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80-83 Long Lane
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Via Planning Portal Only

20th April 2023

Dear Sir/Madam

CERTIFICATE OF LAWFUL DEVELOPMENT (EXISTING) WITH RESPECT TO THE LAWFULNESS OF THE EXISTING LOWER GROUND FLOOR/CELLAR/BASEMENT AT 91 SAVERNAKE ROAD, LONDON, NW3 2LG.

This is an application under Section 191 (1) (b) of the Town and Country Planning Act 1990 to obtain a Lawful Development Certificate to confirm that the lower ground floor/cellar/basement works carried out at the property is lawful. The lower ground floor/cellar/basement works are lawful by virtue of them being completed more than for 4 years ago, prior to the date this application was made.

The following documents are submitted in support of the application:

- Completed application form
- Site location plan
- Dated photographs showing the works being undertaken and completed
- Letter from Structural Engineer confirming completion of works
- As built floorplan of works
- Building Control Application Form
- Structural calculations package for works

Supporting Evidence:

- Appendix 1 – Dated photographs showing the lower ground floor/cellar/basement works during construction and works completed on 8th June 2018.
- Appendix 2 – Letter dated 10th July 2018 from Form London Limited Structural Engineers confirming that various site visits were undertaken between February and June 2018 and that

the works were completed on 8th June 2018. The email attached at Appendix 2a confirms that the works referred to in the letter relate to the as built plans in Appendix 3.

- Appendix 3 – As built floor plan (dated 06/02/2019) issued by Form London Limited Structural Engineers highlighting as built lower ground/cellar/basement.
- Appendix 4 - Building Control application form (completed 5th February 2018) for works carried out at the property.
- Appendix 5 - Structural calculations package relating to the extent of the as built lower ground floor/cellar/basement works.

The Site

The site is located on the south side of Savernake Road and comprises a three storey (above ground) semi-detached Victorian property. The site is on a street comprised of similar semi-detached and terraced Victorian residential properties.

Planning History

On the 8th January 2017, planning permission was granted at the site (2017/6326/P) for the erection of single storey rear/side infill extension and rear dormer roof extension; and other external alterations.

Legislative Background and Guidance

Section 191 of the Town and Country Planning Act 1990 (as amended)

Section 191 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) allows applications to a Local Planning Authority for the issue of Certificates of Lawful Use for Existing Development. This provides a statutory mechanism for obtaining confirmation that an existing use of land, operational development, or activity is lawful and consequently immune from enforcement action.

Section 171B(1) of the Town and Country Planning Act 1990 (as amended)

Section 171B(1) of the Town and Country Planning Act provides for the ‘four year rule’ in respect of operational development. It states:

“Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.”

Therefore, if it can be demonstrated that the works were substantially completed more than four years prior to the submission of this certificate application, then the development is lawful, and a certificate should be issued.

Planning Practice Guidance Paragraph 009

Planning Practice Guidance at paragraph 009 (Reference ID: 17c-009-20140306), states:

“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.”

In light of the above, a certificate of lawful development existing is not a planning permission. The planning merits of the development are not relevant and planning policies are not applicable. The issue of a certificate depends entirely on factual evidence about the history, planning status of the building and the interpretation of any relevant planning law or judicial authority. The test in this instance is whether 'on the balance of probability' the applicant has demonstrated that the development was carried out and substantially completed more than four years prior to the submission of this certificate application.

The lawfulness of the existing development

As outlined above, the application is not to be considered against local or national planning policy. The question to ask is whether the applicant has demonstrated, on the balance of probability, that the development occurred more than four years prior to the submission of this certificate application.

The 'balance of probability' threshold was previously set out in Circular 10/97 (now cancelled), but that threshold is repeated in current Planning Practice Guidance. Further, case law dictates that an applicant's own evidence does not need to be corroborated by "independent" evidence to be accepted (*FW Gabbitas v SSE and Newham LBC* [1985] JPL 630). If the local planning authority has no evidence of its own, or 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."

Works commenced on the lower ground floor/cellar/basement in February 2018. The lower ground floor/cellar/basement works were completed in June 2018. Based on the evidence available it can be demonstrated, on the balance of probability, that the works were substantially complete more than four years prior to the submission of this application. The following provides a summary of the evidence submitted in support of the application.

Dated photographic evidence of the lower ground floor/cellar/basement works being undertaken and completed between February and June 2018. Structural and excavation works commenced in February 2018, underpinning works took place between March and May 2018 and the structural works were completed in June 2018 (**Appendix 1**).

Letter dated 10th July 2018 from Form London Limited Structural Engineers confirming that various site visits were undertaken between 19th February 2018 and 8th June 2018 to inspect the lower ground/cellar/basement works being carried out. The letter confirms that the works were completed on 8th June 2018. (**Appendix 2**). The extent of these completed works (as confirmed in the email attached at **Appendix 2a**) correspond with the 'as built' plan issued by Form London Limited, page 1 which highlights the works carried out (**Appendix 3**).

Building Control application form completed by applicant for works carried out at the property. The description of work includes reference to full refurbishment of house including cellar, which will be underpinned and including all associated work. The description of works cannot be read fully unless the form is scrolled through, therefore for clarity the description of works is copied verbatim below:

'Single storey rear extension and internal (structural) alterations to form an open plan kitchen / dining area; reconfigure two front ground floor reception rooms; combine wc with bathroom on first floor; replace second floor rear bedroom with new en-suite shower / dressing room and extend third floor bedroom to include new rear dormer; installation of new controlled services / fittings; re-roofing, full refurbishment of house including cellar, which will be underpinned, and including all associated work to the above at 91 Savernake Road, London NW3'.

These works referred to within the Building Control application include the lower ground/cellar/basement works carried out at the property which form part of this application (**Appendix 4**). Building Control were fully aware of and witness the works which were being carried out and completed which now form the subject of this application.

Calculations relating to structural works proposed for lower ground floor/cellar/basement (**Appendix 5**). Whilst these calculations are dated November 2017 (and prior to the works being carried out), they clearly show the intent of proposed works for the lower ground floor/cellar/basement subsequently carried out and completed between February and June 2018 (as evidenced in Appendices 2 and 3).

Summary & Conclusion

The evidence submitted demonstrates that the lower ground floor/cellar/basement works were completed in June 2018 and have been in situ for more than four years before the submission of this lawful development certificate application.

Accordingly, the requirements of s.191(2)(a) are satisfied (lawfulness through expiry of time), and any refusal from the Council would be unfounded. It is therefore respectfully requested that a certificate is issued.

I trust the commentary above is clear but please do not hesitate to contact me if you have any queries or if I can offer any further points of clarification.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stuart Minty', with a long horizontal flourish extending to the right.

Stuart Minty
Director
SM Planning