



Officer Report

Application Number:	HGY/2026/1136
Application Type:	Lawful development: Existing use
Address:	42 Holmesdale Road, Hornsey, London, N6 5TQ
Proposal:	Certificate of lawfulness: existing use of a flat roof area as a residential amenity space (roof terrace); and the presence of a perimeter balustrade, currently in glazed form, enclosing that terrace.
Case Officer:	Eunice Huang
Valid Date:	27/05/2026
Applicant:	c/o Agent
Agent:	Mr Mandip Sahota

RECOMMENDATION

Approve

1. PLANNING & ENFORCEMENT HISTORY

The relevant planning history is as follows:

- PRE/2014/0110
Address: 42, Holmesdale Road, Hornsey, London, N6 5TQ
Proposal: Conversion and extension of cellar into basement living accommodation and 2nd floor balcony.
Received Date: 2 October 2014
Valid Date: 2 October 2014
Decision Date: 27 November 2014
Decision: PreAppSent
- HGY/2009/2042
Address: 42, Holmesdale Road, London, N6 5TQ, London
Proposal: Erection of rear ground floor and second floor extensions.
Received Date: 2 December 2009
Valid Date: 2 December 2009
Decision Date: 26 January 2010
Decision: Approve with Conditions
- HGY/2003/1354
Address: 40, Holmesdale Road, London, N6 5TQ, London
Proposal: Certificate of Lawfulness for the erection of a single storey rear extension.
Received Date: 4 August 2003
Valid Date: 4 August 2003
Decision Date: 2 September 2003
Decision: Permitted Development

2. REPRESENTATIONS

Planning Practice Guidance (PPG) on Lawful Development Certificates, sets out that: “There is no statutory requirement to consult third parties.” (Paragraph: 008 Reference ID: 17c-008-2014030). The application was not placed under consultation.

3. RELEVANT PLANNING LEGISLATION

The application has been made under section 191 of the Town and Country Planning Act 1990 and relevant amendments. This is not a planning application but instead the applicant seeks confirmation that the proposed development is lawful.

Town and Country Planning Act 1990

Section 191 of the Town and Country Planning Act 1990 (as amended by section 10 of the Planning and Compensation Act 1991) states that:

“If any person wishes to ascertain whether any existing use of buildings or other land is lawful ...he may make an application for the purpose to the Local Planning Authority specifying the land and describing the use ... For the purposes of this Act uses ... are lawful at any time if –

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

If, on an application under this section, the Local Planning Authority are provided with information satisfying them of the lawfulness at the time of the application of the use, described in the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”

National Planning Practice Guidance (PPG)

National Planning Policy Guidance issued by the Government in relation to Lawful Development Certificates explains the process for obtaining a lawful development certificate for existing or proposed use.

In this case, the Local Planning Authority is requested to grant a certificate confirming that: “(a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990” Paragraph 001 Reference ID: 17c-001-20140306.

Paragraph: 009 Reference ID: 17c-009-20140306 of the PPG indicates:

“A Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.”

As such, the impact of the proposed development on the neighbouring amenity or the character of the area cannot be taken into consideration for the purpose of this submission.

Paragraph: 006 Reference ID: 17c-006-20140306 of the PPG indicates:

“The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning

authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

In the case of applications for existing use, if a Local Planning Authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

4. EVALUATION

Section 191 of the Act indicates that the burden of proof lies with the applicant, but the relevant test is 'the balance of probability'. Local Planning Authorities (LPAs) are advised that (unless the applicant's evidence is imprecise or ambiguous, or the LPA has evidence of its own which contradicts or undermines the applicant's version of events), a certificate should be issued. In this case, a Certificate is sought on the grounds that the existing flat roof area has been in use as a roof terrace, with a perimeter balustrade, for a continuous period of 10 or more years on the application site.

Applicant's evidence

The application form accompanying this application asserts that

- The use of the roof as a residential terrace has continued uninterrupted for a period exceeding ten years
- The existing glazed balustrade constitutes operational development which has been in place for more than four years
- There has been no material interruption or change in the nature of the use or the planning unit

The application is accompanied by the following evidence:

- Photographs from the view of the roof terrace and balustrade from the rear garden, dated 25/05/2020, 10/10/2020, 24/01/2021.
- Sunday Times article dated 07/04/2012, featuring a photo of the roof terrace, showing a deck, balustrade and domestic paraphernalia, and a photo of the roof terrace as viewed from the rear garden.
- Aerial photographs from Google Earth showing the presence of different arrangements of domestic paraphernalia on the roof, dated 04/06/2015, 08/04/2017, 07/05/2018, 26/06/2019, 11/04/2020, 30/03/2021, 05/05/2022, 13/04/2024.
- Statutory declaration from the owner of the property, declaring that the roof terrace has been in use for more than 10 years, and that at no time the use of the roof terrace ceased or been abandoned. A balustrade has enclosed the roof terrace throughout the period of its use, although the original balustrade was replaced in May 2020. Application history shows that this owner was the applicant for HGY/2009/2042 and PRE/2014/0110.

The evidence presented to substantiate the statement of case is considered comprehensive in nature. On the balance of probability therefore it is considered that the evidence submitted by the applicant precisely and unambiguously demonstrates that the existing flat roof area has been used as roof terrace with a perimeter balustrade. The photographs and Sunday Times magazine article shows the continuous presence of the roof terrace and balustrade since at least 2012, and the existing balustrade has been in place since 2020. The drawings show that the roof terrace is accessed from the second floor study/studio through the rooflight.

5. RECOMMENDATION

Grant the requested Certificate of Lawfulness under section 191 of Town and Country Planning Act 1990.

From the documentation and evidence provided, the Local Planning Authority is satisfied that, on the balance of probabilities the use of the flat roof area as a residential terrace with the presence of a balustrade has continued uninterrupted for a period exceeding ten years before the date of this application, and the existing balustrade has been in place for a period exceeding four years before the date of this application, at 42 Holmesdale Road, London N6 5TQ. Therefore, the sought use and operation development is considered to be lawful.