

LDC (Existing) Report		Application number	2023/4732/P
Officer		Expiry date	
Fast Track Team – Geri Gohin		13/02/2024	
Application Address		Authorised Officer Signature	
104 West End Lane London NW6 2LS			
Conservation Area		Article 4	
South Hampstead		Basements Land Use	
Proposal			
Rear two storey extension and rear external flue.			
Recommendation:		Grant lawful development certificate.	

Site description

The application site refers to a 2.5 storey building on West End Lane comprising of a lower ground, ground, first and second floors. The building contains a two-storey extension to the rear of the building at ground and lower ground floors as well as an external flue which extends from the ground floor to the second floor and is the subject of the current application.

The site is located within the South Hampstead Conservation Area however it is not listed.

Proposal

The applicant is required to demonstrate, on balance of probability, that the two-storey extension and the external flue have existed for a period of 4 or more years.

Planning History

2023/4726/P – Use as a hot food takeaway (Sui Generis). Currently under consideration

2007/0426/P - (104 West End Lane & 198a Broadhurst Gardens) - Variation of condition 2 of planning permission granted on 17/12/06 (2006/3481/P) for use of the premises as Class A4 (Drinking Establishment), to permit staff on the premises until 0200 Monday to Saturday and Sundays preceding a Bank Holiday. Granted 23/03/2007

2006/3481/P - (104 West End Lane & 198a Broadhurst Gardens) - Use of the premises as Class A4 (Drinking Establishment), as a revision to unimplemented planning permission granted 12/06/06 (reference 2006/0496/P) for change of use of 198A Broadhurst Gardens from workshop (Class B1) and 104 West End Lane from retail

(Class A1) with ancillary office space above to restaurant (Class A3), with external alterations. Granted 07/12/2006

2006/0496/P - (104 West End Lane & 198a Broadhurst Gardens) - Change of use of 198A Broadhurst Gardens from Class B1 (Workshop) to Class A3 (Restaurant) and change of use of 104 West End Lane from Class A1 (Retail) to Class A3 (Restaurant) with ancillary office space above, plus external alterations including the provision of a new shopfront, erection of a glazed link between the two buildings, erection of a steel gate with canopy on the Broadhurst Gardens elevation, and the installation of various ventilation and extraction equipment. Granted 12/06/2006

9401072 - The installation of a new shopfront. Granted 13/10/1994

16978 - Alteration to the shopfront. Permission 14/10/1973

Enforcement history

EN16/1126, EN16/1127, EN16/1128, EN16/1129 & EN16/0130 – Estate agents boards. Cases closed as breach ceased 12/06/2017

EN13/1130 - Illuminated flashing sign. Case closed as breach ceased 20/12/2013

EN13/0308 - Building a kitchen in a shop. Case closed as no breach found 30/04/2013

EN11/0753 - Kebab restaurant operating until 6am in the morning. Case closed as duplicate complaint (EN11/0299) 14/10/2011

EN11/0299 – Two storey "lean-to" structure which it is advertising as a sheesha lounge. Case closed as immune from enforcement action 15/03/2013

EN10/0881 - Operating as cab station without planning permission. Failure to sign s106. Case closed as planning permission granted 13/12/2011

Applicant's evidence

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

- Statutory Declaration by Antony Spencer, joint owner of 104 West End Lane since 1990. His declaration states that the two storey extension was built around 2011 to 2012 and therefore for more than the last 10 years. This is accompanied by an aerial image dated 11th April 2020 and photographs taken in March 2023 and August 2023 as well as internal photographs dated 30 November 2012 and taken by the company's Head of Property at that time.
- Statutory Declaration by Anthony Green, joint owner of 104 West End Lane since 1990. His declaration states that the two storey extension was built around 2011 to 2012 and therefore for more than the last 10 years. This is accompanied by an aerial image dated 11th April 2020 and photographs taken in March 2023 and August 2023 as well as internal photographs dated 30 November 2012 and taken by the company's Head of Property at that time.

- Statutory Declaration by Robert Reifft, Commercial Estate Agent at Dutch and Dutch for the last 38 years. Dutch and Dutch were the estate agents responsible for the letting of the premises from 24th October 2018. Robert Reifft confirms that from his personal knowledge the rear extension has existed in its current form since at least 24th October 2018.
- Google Earth Screenshots from 11th April 2020 showing both the rear extension and the external flue.
- Photographs (x 2)
- Google Earth Screenshots dated June 2016, June 2017, December 2020 and June 2022.

The applicant has also submitted:

- Location Plan and Floor Plans
- Cover Letter and List of Appendices from hgh dated 1st November 2023

Council's evidence

An enforcement investigation was opened in March 2011 (references EN11/0299) alleging the construction of a two storey structure at the rear of 104 West End Lane (& 198a Broadhurst Gardens). At the time of the investigation, it was noted that there was also a ventilation duct at the rear. The case was closed as immune from enforcement action on 15th March 2013.

The aerial imagery from Blackburn Road in July 2008 also shows the external flue in place, thereby demonstrating its existence in excess of four years.

The evidence submitted demonstrates that on the balance of probability, the rear extension and external flue have been in existence for a period surpassing 4 years and the Council has no evidence to contradict this.

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 (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 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 development are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

Aerial imagery and photographs have been provided by the applicant showing the extension and external flue in place in November 2012 (extension) and June 2008 (flue).

As such both the applicant's evidence and that from the Council demonstrate the existence of the extension and external flue for in excess of four years.

There has been no enforcement action taken against the extension and external flue.

Therefore, the information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that "on the balance of probability" the rear extension and external flue have been in existence for a period of more than 4 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Recommendation: Approve