

Delegated Report		Analysis sheet	Expiry Date:	22/08/2023
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Alex Kresovic			2023/2654/P	
Application Address			Drawing Numbers	
369-377 Kentish Town Road London NW5 2TJ			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Lawful Development Certificate (existing) to confirm that planning permission 2019/0910/P has lawfully commenced within the permitted three-year period (Section 191 of the Town and Country Planning Act 1990).				
Recommendation(s):	Grant Certificate of Lawfulness (Existing)			
Application Type:	Certificate of Lawfulness (Existing)			
Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				

Site Description

The site occupies a triangular site on the west side of Kentish Town Road, occupied by a car wash. There is a wide railway cutting to the rear. The neighbouring building to the north (379 Kentish Town Road) is 5 storeys and the remainder of the adjoining terrace is 3 storeys, although 381 and 383 Kentish Town Road both have additional height due to mansard roofs. The site falls with the Kentish Town 'Town Centre', the Kentish Town Neighbourhood Area, and within the area covered by the draft Kentish Town Planning Framework.

The site is not in a conservation area but Kentish Town conservation area is to the east of the site. There are also several nearby Grade II listed buildings including The Grade II listed public house "The Assembly House" (292-294 Kentish Town Road) is to the south of the site on the other side of Kentish Town Road.

Relevant History

APPLICATION SITE:

2019/0910/P: Redevelopment including change of use from car wash (Sui Generis) and erection of part six and part seven storey building plus basement to provide 14 flats (10 x 2-bed units and 4 x 1-bed) (Class C3) at 1st floor and above (with terraces at 5th floor rear and 6th floor level (north elevation); and retail (Class A1) or restaurant (Class A3) use at ground and basement level incorporating widened pavement to Kentish Town Road. **Granted subject to S106 agreement 12/03/2020.**

8903167: Erection of a five-storey development to contain a car showroom a flat and a maisonette with ancillary parking for the showroom and residents at ground floor level. **Refused 24/05/1990 Appeal allowed 19/11/90**

EN11/0104: The erection of 2x advertisement hoarding on the front elevation of bridge structure and adjoining site. Discontinuance Notice dated 13/02/2013. **Appeal allowed; discontinuance notice quashed 26/11/2013.**

Assessment

Background

The certificate seeks to demonstrate that on the balance of probability that planning permission ref: 2019/0910/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 12th of March 2023, and such development can continue as approved under this permission.

Applicant's Evidence

1. All consented drawings (existing and proposed)
2. Plan showing the areas of demolition which were undertaken in the week commencing 27th February 2023
3. Progress report (dated 10th March) provided by the site contractor
4. Photographic schedule (dated for the week commencing 27th February 2023)
5. Full suite of waste disposal notes
6. Asbestos removal notes (dated 23rd March 2023)

Council's evidence

Judging the evidence submitted and the history of the site, officers are satisfied that planning permission ref: 2019/0910/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 27th of February 2023 and are in accordance with the approved plans pursuant to planning permission ref: 2019/0910/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 2019/0910/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) and condition 1 of the permission. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Conclusion

Recommendation: Grant Certificate.