

<b>LDC (Existing) Report</b>	<b>Application number</b>	2023/5181/P
<b>Officer</b>	<b>Expiry date</b>	
Tony Young	05/03/2024	
<b>Application Address</b>	<b>Authorised Officer Signature</b>	
22 Holmes Road London NW5 3AB		
<b>Conservation Area</b>	<b>Article 4</b>	
No	Yes (basements / Class E to C3)	
<b>Proposal</b>		
Commencement of works in accordance with condition 1 (within three years from date of planning permission 2019/2823/P dated 07/12/2020), for the demolition of former studio building and existing side and rear extensions to 22 Holmes Road. Erection of 2 storey (with basement), 2 bedroom dwelling between no.22 and no.24, and 2 x 2 storey (with basement) 2 bedroom dwellings to rear of site with associated private amenity space and refuse/cycle storage. Erection of new 2 storey extension to rear of no.22.		
<b>Recommendation:</b>	<b>Grant Certificate of Lawfulness</b>	

Planning permission (2019/2823/P) was granted on 07/12/2020 subject to a Section 106 Legal Agreement and a number of conditions. The approved scheme is for the demolition of former studio building and existing side and rear extensions to 22 Holmes Road. Erection of 2 storey (with basement), 2 bedroom dwelling between no.22 and no.24, and 2 x 2 storey (with basement) 2 bedroom dwellings to rear of site with associated private amenity space and refuse/cycle storage. Erection of new 2 storey extension to rear of no.22.

The certificate seeks to establish that works to implement the approved scheme commenced before the permission expired on 07/12/2023, and that the implementation of the scheme is therefore lawful and such development can continue as approved under this permission.

### **Applicant's Evidence**

The applicant has submitted the following information in support of the application:

- Invoice from 'Robert's 21st Century Design Ltd.' (main contractor) dated 30/11/2023, confirming cost of site set up (hoarding fence erection) and commencement of demolition works;
- Photographs of the original building (pre-existing and following demolition), showing erection of hoarding and demolition works carried out between 29/11/2023 and 30/11/2023 (date stamped);
- Section 106 Acknowledgement Notice (ref: S08681-LP19797) dated 18/10/2023, confirming payment of various covenant contributions payments (clauses 4.1, 4.2(b), 4.4.1(i) & 4.5.1) in regard to the Section106 agreement dated 07/12/2020 for planning application 2019/2823/P;
- Various Discharge Notices, confirming the discharge of covenants under the Section106 agreement dated 07/12/2020 for planning application 2019/2823/P:

- Section 106 Discharge Notice (clauses 4.1, 4.2(b), 4.4.1(i) & 4.5.1) dated 18/10/2023
- Section 106 Discharge Notice (clause 4.2.1(a)) dated 17/11/2023
- Section 106 Discharge Notice (clause 4.4.1(ii)) dated 22/11/2023
- Section 106 Discharge Notice (clause 5.1) dated 28/11/2023

The applicant has also submitted the following plan:

- Site location plan (unnumbered), showing the boundary of the site outlined in red

### **Council's Evidence**

There are a number of pre-commencement conditions attached to the approval (2019/2823/P) which require details to be submitted and discharged prior to the commencement of works at the application site. These are:

- Condition 6 (energy strategy)
- Condition 10 (appointment of engineer)

Both conditions are confirmed as having been discharged under approval of details application (2023/4847/P) dated 29/11/2023, prior to the expiration of planning permission on 07/12/2023 as set out in Condition 1 of the relevant approval.

An associated Section 106 (S106) Legal Agreement has a number of planning obligations which are also required to be satisfied on or prior to implementation of the planning permission (2019/2823/P). The Council's Planning Obligations Team have confirmed that all relevant planning obligations have been satisfied and discharged in advance of any works taking place and prior to the expiration of planning permission on 07/12/2023 as set out in Condition 1 of the relevant approval.

In light of the fact that all relevant pre-commencement planning conditions and implementation obligations have been fully discharged, the opportunity is therefore provided under planning permission (2019/2823/P) for works to commence.

### **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 (National Planning Practice guidance). 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.

Section 56 (2) of the Town and Country Planning Act 1990 states 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.*

Evidence provided in the application submission confirms that the owner provided written notice to the Council of the date that implementation of the development would take place as required under Clause 5.1 of the Section 106 Legal Agreement associated with planning permission (2019/2823/P). On that basis, a Section 106 Discharge Notice was issued by the Council dated 28/11/2023 in regard to the written notice provided by the owner.

Following this, works commenced on 29/11/2023 consistent with the planning approval. Photographs (date stamped) provided in the application submission show the original building before and after commencement works, and indicate that a brick side extension to no.22 was demolished and a site hoarding erected to facilitate further site operations. These works were completed on 30/11/2023, and as such, prior to the expiration of planning permission on 07/12/2023 as set out in Condition 1 of the relevant approval.

Having reviewed the application submission, therefore, the evidence provided by the applicant is considered sufficient to demonstrate that the relevant works commenced in a timely fashion, consistent with the approved permission, and do constitute a '*material operation*' as defined in Section 56 of the Town and Country Planning Act 1990 (as amended).

## **Conclusion**

Overall therefore, the information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate '*on the balance of probability*' that the works constitute a material start and commenced prior to the expiry of 3 years in compliance with Condition 1 of the relevant planning permission (2019/2823/P). The Council's evidence does not contradict or undermine the applicant's version of events.

As such, the implementation of the scheme would be lawful, and any work approved under the relevant permission and yet to commence can be completed at any time in the future.

On that basis, it is therefore recommended that a Certificate of Lawfulness can be issued.

**Recommendation:** Grant Certificate of Lawfulness