Camden Council

5 Pancras Square,

London,

N1C 4AG

7th December 2015

**RE: Certificate of Lawfulness Application for 7 Oak Hill Park Mews**

Dear Sir/Madam,

Please find attached an application for a Certificate of Lawfulness for the use of a flat roof at 7 Oak Hill Park Mews as being incidental to the enjoyment of the dewllinghouse. A number of legal cases consistently advise that use of a roof terrace does not constitute a material change of use.  Those cases are summarised in Development Control Practice section 4.3245 and 12.4142.

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| ***4.3245 Use of flat roofs*** |

*The question is sometimes asked as to whether use of a flat roof of a building, say for a garden or sitting out area, constitutes a material change. However with reference to the appropriate planning unit it may be determined that the roof of a building falls within that unit. In lslington 14/09/1995 DCS No*[*039-285-162*](http://www.dcp-online.co.uk/DCP/dcslink?dcsref=039-285-162)*an enforcement notice was served alleging use of a second floor roof for sitting out purposes by office workers. An inspector felt that the use fell within the same planning unit and was for the exclusive use of the occupants of that building. The inspector rejected a local authority assertion that the use was not authorised as a roof terrace was not ordinarily ancillary to offices or light industry. The notice was quashed.*

*Another decision of interest is the Hammersmith case described at*[*12.415*](http://www.dcp-online.co.uk/DCP/ShowPage?filename=12-4.html#12.415)*which related to use of a flat roof over a flat as a balcony. Here, although it was stated that each flat was a separate planning unit, the flat roof lay over accommodation on a lower floor which belonged to it. The notice was quashed.*

*Also of note is Brighton 01/11/1990 DCS No*[*041-820-048*](http://www.dcp-online.co.uk/DCP/dcslink?dcsref=041-820-048)*where an enforcement notice had alleged unauthorised use of a terrace above the Brighton Aquarium for children’s amusements. An inspector observed that the Aquarium complex was within one ownership and often it was appropriate to regard the roof of a building as part of the planning unit which embraced the building. However in this case the roof was so distinct in physical and functional terms to be considered apart from the Aquarium itself. There was no direct interconnection between the terrace and the inside of the building.*

*In circumstances where a flat roof is accessed from the roof of one planning unit but lies over the premises belonging to another planning unit, it may be deduced that use of that roof would not normally be ancillary and a change of use of the roof space would have occurred. Whether this would be material is another matter. Of course, necessary operational development such as railings or staircases, may bring many uses of flat roofs within planning control anyway, although Part I permitted development rights could allow such works, see*[*12.415*](http://www.dcp-online.co.uk/DCP/ShowPage?filename=12-4.html#12.415)*.*

***12.4142 Material change of use?***

*The mere use of a flat roof of a conventional house as a terrace does not fall within planning control as being incidental to the enjoyment of the dwellinghouse, as set out in sec.55(2)(d) of the 1990 Act. In cases where the roof being used is part of a different flat in a building there would be no material change of use, see Redbridge 22/06/2000 DCS No*[*043-075-461*](http://www.dcp-online.co.uk/DCP/dcslink?dcsref=043-075-461)*.*

*In allowing an appeal against an enforcement notice requiring a householder to cease using a flat roof extension as a sitting out area, an inspector decided that the use was not unlawful. In addition to alleging an unauthorised use of the roof the notice also required the removal of a balcony around the roof together with a platform sited thereon. These items had been removed. However, the appellant stated that the actual use of the flat roof did not involve a breach of planning control. Rather, he claimed it was incidental to the enjoyment of the dwellinghouse and accordingly did not fall within planning control. The inspector decided that the use of the roof as a sitting out area was something which was generally associated with the residential use. It would not result in a significant change in the character of the activities within the planning unit. Although the court in Croydon LBC v Gladden 1994 held that the concept of enjoyment of a dwellinghouse embraced an element of “reasonableness”, the use of the flat roof was not so unreasonable, he held, as to make it fall within planning control. Accordingly, he varied the notice to remove the restriction of using the roof as an outdoor amenity area, see East Northamptonshire 15/02/2010 DCS No*[*100-066-519*](http://www.dcp-online.co.uk/DCP/dcslink?dcsref=100-066-519)*.*

We look forward to hearing from you and if you need any further information, please do not hesitate to contact us.

Yours sincerely,



**Muireann Murphy**

Planner

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