

LDC (Existing) Report		Application number	2014/0971/P
Officer		Expiry date	
Emily Marriott-Brittan		03/04/2014	
Application Address		Authorised Officer Signature	
3 Kidderpore Avenue London NW3 7SX			
Conservation Area		Article 4	
Yes (Redington Frogal)		No	
Proposal			
To establish that the demolition of the pool house was a lawful operation and forms part of the developments approved by conservation area consent 2009/5076/C (appeal reference: APP/X5210/E/10/2131297) and planning permission 2010/3432/P (appeal reference: APP/X5210/A/11/2166638).			
Recommendation:		Approve Certificate	

Proposal

To establish that the demolition of the pool house was a lawful operation and forms part of the developments approved by conservation area consent 2009/5076/C (appeal reference: APP/X5210/E/10/2131297) and planning permission 2010/3432/P (appeal reference: APP/X5210/A/11/2166638).

History

Conservation Area Consent – 2009/5076/C

CAC for the demolition of the pool house was granted on appeal on 14 December 2010. The inspector found that, irrespective of whether any development took place, the demolition would in no way harm the character and appearance of the CA. The application was therefore granted consent with the only condition requiring that the demolition took place within 3 years.

Planning Permission – 2010/3432/P

Planning Permission was granted on appeal on 30 April 2012 for “*the excavation of basement to provide additional residential accommodation including swimming pool and underground parking facilities to existing dwelling house (Class C3)*”. They have until 30 April 2015 to implement this permission to keep it alive.

Assessment

Permission is sought for a Certificate of Lawful Development to confirm that the works which have been carried out in relation to the conservation area consent (2009/5076/P) and the planning permission (2010/3432/P), namely the demolition of the pool house, were lawfully carried out and therefore the development approved by the planning permission (2010/3432/P) has been lawfully begun for the purposes of complying with Condition 1 of the appeal conditions (APP/X5210/A/11/2166638).

Planning permissions may be kept alive indefinitely (i.e. remain legally extant and capable of full implementation) if works or actions to implement them have commenced. Provision is made in Section 56 of the Town and Country Planning Act 1990 that development may be

taken as begun when a 'material operation' begins to be carried out.

Material operations are listed at section 56(b) as:

- “(a) any work of construction in the course of the erection of a building;
- (a) 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 out 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.”

Circular 10/97 explains that the burden of proof in applications under Section 192 of the Town and Country Planning Act 1990 lies firmly with the applicant. In support of the application various forms of evidence have been submitted by the applicant's agent including:

- Cover Letter dated 05/02/2014
- Location Plan
- Statutory declaration

Following the request of additional information from the officer the applicant also provided:

- Signed letter from the contractors Vascroft Contractors Ltd dated 31/03/2014

Circular 10.97 goes on to state that the relevant legal test to consider when evaluating the evidence 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 applicants' evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

The key points for consideration are:

- whether the demolition of the pool house was a lawful operation; and
- that the demolition of the pool house constitutes a material operation sufficient enough to consider that the planning permission 2010/3432/P has been lawfully implemented.

The evidence submitted by the contractor's state that the demolition of the pool house occurred on the 28/11/2013 and 07/12/2013 prior to the expiry of the conservation area consent on the 14/12/2013 this is also corroborated in a signed statutory declaration by the applicant on 10/01/2014. In addition a site visit by the officer confirmed that the pool house had been demolished. It is considered that the demolition of the pool house was lawful and carried out in accordance with the condition of the appeal (APP/X5210/E/10/2131297) that *‘the works hereby authorised shall be begun no later than 3 years from the date of this consent’*.

The appeal for the planning permission (APP/X5210/A/11/2166638) required that three conditions be met prior to any development taking place on site:

- **Condition (2) Discharge of hard and soft landscaping and details of planting**
An application for the discharge of condition 2 of the appeal was submitted to council (planning reference 2013/4708/P) and granted on 25/09/2013.

- **Condition (4) Discharge of tree protection measures**

An application for the discharge of condition 4 of the appeal was submitted to Council (planning reference: 2013/4708/P) and granted on 25/09/2013.

- **Condition (6) Discharge of sustainable urban drainage system**

An application for the discharge of condition 6 was submitted to Council (planning reference: 2013/3641/P) and granted on 05/08/2013.

The demolition of the pool house was carried out on the 28/11/2013 and 7/12/2013. The above conditions were all discharged before 28/11/2013 thus the relevant conditions were discharged prior to the demolition of the pool house taking place.

Whilst the original planning permission does not include the demolition of the pool house, it is considered that the demolition constitutes a 'material operation' which would be necessary for to begin the work: "*the excavation of basement to provide additional residential accommodation including swimming pool and underground parking facilities to existing dwelling house (Class C3)*". As such, it is considered that a Certificate of Lawful Development should be granted.

The applicant is reminded of the obligations of the S.106 Agreement dated 15/12/2011 in relation to the planning permission granted on appeal (APP/X5210/A/11/2166638). Any further works on site relating to the planning permission should not take place until such time as the relevant conditions have been discharged including:

- detailed basement construction plan
- payment of the Council Highways Contribution in full and submission to the Council Level Plans for approval
- approval of the Sustainability Plan by the Council

Recommendation: Grant Lawful Development Certificate