

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	02/08/2023
		N/A	<b>Consultation Expiry Date:</b>	N/A
<b>Officer</b>			<b>Application Number(s)</b>	
Alex Kresovic			2023/2327/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
10 Canfield Gardens London NW6 3JS			Refer to Draft Decision Notice	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
Lawful Development Certificate (existing) to confirm that planning permission 2020/1530/P has lawfully commenced within the permitted three-year period (Section 191 of the Town and Country Planning Act 1990).				
<b>Recommendation(s):</b>	<b>Grant Certificate of Lawfulness (Existing)</b>			
<b>Application Type:</b>	<b>Certificate of Lawfulness (Existing)</b>			
<b>Conditions or Reasons for Refusal:</b>	<b>Refer to Draft Decision Notice</b>			
<b>Informatives:</b>				

## Site Description

The application site is a three storey (plus basement) building located on the north-western side of Canfield Gardens. The building is not listed, though it is located within the South Hampstead Conservation Area.

Due to the topography of the site, the lower ground floor front elevation is visible from street level, with the land stepped down to the front elevation lower ground windows/lightwell area. A small strip of planting exists across the front of the site.

## Relevant History

### APPLICATION SITE:

**2020/1530/P** - Erection of front and rear lower ground floor extensions; removal of existing ground floor rear extension and erection of replacement rear extension; replacement of all existing windows with timber framed double glazed units (Use Class C4). - **Granted 17/07/2020.**

**2019/3052/P** - Use of House in Multiple Occupation (HMO) as 16 self-contained flats (comprising 10 x studios and 6 x 1-bedroom flats) (Use Class C3) over basement, ground, first and second floor levels – **Lawful development certificate (existing) Granted 27/01/2020.**

**8803845** - Change of use and works of conversion to form ten self-contained units including the insertion of rooflight at front as shown on drawing nos.8803/10 /11 /12 /13B /14B /15 /16a and /20 as revised on 20.12.88. - **Refused 07/06/1989.**

**TP3261** - Alterations and use of the ground, first and second floors of 10 CANFIELD GARDENS, N.W.6. for letting in rooms - **Refused 21/11/1960.**

## Assessment

### Background

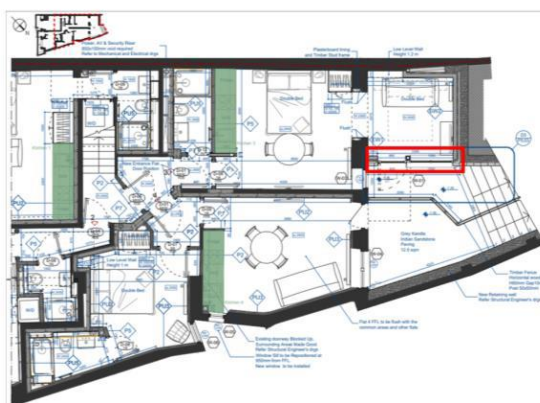
The certificate seeks to demonstrate that on the balance of probability that planning permission ref: 2020/1530/P commenced within the 3-year time period pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended), which would expire on the 17<sup>th</sup> of July 2023, and such development can continue as approved under this permission.

### Applicant's Evidence

1. Site logbook demonstrating physical works have commenced onsite.
2. Two drawings are submitted showing the area of works (highlighted in red).



BASEMENT FLOOR PLAN



3. Quotation by Alco Contracts to undertake works dated 1<sup>st</sup> of June 2023.
4. Fee and purchase order raised by the 6<sup>th</sup> of June 2023.
5. Works being commenced and completed on the 6<sup>th</sup> of June 2023. A trench of 500mm width and 500mm depth was created to allow for this strip of foundation to be formed.
6. Time stamped photos showing works being commenced and completed on the 6<sup>th</sup> of June 2023.

### Council's evidence

Judging the evidence submitted and the history of the site, officers are satisfied that planning permission ref: 2020/1530/P commenced within the 3-year time period pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

### **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 (Planning Practise Guidance para. 006), 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 applicant’s evidence suggests that the works being carried out commenced on the 6<sup>th</sup> of June 2023 and are in accordance with the approved plans pursuant to planning permission ref: 2020/1530/P.

The works undertaken comprised a ‘*material operation*’ for the purposes of Section 56(4) of the Town and Country Planning Act, specifically “(a) *any work of construction in the course of the erection of a building and (aa) any work of demolition of a building*” and such works were carried out before the expiry of the planning permission.

The information provided by the applicant is therefore deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ that planning permission 2020/1530/P commenced within the 3-year time period pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended). Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

### **Conclusion**

Recommendation: Grant Certificate