

<b>LDC Report</b>	25/06/2015
<b>Officer</b>	<b>Application Number</b>
Darlene Dike	2015/2466/P
<b>Application Address</b>	<b>Recommendation</b>
32 Eton Avenue London NW3 3HL	Grant Lawful Development Certificate
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Use of ground floor rear extension roof as terrace, without privacy screen.	
<b>Assessment</b>	
<p>The application site is located on the north side of Eton Avenue, close to the junctions with Merton Rise and Strathray Gardens, and comprises a two storey detached property which has been divided into five flats. The building is not listed but falls within the Belsize Park conservation area, and is identified as making a positive contribution to the conservation area.</p> <p>The application relates to the use of the roof to the ground floor rear extension as a terrace, without the installation of a privacy screen. The application seeks to demonstrate that the roof terrace has been in use without a privacy screen for a period of 10 years or more, such that continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the roof terrace has been in use without a privacy screen for a period of 10 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>• Statutory declaration, dated and co-signed by a solicitor, asserting that the roof terrace has been in use without a privacy screen for over 10 years</li> <li>• A copy of a title plan for the property dated 26<sup>th</sup> April 2015</li> <li>• Rear elevation drawing showing the position of the roof terrace</li> <li>• Sale particulars for the property dating from 2004 from agents Kinleigh, Folkard and Hayward, corroborating the presence of a roof terrace in writing and in plan</li> <li>• RICS Homebuyer Survey and Valuation dated 21<sup>st</sup> September 2004, which makes several references to a roof terrace present at the property</li> <li>• Letter from Foster Harrington solicitors dated 17<sup>th</sup> February 2005, which raises no objection to decking being applied to an existing roof terrace at the property</li> </ul>	

The applicant has also submitted the following plans:

- A site location plan outlining the application site

### **Council's Evidence**

The host site is subject to informal enforcement action under the case reference EN14/0864 for the use of the roof terrace without a glazed privacy screen as required under condition 2 of planning permission PW9802694, granted 6/11/1998.

However, an aerial photograph on the Council's GIS system revealed a roof terrace in this location in 2007.

### **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 and the aerial photograph taken in 2007 clearly shows the roof terrace in existence.

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 been in use without a privacy screen for more than 10 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

**Recommendation: Approve**