

LDC Report (Existing)	Application Number 2024/4400/P	
Officer Fast Track - Geri	Expiry Date 05/12/2024	
Application Address 25 John's Mews London WC1N 2NS	Authorised Officer Signature	
Conservation Area	Article 4	
Bloomsbury	Basements	
Proposal		
Confirmation that planning permission 2020/5883/P and listed building consent 2021/0122/L (dated 19/11/2021 and 22/11/2021) for 'erection of basement extension and installation of ventilation riser at roof level. Internal alterations' were lawfully implemented by the carrying out of material operations prior to the expiry of the permissions.		
Recommendation: Grant		
<p>The application site relates to a grade II listed two-storey red brick mews building constructed c. 1903, and erected by Henry Finch.</p> <p>The application building is located within the Bloomsbury Conservation Area.</p> <p>Planning permission was granted on 19th November 2021 (application ref. 2020/5883/P) for the 'erection of basement extension and installation of ventilation riser at roof level.'</p> <p>Listed building consent was granted on 22nd November 2021 (application ref. 2021/0122/L) for the 'erection of basement extension and installation of ventilation riser at roof level. Internal alterations.'</p> <p>This certificate of lawful development application seeks to demonstrate that works to implement planning permission 2020/5883/P and listed building consent 2021/0122/L have been undertaken.</p> <p>Applicant's Evidence</p> <p>The applicant purports that the application was implemented by a material start (installation of the ventilation riser within the first floor utility room, terminating at roof level) starting on 24th September 2024 in full compliance with the extant consents and has submitted the following evidence to demonstrate this:</p>		

- A Site Location Plan
- A copy of the decision letter for 2022/0428/P (Approval of Details application)
- A copy of the Section 106 Discharge Notice dated 26th June 2024 (clauses 4.2 (a), 4.1 (b) and 4.3)
- A copy of the Section 106 Discharge Notice dated 29th July 2024 (clause 4.2 (b))
- A copy of the Section 106 Discharge Notice dated 2nd August 2024 (clause 4.1 (a))
- A copy of the Section 106 Discharge Notice dated 26th September 2024 (clause 5.1)
- Site Implementation Works dated 10th October 2024 (x 4 pages) including date stamped photographs of completed works
- A Covering Letter from Savills dated 10th October 2024 (x 8 pages)

Assessment

Section 56(1) of the Town and Country Planning Act 1990 outlines that:

“Subject to the following provision of this section, for the purposes of this Act, development of land shall be taken to initiated:

- a) If the development consists of the carrying of operations at the time when those operations are begun.”

Section 56 (2) also outlines that:

“For the purposes of the provisions of this Part mentioned in subsection (3), development shall be taken to 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.”

Planning conditions

The 2021 Planning Permission was granted subject to 4 numbered conditions. Condition numbered 3 required details to be submitted and approved by the Council.

Condition 3 (basement engineer) (2022/0428/P) was granted on 16th March 2022.

The 2021 Listed Building Consent was granted subject to 3 numbered conditions. None of these conditions required details to be submitted and approved by the Council.

All of the conditions that were imposed on the planning consent 2020/5883/P and listed building consent 2021/0122/L which were required to be discharged prior to commencement of

development have been discharged and details of these applications have been provided.

The pre-commencement planning obligations, that were attached to the permission 2020/5883/P and secured by Section 106 legal agreement, have also been discharged.

The submission outlines that implementation works at the site commenced prior to the expiration of the original planning permission and listed building consent. Sufficient evidence of these works has been provided as above, demonstrating that the installation of the ventilation riser within the first floor utility room, terminating at roof level took place. The submitted evidence is to the satisfaction of planning officers that a material operation as defined in The Town and Country Planning Act 1990 was carried out, which implements the planning permission in question.

The Council considers that the works carried out and evidence listed above demonstrate the works to implement the planning permission 2020/5883/P and listed building consent 2021/0122/L have commenced.

Applicants submitted evidence

On the balance of probabilities, that the works relied upon in the application for the Lawful Development Certificate (specifically, the installation of the ventilation riser commencing on 24th September 2024) were carried out before 19th November 2024. The following evidence, taken as a whole, shows that it is more likely than not that the installation of the ventilation riser was carried out before 19th November 2024:

- (1) Stamped photographs dated 10th October 2024 showing the implemented ventilation riser within the utility room at first floor and roof levels.

Conclusion

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 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 information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the works have commenced before the application expired and the full implementation of the scheme would be lawful. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Recommendation: Grant Certificate of Lawfulness (Existing)