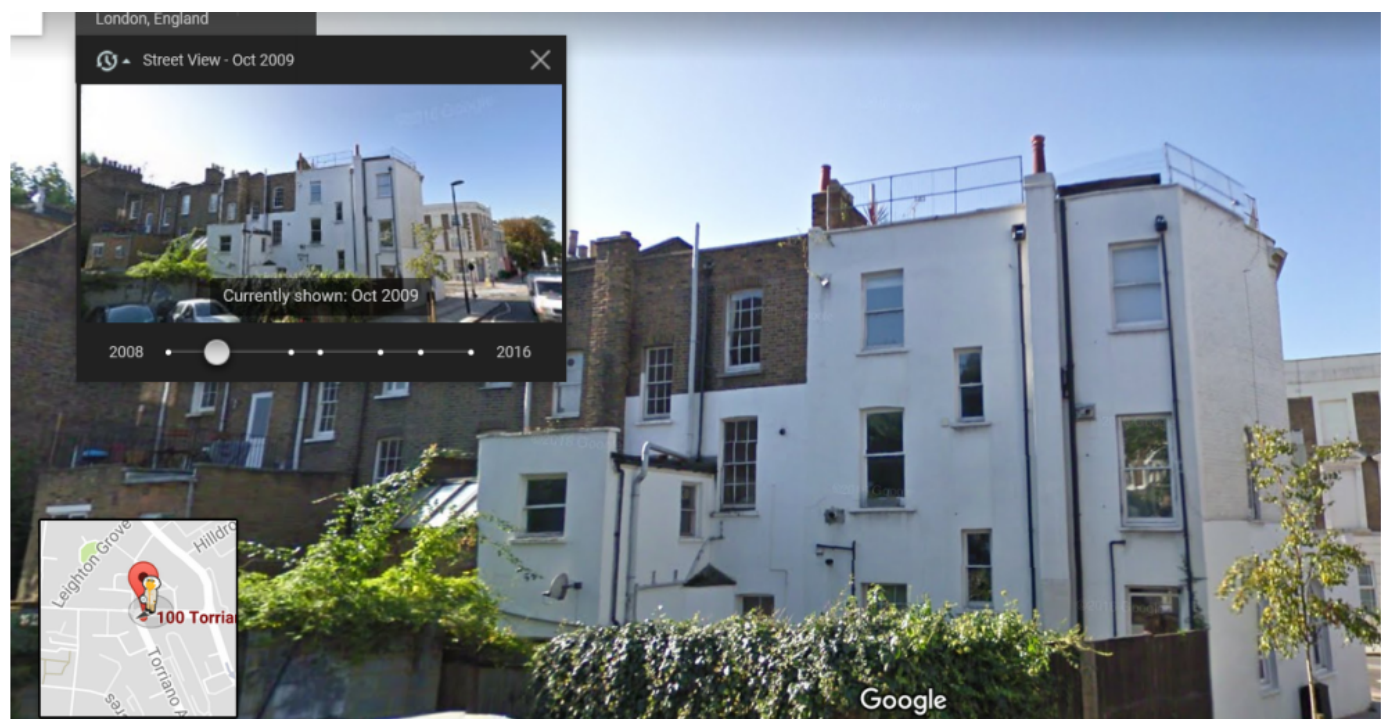


<b>LDC Report</b>	28/07/2017
<b>Officer</b>	<b>Application Number</b>
Patrick Marfleet	2017/2863/P
<b>Application Address</b>	<b>Recommendation</b>
Flat 4, 100 Torriano Avenue London NW5 2SE	Approval
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Use of existing flat roof at the site as an amenity terrace area, with associated balustrading, for occupants of second floor flat.	
<b>Assessment</b>	
<p>The application site is located on the north eastern side of Torriano Avenue and relates to a three storey plus basement end of terrace property.</p> <p>The application relates to the use of the flat roof of the host building as an amenity terrace area with balustrade in situ.</p> <p>The building is not listed and is not located in 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><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>- Three historic aerial images dated September 1999, December 2006 and July 2013 indicating the use of the existing flat roof at the site as an amenity terrace area.</li> <li>- Correspondence from a resident of 100 Torriano Avenue confirming the use of the roof as a terrace area.</li> </ul> <p><b>Council's Evidence</b></p> <p>Photographic evidence from 2009 (shown below) showing a safety balustrade surrounding the roof terrace area.</p> <p><b>Assessment</b></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 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 applicants view that the roof terrace has been in situ for a minimum of 4 years. The photographs included below show the balustrading surrounding the roof terrace area at the site being in situ from as early as October 2009, which correlates with the historic aerial photographs provided by the applicant.





The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the flat roof of the host property has been in use as a terrace area 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:** Grant Certificate of Lawfulness (Existing)