

<b>LDC (Existing) Report</b>		<b>Application number</b>	2024/5195/P
<b>Officer</b>		<b>Expiry date</b>	
Fast Track Team – Geri Gohin		20/01/2025	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
16 Eldon Grove London NW3 5PT			
<b>Conservation Area</b>		<b>Relevant article 4</b>	
Fitzjohns Netherhall		Basements	
<b>Proposal</b>			
Use of the property as a single dwellinghouse.			
<b>Recommendation:</b>		Grant Lawful Development Certificate	

## 1.0 Site Description

- 1.1 The application relates to the existing use of the property as a single dwelling house.
- 1.2 The building is not listed however it is located in the Fitzjohns Netherhall Conservation Area.

## 2.0 Proposal

- 2.1 The applicant is required to demonstrate, on balance of probabilities that the existing residential unit has existed and been in use as a single dwelling house (Class C3) for a period of 4 years or more such that the continued use would not require planning permission.

## 3.0 History

- 3.1 At the application site:

**2024/1855/P** - Details of tree protection measures pursuant to condition 5 of planning permission 2023/3443/P dated 5/02/2024 (for: Demolition and replacement of existing rear ground and first floor conservatories, new rooflights, alterations to rear fenestration, new front boundary treatment and air source heat pump in rear garden).  
**Still pending a decision**

**2024/1473/P** - Installation of 1 no. new rooflight and 1 no. replacement rooflight on side roofslope. **Granted 07/06/2024**

**2023/3443/P** - Demolition and replacement of existing rear ground and first floor conservatories, new rooflights, alterations to rear fenestration, new front boundary treatment and air source heat pump in rear garden. **Granted 05/02/2024**

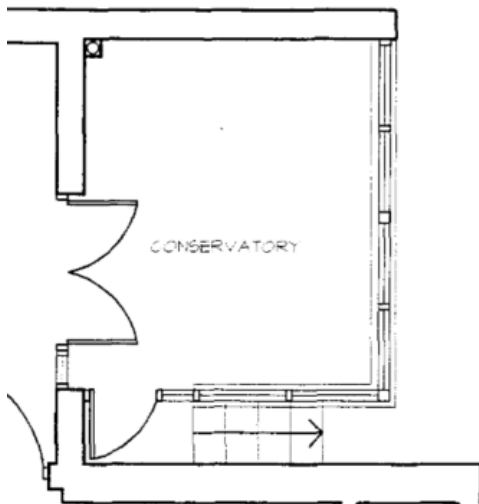
**2016/6999/P** - Replacement and enlargement of existing second floor conservatory

and terrace (Class C3). **Granted 03/02/2017**

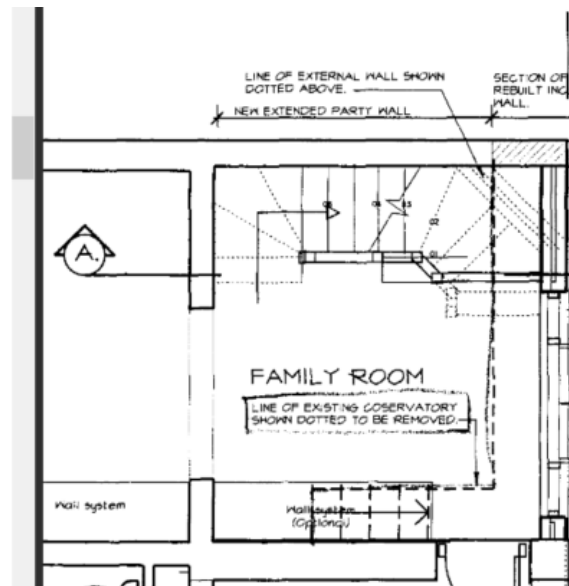
**PWX0302298/P** - The erection of a single storey rear extension at basement level with a roof terrace on its flat roof, the replacement of an approved two storey rear conservatory extension with an extension of a different design and the installation of two windows on the side elevation lower ground floor level. **Granted 22/12/2003**

The proposed basement plan indicates an internal staircase as part of the assessment of the planning application:

Existing Floor Plan



Proposed Floor Plan



**PWX0103404** - Enlargement of the basement flat and alterations to the side elevation. **Granted 06/08/2002**

**PWX0103403** - The erection of a full width, three-storey rear extension. **Refused 06/08/2002**

**PWX0002039** - The erection of a dormer on the rear roofslope and the insertion of a rooflight in the side roofslope. **Refused 07/03/2000**

**PW9902727** - The change of use from three to two self contained units, the replacement of a conservatory at basement level with a two storey glazed extension, the installation of 3 new windows at rear basement level, the installation of French doors, timber decking and staircase to the rear garden from the ground floor kitchen and the installation of a roof light in the rear part of the roof. **Granted 14/02/2000**

**9005720** - The erection of a conservatory at rear basement level and the erection of a porch on the side passage. **Granted 08/10/1991**

**CTP/F7/4/11/29085** Construction of roof terrace on existing ground floor rear extension and erection of conservatory. **Permission 01/11/1979**

The applicant who is the freeholder for the property has submitted the following information in support of the application:

#### 4.1 Sworn Addidavits

- Ms Olga Borovskikh dated 22.11.2024
- Mr Alexander Migita dated 22.11.2024

#### 4.2 Utility Bills

- Council Tax bill dated 07/03/2023 (for the period of 01/04/2023 to 01/01/2024) addressed to Mrs O Borovskign and Mr A Migita to 16 Eldon Grove
- Thames Water bill dated 30 May 2023 (for the period of 1 February 2023 to 26 May 2023) addressed to Mrs Olga Borovskikh to 16 Eldon Grove
- Ovo energy bill dated 14<sup>th</sup> November 2024 (for the period of 15<sup>th</sup> October – 14<sup>th</sup> November 2023) addressed to Mrs Olga Borovskikh to 16 Eldon Grove
- Ovo energy bill dated 14<sup>th</sup> November 2024 (for the period of 15<sup>th</sup> July – 14<sup>th</sup> August 2024) addressed to Mrs Olga Borovskikh to 16 Eldon Grove

#### 4.3 The applicant has also submitted the following plans/documents:

- A site location plan outlining the application site
- Approved plans (x 15 pages) submitted as part of the planning application granted on 5<sup>th</sup> February 2024 (2023/3443/P)
- Existing Ground Floor Plan - DKR01-GC-ZZ-GF-DP-A-100
- Existing Lower Ground Plan - DKR01-GC-ZZ-LG-DP-A-100
- Covering Letter dated 22 November 2024 (x 4 pages)
- Photographs (x 2 pages)
- Details from Rightmove which show that the property was sold as a house and has been a single house since at least 1999.

#### 5.0 **Council's Evidence**

##### 5.1 Council Tax & Business Rates

Council tax liability has been confirmed via the Valuation Office Agency (VOA) website. This shows that the property was split up from one dwelling to two dwellings (Flat Lower Ground Floor and House excluding basement) on 31<sup>st</sup> January 2023. Both dwellings are in the names of Mr Migita and Ms Borovskikh:

[FLAT LOWER GND FLR 16 ELDON GROVE, London, NW3 5PT](#)

G

[Camden](#)

[HOUSE EXCL BST 16 ELDON GROVE, London, NW3 5PT](#)

H

[Camden](#)

Property information for

**FLAT LOWER GND FLR 16, ELDON GROVE, LONDON, NW3 5PT**

Property information for

**HOUSE EXCL BST 16, ELDON GROVE, LONDON, NW3 5PT**

Local Authority [Camden](#)

Local authority reference number 5203325

Council Tax band G

Improvement indicator No

With effect from 31 January 2023

Mixed-use property No

Court code None

Local Authority [Camden](#)

Local authority reference number 5203324

Council Tax band H

Improvement indicator No

With effect from 31 January 2023

Mixed-use property No

Court code None

- 5.2** No application by the owners of the house was made at the time (31<sup>st</sup> January 2023). The property was being refurbished and following a Council Tax inspection in January 2023, it was noted that the property was empty/unfurnished. Council Tax decided to split the dwelling into two (Lower Ground Floor, 16 Eldon Grove and House excluding Basement, 16 Eldon Grove). This appears to be the only counter evidence however it is believed that as works were ongoing at the time of the inspection in January 2023, it may not have been possible to inspect the internal staircase. The evidence before us is leading us to believe that the stairs were there prior to the inspection and are likely to have been there for more than 4 years. This is consistent with the proposed floor plan submitted as part of the planning application (PWX0302298/P) that was granted on 22<sup>nd</sup> December 2003 (see above planning history and floor plans).

**5.3** Electoral Register

The Electoral Register confirms that there are no records of any former electors for either Lower Ground, 16 Eldon Grove or House excluding Basement, 16 Eldon Grove from March 2020 to October/November 2024.

## **6.0 Assessment**

- 6.1** 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.
- 6.2** The applicant has provided evidence to demonstrate that they have been in occupation of the property in its entirety and have used the property as self-contained family dwelling since January 2023. The property has been in use solely by Mr Migita and Ms Borovskikh since they moved there.
- 6.3** Whilst Council Tax records are a useful indicator, they are not proof of the way in which the property has been operating and other factors must be taken into consideration. The Council Tax inspection was undertaken when building works were taking place at the property which could have resulted in them not being able to fully inspect the property. This, along with other evidence from a planning application granted in 2003 (reference: PWX0302298/P) which shows an internal staircase connecting the ground and lower ground floors, suggests that on the balance of probability the property has been in use as a single-family dwelling house for a period of more than 4 years.

## **7.0 Conclusion**

- 7.1** The Council does not have any evidence to contradict or undermine the applicant’s version of events.
- 7.2** The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the property has existed and been in residential use as a single-family dwelling house for a period of more than 4 years or more as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.
- 7.3** Grant Certificate of Existing Lawful Development.