

<b>LDC Report</b>		08/11/2012	
<b>Officer</b>		<b>Application Number</b>	
Jenna Litherland		2012/4756/P	
<b>Application Address</b>		<b>Recommendation</b>	
7 Hilltop Road London NW6 2QA		Refuse	
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b>			
Re-erection of a single storey rear projection to match the original rear projection whilst maintaining the existing permitted development rights of the single family dwellinghouse (Class C3).			
<b>Assessment</b>			
<p><b>Site Description</b></p> <p>The application site is 7 Hilltop Road a 2-storey with dormer detached dwellinghouse, located on the east side of Hilltop Road, close to its junction with Sheriff Road.</p> <p>The dwellinghouse dates from the late 19<sup>th</sup>/ early 20<sup>th</sup> century and is finished in red brick and render to the front and brown brick to the rear.</p> <p>The property is not listed and is not located within a Conservation Area, it does, however, border South Hampstead Conservation Area to the rear.</p> <p><b>Planning History</b></p> <p><b>July 2008</b> <u>5 &amp; 7 Hilltop Road</u> Permission granted subject to Section 106 Agreement (signed 4<sup>th</sup> July 2008) for change of use from care home (Class C2) to two single family dwellings (Class C3). The S.106 Legal Agreement secured a lifetime homes requirement and car-free housing, ref. 2007/5375/P.</p> <p><b>September 2008</b> <u>5 &amp; 7 Hilltop Road</u> Details approved in for cycle storage area for 2 cycles and location/design of waste storage including recycled materials pursuant to conditions 2 and 3 of the permission granted subject to a Section 106 Legal Agreement on 4th July 2008 (ref: 2007/5375/P) for change of use from care home (Class C2) to provide two single family dwellings (Class C3) ref.. 2008/3673/P.</p> <p><b>September 2008</b> <u>5 &amp; 7 Hilltop Road</u> Planning permission <u>refused</u> for erection of two storey rear extensions to both dwellinghouses. The application was refused on grounds of excessive bulk and footprint at the rear; and harmful impact on outlook and daylight of neighbours on both sides. 2008/2409/P.</p> <p>Reasons for refusal:</p> <p><i>The proposed extensions would be excessively large and bulky on this site and would be detrimental to the setting of adjoining buildings, the character of the local townscape and the character of the</i></p>			

*adjacent Swiss Cottage Conservation Area. This would be contrary to policies S1/S2 (strategic policies) B1 (general design principles), B7 (Conservation Area) and B3 (Extensions and Alterations) of the 2006 Camden Unitary Development Plan.*

*The proposed extensions, by reason of their scale and excessive bulk, would result in a loss of daylight and outlook to neighbouring properties on either side to the detriment of their residential amenities. This would be contrary to policies S1/2 (strategic policies) and SD6 (neighbour amenity) of the 2006 Camden Unitary Development Plan.*

**December 2008** 5 Hilltop Road A Certificate of Lawful Use (Proposed) was granted for the erection of single-storey rear extension and enlargement of rear dormer windows at. 2008/4872/P.

**December 2008** 7 Hilltop Road A Certificate of Lawful Use (Proposed) was granted for erection of single-storey rear extension and enlargement of rear dormer windows, ref. 2008/5383/P.

**May 2009** 7 Hilltop Road A Certificate of Lawful Use (Proposed) was refused for additions and alterations to include single-storey side extensions and first floor rear extension to dwellinghouse, ref. 2009/1649/P.

**May 2009** 5 Hilltop Road A Certificate of Lawful Use (Proposed) was refused for additions and alterations to include single-storey side extensions and first floor rear extension to dwellinghouse, ref. 2009/1651/P.

**May 2011** 5 & 7 Hilltop Road Planning permission refused for erection of a single storey ground floor level flat-roofed rear extension to both dwellings, ref. 2011/0963/P.

Reason for refusal:

*The proposed extensions, by virtue of their excessive size and bulk would have a discordant and detrimental impact on the character, proportions and scale of the host buildings, the setting and the character and appearance of the adjacent South Hampstead Conservation Area.*

**September 2012** 5 Hilltop Road Certificate of lawful use (existing) submitted for the erection of single storey rear extension to single dwellinghouse (Class C3), ref. 2012/4757/P. This application is currently under consideration.

#### Enforcement History

**March 2009** 5 & 7 Hilltop Road Investigation opened into alleged works to the rear without planning consent in the form of a single storey extension. EN09/0136. It was alleged that full-width extensions projecting into the garden by 10m were under construction. An Enforcement Notice was issued.

**April 2010** An appeal against this notice was dismissed.

**June 2010** 5 Hilltop Road Investigation opened into alleged use as HMO, ref EN10/0578. No breach found.

#### **Consultations**

A site notice was displayed from 28/09/2012 until 19/10/2012 and 23 neighbours were notified by letter.

21 letter of objection have been received from the local residents as well as West Hampstead Gardens & Residents Association. Objections are on the following grounds:

- The application is seeking an existing use certificate for extension which no longer exists and has not existed for 3 ½ years. This is unacceptable.
- There is no existing user in place.
- No drawings have been submitted for the additional extension, over and above the replacement of what previously existed. This is unacceptable.

- Granting this would result in loss of green space.
- The proposal would harm the Conservation Area and neighbour amenity.
- The permitted development rights would be used to create a large extension which is totally out of keeping.

## **Proposal**

The application seeks a certificate of lawful development for the *existing use* of the pre 1948 projection which was demolished in 2009. The application also seeks a guarantee from the Council that once the projection has been replaced, the property will benefit from further Permitted Development rights for a rear extension under A.1(e) of Schedule 2, Part 1 of the General Permitted Development Order.

## **Assessment**

The applicant's evidence states that although the enforcement notice (reference EN09/0136) required the removal of the extended rebuilt extension it did not in law have the effect of removing the pre-existing entitlement to replace 'in a like for like form' the extensions in their original and un-extended form or the dwelling's entitlement to extend under permitted development rights. Officers do not agree with this point. The pre 1948 extension was demolished in 2009. Since the time that the rear projection was demolished the area, where the projection once stood, has been exposed, with no roof and unfinished walls. The use of the projection as class C3 (being part of the dwelling houses) had ceased by February 2009 when it was demolished. Likewise the operations no longer existed once the projection was demolished. It is therefore considered that any certificate for existing use (for the demolished rear projections) cannot therefore be granted.

Almost 4 years have passed since the projection was demolished. For some 12 months the property along with the adjacent property, No. 5 Hilltop Road, were the subject of enforcement notices and appeals to the planning inspectorate. However the Inspectorate's decision was released on 29 April 2010 and since that date there has been no attempt to rebuild the projections. The applicant considers that rebuilding the projection is part of one continued operational development. This is not considered to be the case. The case which the applicant quotes (1964 case of *Sainty v Minister of Housing*) is not considered to support the applicant's proposal. In this decision the judge states that it would be possible to remove a wall to put a damp course in and then re-erect it as this would be an improvement or alteration. This gives the impression of piecemeal improvements with the wall being removed and re-erected in a short period of time. In relation to the current application the fact remains that the projections were demolished almost 4 years ago and they cannot now be relied upon to assert PD rights for a further rear extension.

The applicant refers to Schedule 2, Class A of the GPDO which relates to the enlargement improvement or other alterations of a dwelling house. The applicant states that limitations include , for example A1(a), that the area of ground of the 'original dwellinghouse' does not count toward the ground included as the increased area and under A1(e) that the enlarged part of the dwelling shall not extend beyond the rear elevation of the 'original dwellinghouse' by more than 4 metres. This is not contested by officers, however, it is considered that the pre-existing projection cannot now be considered as part of the original dwellinghouse as this part of the house is no longer in existence.

As such it is recommended that the lawful development certificate is refused.

## **Recommendation: Refuse**

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