

LDC Report	22/11/2016
Officer	Application Number
Helaina Farthing	2016/6320/P
Application Address	Recommendation
15 Kylemore Road London NW6 2PS	Approval
Proposal	
Creation of access onto the flat roof of the first floor to enable use as a terrace (no balustrade in situ).	
Assessment	
<p>The application site is located on Kylemore Road and comprises of a single dwelling house. The property is situated on the eastern side of Kylemore Road.</p> <p>The application relates to the use of the flat roof of the first floor rear wing as a terrace without a balustrade in situ.</p> <p>The building is not listed and is not located within a conservation area.</p> <p>The applicant is required to demonstrate, on balance of probability that the roof has been used as a terrace, for a period of 4 or more years.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • Report on the structural condition of the property from Owen Powell, Architects and Surveyors dated 22/07/2008; • 'Sales particulars' for the property produced in 2008 by Dutch and Dutch (Property Advisers and Property Management); • Sworn affidavit from Christein Koch dated 19/10/2016; • Sworn affidavit from Michael Rossiter dated 19/10/2016; • Sworn affidavit from ElfiPallis dated 25/10/2016; • Sworn affidavit from Greg Pallis dated 25/10/2016. <p>Council's Evidence</p> <p>Photograph evidence from 2011 (shown below) showing French doors on the rear dormer directly onto the flat roof. There are also signs of use of the space as terrace present.</p> <p>Assessment</p> <p>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</p>	

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 has evidence which supports the applicant's version of events, in the form of a photo from August 2011 which shows the flat roof is accessible by the French doors on the rear of the dormer allowing the space to be used as a roof terrace. There are no blustrades in place at this time.



The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' that the first floor roof has been used as a terrace following the insertion of the French doors over 4 years ago as required under the Act. Furthermore, the Council's own evidence does not contradict or undermine the applicant's version of events.

Recommendation: Grant Certificate of Lawfulness (Existing)