

Delegated Report		Analysis sheet	Expiry Date:	15/11/2023
		N/A	Consultation Expiry Date:	N/A
Officer			Application Number(s)	
Sofie Fieldsend			2023/3928/P	
Application Address			Drawing Numbers	
5-6 Park End London NW3 2SE			Refer to Draft Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Commencement of development in accordance with Condition 1 of planning permission ref. 2020/5542/P (dated 2 February 2021) for 'Erection of extension to front first floor balcony and removal of external staircase. Erection of front bin store and cycle stand'.				
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 is a two-storey mid terrace dwelling. While not listed, it is located in the South Hill Park Conservation Area and within the Hampstead Neighbourhood Plan area.

Relevant History

2020/5542/P – Erection of extension to front first floor balcony and removal of external staircase. Erection of front bin store and cycle stand. **Granted 02/02/2021**

Assessment

Background

The certificate seeks to demonstrate that on the balance of probability that planning permission ref: 2020/5542/P (dated 2nd February 2021), was implemented in line with the attached conditions and the definitions of development outlined within the Town and Country Planning Act 1990. They therefore seek to confirm that the permission remains extant and that the carrying out of the balance of the operational works permitted would therefore not require further express consent. This permission is extant and would expire on the 2nd of February 2024 if the scheme had not been implemented.

To satisfy the above, the applicant is required to demonstrate, on balance of probability that the permission was implemented in line with its conditions, prior to the expiry date of the planning permission 2020/5542/P dated 2nd February 2021.

Applicant's Evidence

1. Consented proposed drawings
2. Drawings as built of the bin store
3. Cover letter containing date of installation and invoice for bin store and installation
4. Photos of the installation of the bin store.

Council's Evidence

It is noted that the application had no pre-commencement conditions or obligations required to be discharged prior to the commencement of the works. The permission also had no condition attached requiring the development to be built out at the same time. It is therefore accepted that the applicant had no outstanding pre-commencement requirements and would have been able to lawfully implement their permission.

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 application was submitted on the 20th of September 2023 accompanied by the applicant's evidence listed above.

The submission outlines that implementation works at the site commenced on the 1st of September 2023 and comprised of installation of the proposed front bin store.

Section 56 (2) of the Town and Country Planning Act 1990 outlines that:

"For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out".

Section 56 (4) further clarifies that in subsection (2) "material operation means-

- (a) any work of construction in the course of the erection of a building;
- (aa) any work of demolition of a building;
- (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
- (d) any operation in the course of laying out or constructing a road or part of a road;
- (e) any change in the use of any land which constitutes material development."

The evidence submitted demonstrates that the installation of the proposed front bin store, as per planning permission 2020/5542/P (dated 2nd February 2021), commenced within the 3-year time period pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

As such, it is considered that the works constitute a material operation as defined in The Town and Country Planning Act 1990 as amended and are in connection with the implementation of the approved permission.

Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Conclusion

Recommendation: Grant Certificate.