

LDC (Existing) Report	Application number	2025/0437/P
Officer	Expiry date	
Tony Young	28/03/2025	
Application Address	Authorised Officer Signature	
2 Frognal Close London NW3 6YB		
Conservation Area	Article 4	
Redington Frognal	Yes (basements)	
Proposal		
Commencement of works in accordance with condition 1 (within three years from date of permission) of planning permission (2018/4241/P) and with condition 1 (within three years from date of consent) of listed building consent (2018/3040/L), both dated 26/03/2019, for the erection of a single storey rear extension to the rear of the existing garages to provide a garden room/workshop, replacement of rear and side boundary fence treatment, replacement of garage doors on the garage, replacement patio doors on the ground floor rear elevation, installation of timber decking to the rear of the main building, internal alterations to the first floor bathroom, and external repairs and cleaning of walls and roofs.		
Recommendation:	Grant Certificate of Lawfulness	

Planning permission (2018/4241/P) and listed building consent (2018/3040/L) were approved dated 26/03/2019 subject to a number of conditions. The approved scheme is for the erection of a single storey rear extension to the rear of the existing garages to provide a garden room/workshop, replacement of rear and side boundary fence treatment, replacement of garage doors on the garage, replacement patio doors on the ground floor rear elevation, installation of timber decking to the rear of the main building, internal alterations to the first floor bathroom, and external repairs and cleaning of walls and roofs.

The certificate seeks to establish that works to implement the approved scheme commenced before the relevant permission and consent both expired on 26/03/2022, and that the implementation of the scheme is therefore lawful and any outstanding works associated with such development can continue as approved under these approvals.

Applicant's Evidence

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

- Cover letter from Dunthorne Parker Architects (agent) dated 30/01/2025, in support of a lawful development certificate to confirm that the planning permission has been lawfully commenced and related commentary.
- Photographic record of works (from October 2021 to March 2022), showing works being carried out to create the consented terraces in October 2021 [construction photos] and the completed works by March 2022 [completed photos].

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 no pre-commencement conditions attached to the planning permission (2018/4241/P).

There is one pre-commencement condition attached to the listed building consent (2018/3040/L) which requires details to be submitted and discharged before the relevant part of the works is begun at the application site:

- *Condition 4 (sliding patio door details)*

Condition 4 is confirmed as having been discharged under approval of details application (2019/5894/L) dated 02/03/2020, prior to the expiration of listed building consent on 26/03/2022 as set out in Condition 1 of the relevant approval.

In light of the fact that any relevant pre-commencement conditions have been fully discharged, the opportunity is therefore provided under planning permission (2018/4241/P) and listed building consent (2018/3040/L) 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.*

Photographic evidence submitted in support of the application provides a record of works related to the relevant approvals. The photographs have been submitted in order to show works being carried out to create and construct the consented terraces in October 2021.

Additional photographs also indicate that these works were completed by March 2022, and as such, prior to the expiration of both the relevant planning permission and listed building consent on 26/03/2022 as set out in Condition 1 of each approval.

Having reviewed the application submission, therefore, the evidence provided by the applicant is considered by the Council to be sufficient to demonstrate that the relevant works commenced in a timely fashion, consistent with the relevant approvals, 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 both the relevant planning permission (2018/4241/P) and listed building consent (2018/3040/L). Furthermore, the Council has no evidence that contradicts or undermines the applicant's version of events.

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

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

Recommendation: Grant Certificate of Lawfulness