

<b>LDC (Existing) Report</b>		<b>Application number</b>	2023/1642/P
<b>Officer</b>		<b>Expiry date</b>	
Tony Young		15/06/2023	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
91 Savernake Road London NW3 2LG			
<b>Conservation Area</b>		<b>Article 4</b>	
Mansfield		Article 4 Directions (basements)	
<b>Proposal</b>			
Works to a cellar space below ground floor level to form an enlarged basement area.			
<b>Recommendation</b>		<b>Issue Certificate</b>	
<b>Introduction</b>			
<p>Council records indicate that the application site comprises a 3-storey (with cellar) semi-detached terrace dwelling house, located on the south side of Savernake Road, midway between Shirlock Road to the east and Roderick Road to the west.</p> <p>The building is not listed and is located within the Mansfield Conservation Area.</p> <p>An Article 4 Direction applies to this property and removes permitted development rights for any basement excavations at the site. As such, works of this kind would require planning permission.</p> <p>The application seeks to demonstrate that, on the balance of probability, works to a cellar space below ground floor level to form an enlarged basement area were completed and have been in existence for a continuous period of at least four years before the date of the application, such that their retention would not require planning permission.</p>			
<b>Applicant's Evidence</b>			
<p>The applicant has submitted the following documents/information in support of the application:</p> <ul style="list-style-type: none"> <li>• Cover Letter from SM Planning (agent) dated 20/04/2023, asserting that works carried out to the lower ground floor/cellar/basement are lawful by virtue of them being completed more than for 4 years ago, prior to the date this application, as demonstrated by evidence provided in Appendices 1-5 and other supporting information;</li> <li>• Appendix 1 - Photographic evidence with dates showing the excavation, underpinning and insulation works at lower ground floor/cellar/basement, as asserted as being completed on 08/06/2018;</li> <li>• Appendix 2 - Letter from Form London Structural Engineers (ref. A075 Savernake Road NW3 2LG) dated 10/07/2018, stating that various site visits were undertaken between February and June 2018 and that the works were completed on 08/06/2018;</li> <li>• Appendix 2a - Email from Form London Structural Engineers dated 19/04/2023, confirming that the works referred to in Appendix 2 relate to as built drawings contained in Appendix 3;</li> <li>• Appendix 3 - As built drawings issued by Form London Structural Engineers dated 06/02/2019, showing highlighted area of works on contextual basement plan;</li> <li>• Appendix 4 - Building Control application form to London Building Control dated</li> </ul>			

05/02/2018, in regard to planning application for works carried out at the property related (ref. 2017/6326/P);

- Appendix 5 - Structural Calculations Package from Form London Ltd. (ref. job number A075) dated November 2017, relating to works to 'as built' lower ground floor/cellar/basement.

The applicant has also submitted the following drawings:

- Site location plan
- 003.17-EX01 rev P1 – showing highlighted area on contextual basement plan (as built)
- As built drawings issued by Form London Structural Engineers dated 06/02/2019 (Appendix 3)

### **Council's Evidence**

There is the following relevant planning history, but no relevant enforcement action for the subject site:

- **2017/6326/P** - Erection of single storey rear/side infill extension and rear dormer roof extension; and other external alterations. Planning permission granted 08/01/2018
- **2018/2724/P** - Variation of Condition 3 (approved drawings) of planning permission ref. 2017/6326/P (dated 08/01/18) for erection of single storey rear/side infill extension and rear dormer roof extension; and other external alterations, namely to increase height of side infill extension. Variation approved 14/08/2018
- **2017/1439/P** - Conversion of the property from no.2 self-contained flats into a single family dwellinghouse (Use Class C3). Planning permission granted 02/10/2017

### **Assessment**

In regard to applications for a Certificate of Lawfulness, 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, nor any from others, to contradict or otherwise make the applicant's version of events less probable, 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.

It is considered that the information provided by the applicant is sufficiently precise and unambiguous to demonstrate that, on the balance of probability, the works to a cellar space below ground floor level to form an enlarged basement area were completed and have been in existence for the required period of at least four years before the date of this application and appear to have remained as such until the present time.

This being the case, and given the fact that the Council does not have any evidence to contradict or undermine the applicant's version of events, the works would not require planning permission. As such, it is recommended that a Certificate of Lawfulness be granted.

**RECOMMENDATION: Grant Certificate of Lawfulness**