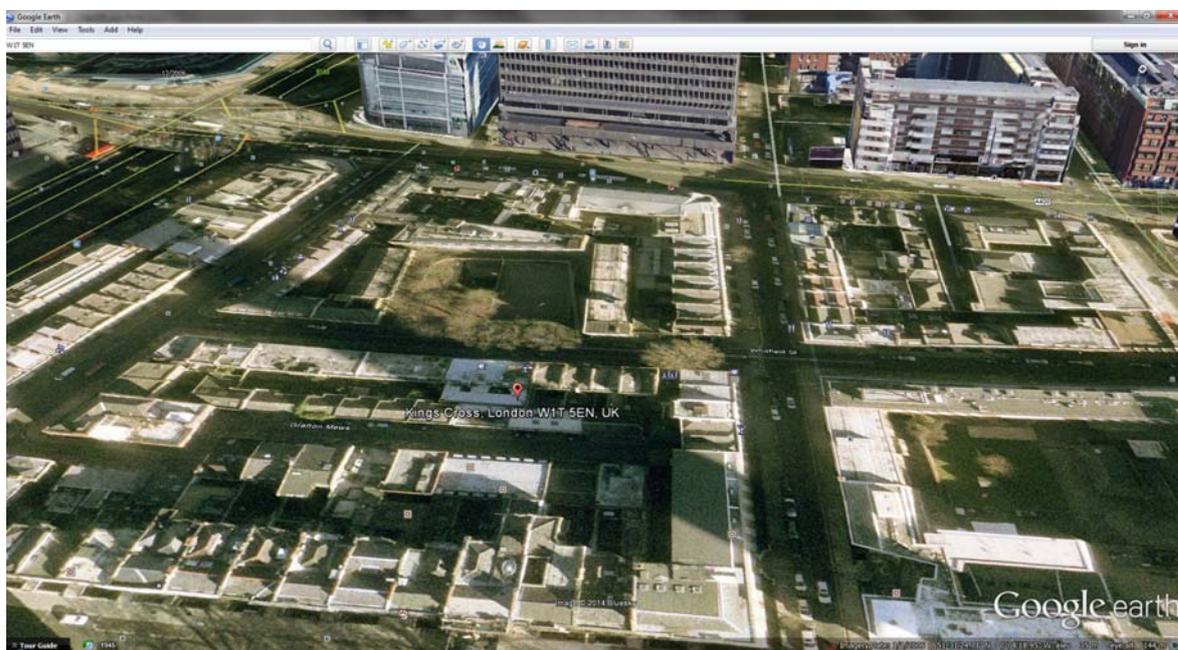
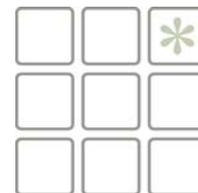
- Google Earth images



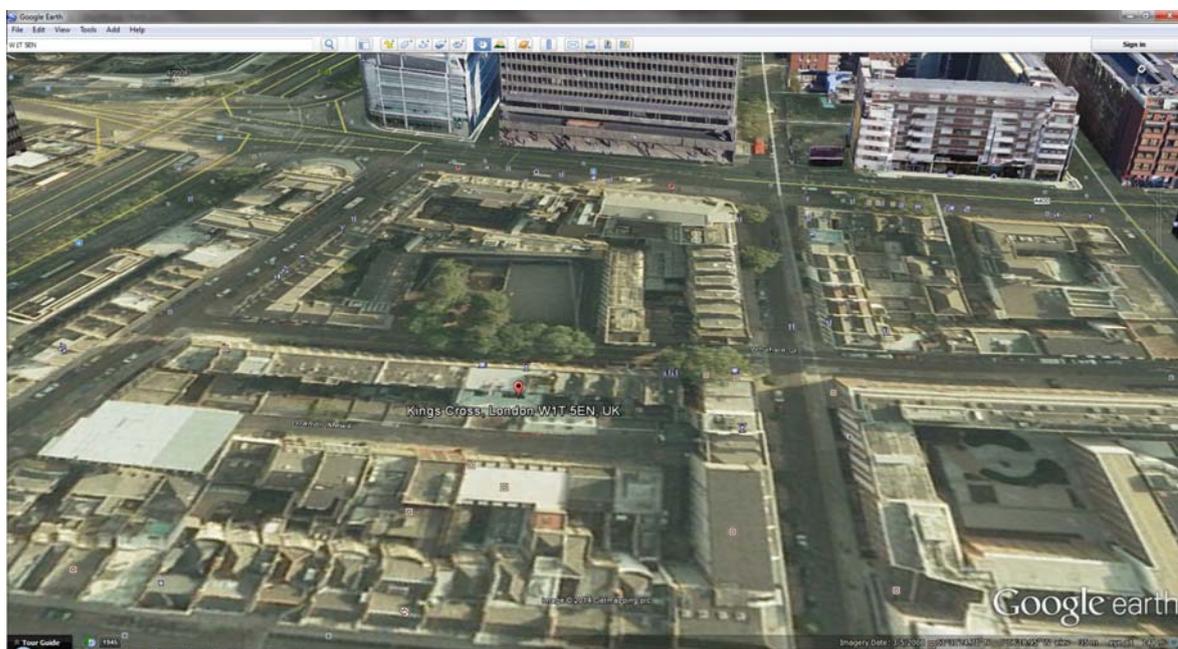
- September 1999



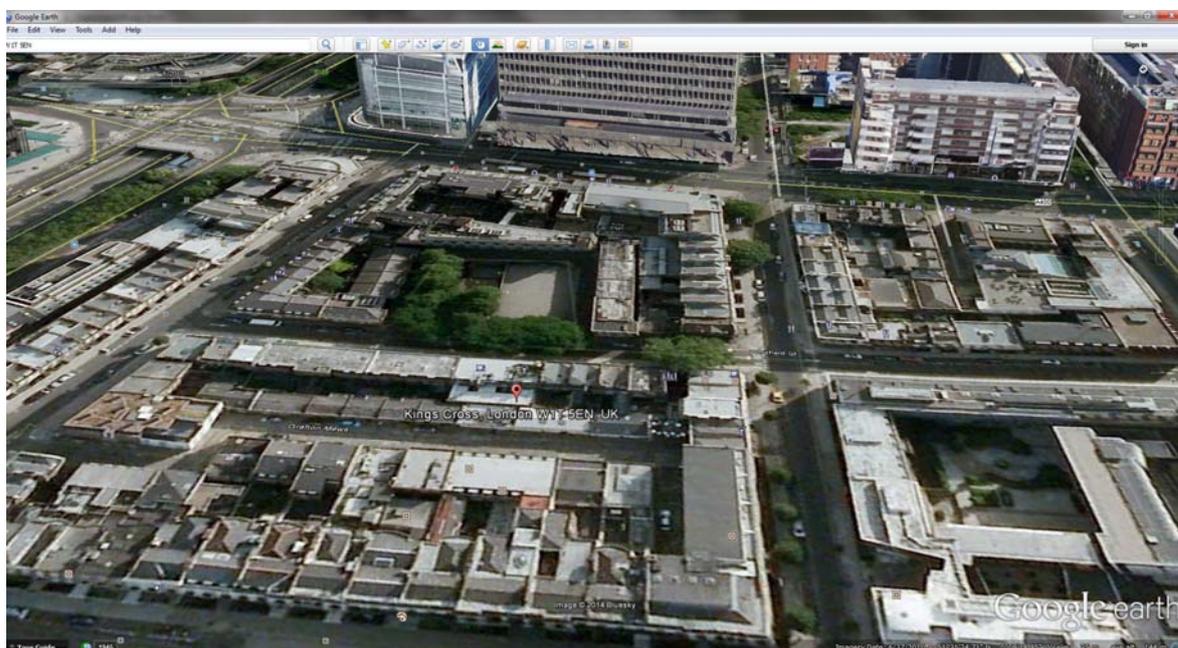
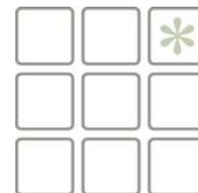
- December 2003



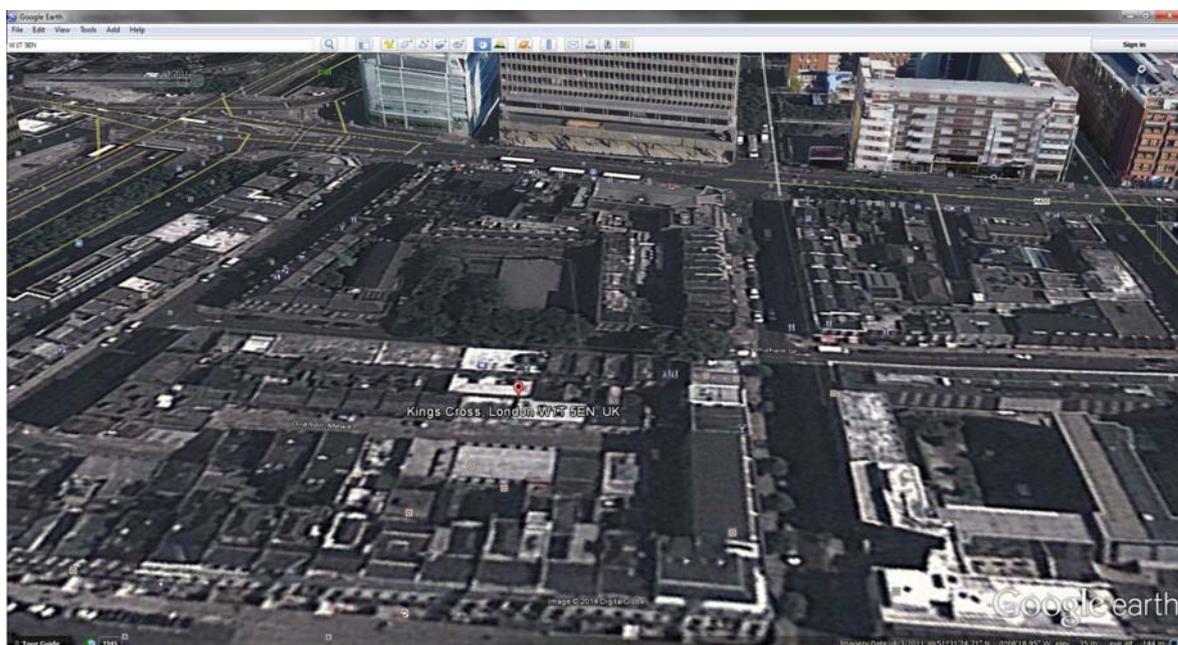
- December 2006



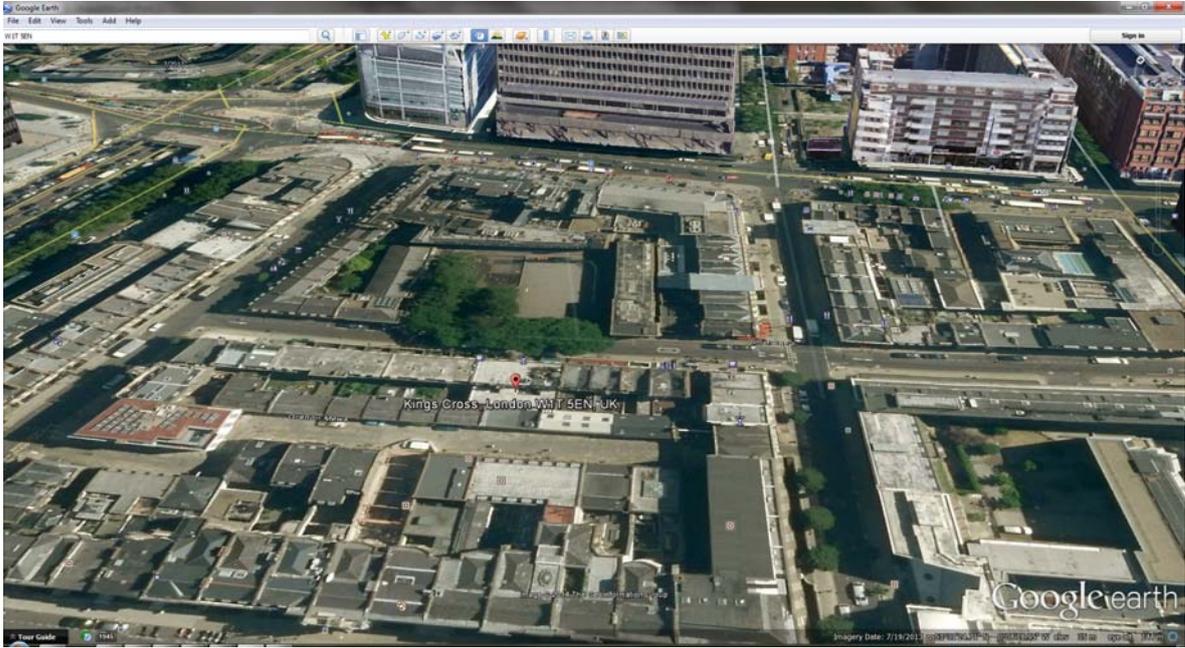
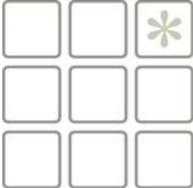
- September 2008



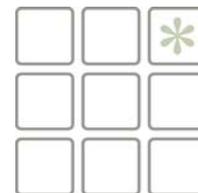
- June 2010



- August 2011



- July 2013



Photos from July 2012, taken by the previous owner

