

LDC (Proposed) Report		Application number	2013/0794/P
Officer		Expiry date	
David Peres Da Costa		05/04/2013	
Application Address		Authorised Officer Signature	
Fitzroy Yard 29A Fitzroy Road London NW1 8TP			
Conservation Area		Article 4	
Yes		No	
Proposal			
Erection of gates at the entrance to Fitzroy Yard.			
Recommendation:		Refuse lawful development certificate.	

The application site comprises an unlisted private backland residential property in the Primrose Hill conservation area. A narrow alley leading off Fitzroy Road provides access and this alley is part of the site. The original building in Fitzroy Yard (no. 29A Fitzroy Road) was a 1960s purpose built studio/office with residential use on the first floor and planning permission was subsequently granted for a change of use to residential. The building fills the entire site to the rear of the block formed by Fitzroy Road, Chalcot Road, Manley Street and Primrose Hill Studios.

Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

The property is not subject to article 4 directions and the original planning permission (ref: 2005/0041/P) dated 20/05/2005 for alterations and extensions, and change of use of former offices and studio flat into a single residential dwelling did not include any conditions removing permitted development rights. These rights have also not been curtailed by subsequent amendments to the original permission (Ref: 2006/2146/P & 2009/4393/P). It is noted that retrospective planning permission (ref: 2011/6090/P) for the gates was refused on 26th March 2012 and that an enforcement notice has been issued in order to secure the removal of the gates.

Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) is subject to certain limits and conditions.

Development is not permitted by Class A if—

- a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level;
- b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed two metres above ground level;

- c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in sub-paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or
- d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

The proposed gates are 1.95m high and would be set back 6.8m from the roadway, (Fitzroy Road). They would be setback from the back edge of the footpath and the adjoining properties front boundary by 4.08m.

There is no definition of the term adjacent to the highway but it normally has the meaning of bordering or close to. A gate or wall may be some distance back provided that it is close enough to have the perceived function of forming a boundary between a highway and a property. It is considered that the proposed gates would be perceived by passers by as marking the boundary to the applicant's land. Although the gates would be 4.08m from the footpath, in visual terms the separation between the gates and the footpath would not be significant and when viewed from the footpath would be a prominent feature that visually formed the principal means of enclosure to the land beyond. It is therefore considered that the gates would be adjacent to the highway and therefore the relevant height limit which may not be exceeded is 1 metre above ground level.

Recommendation: Refuse lawful development certificate

The entrance gates are not permitted under Class A of Part 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) as they exceed one metre above ground level and are adjacent to a highway.

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