

## **APPENDIX 2**

**Information pertaining to application 2016/6320/P  
15 Kylemore Road**

SMB Town Planning Ltd  
Symal House  
423 Edgware Road  
Colindale  
London  
NW9 0HU

Application Ref: **2016/6320/P**  
Please ask for: **Helaina Farthing**  
Telephone: 020 7974 **3303**

16 December 2016

Dear Sir/Madam

## DECISION

Town and Country Planning Act 1990

### **Certificate of Lawfulness (Existing) Granted**

The Council hereby certifies that on the 18 November 2016 the use described in the First Schedule below in respect of the land specified in the Second Schedule below, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 as amended.

First Schedule: Creation of access onto the flat roof of the first floor to enable use as a terrace (no balustrade in situ).

Drawing Nos: Site Location Plan; EX-EL00; 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.

Second Schedule:  
**15 Kylemore Road**  
London  
**NW6 2PS**

Reason for the Decision:



- 1 The operations were substantially completed more than four years before the date of this application.

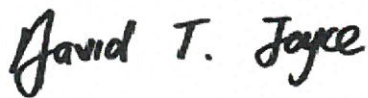
Informative(s):

- 1 Please be advised planning permission would be required for any balustrade.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully



David Joyce  
Executive Director Supporting Communities

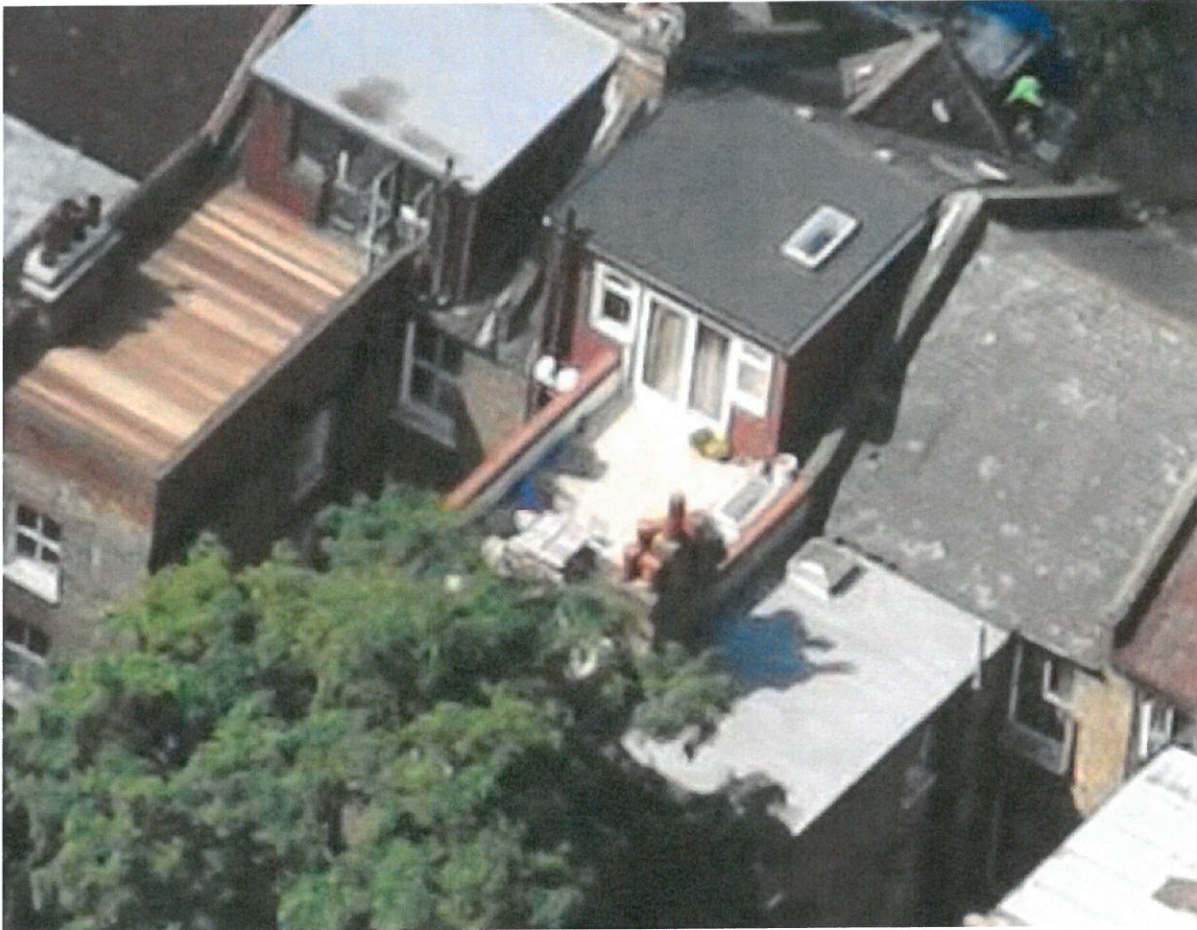
Notes

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the matter specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful on the specified date and thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

<b>LDC Report</b>	22/11/2016
<b>Officer</b>	<b>Application Number</b>
Helaina Farthing	2016/6320/P
<b>Application Address</b>	<b>Recommendation</b>
15 Kylemore Road London NW6 2PS	Approval
<b>Proposal</b>	
Creation of access onto the flat roof of the first floor to enable use as a terrace (no balustrade in situ).	
<b>Assessment</b>	
<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 Kylmore 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><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>• Report on the structural condition of the property from Owen Powell, Architects and Surveyors dated 22/07/2008;</li> <li>• 'Sales particulars' for the property produced in 2008 by Dutch and Dutch (Property Advisers and Property Management);</li> <li>• Sworn affidavit from Christein Koch dated 19/10/2016;</li> <li>• Sworn affidavit from Michael Rossiter dated 19/10/2016;</li> <li>• Sworn affidavit from ElfiPallis dated 25/10/2016;</li> <li>• Sworn affidavit from Greg Pallis dated 25/10/2016.</li> </ul> <p><b>Council's Evidence</b></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><b>Assessment</b></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)**