

<b>LDC Report</b>	
<b>Officer</b>	<b>Application Number</b>
Raymond Yeung	2016/2797/P
<b>Application Address</b>	<b>Recommendation</b>
5 Gayton Road London NW3 1TX	Grant
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Installation of railings above flat roof of rear extension.	
<b>Assessment</b>	
<p>The application site is located to the west of Gayton Road and the area in question relates to above the flat roof of the original rear 3 storey outrigger extension.</p> <p>The application seeks to demonstrate that railings above the flat roof, enabling its use as a roof terrace, have existed for a period of 4 years or more such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing residential unit has existed 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>• Statutory declaration dated from 2003 stating that at the time it has been there for more than 10 years.</li> </ul> <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> <li>• A site location and block plan outlining the application site</li> <li>• Plans from permission granted within 2004/4147/P which also shows a photograph of the rear of adjoining neighbour 6 Gayton Road with No5A's railing within shot</li> </ul> <p><b>Council's Evidence</b></p>	

Having looked at the council's records, the details relating to application 2004/4147/P provided by the applicant appears to be consistent.

There is no enforcement action on the subject site.

### **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.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the railings have existed 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: Approve**