

LDC Report		16/01/2013
Officer		Application Number
Hilary Cuddy		2012/6252/P
Application Address		Recommendation
5-7 Buck Street London NW1 8NJ		Grant Certificate
1st Signature		2nd Signature (if refusal)
Proposal		
<p>To establish that commencement of material operations has begun on site pursuant to planning permission dated 28/01/2005 (ref: PEX0300061) for partial demolition of existing buildings and erection of a basement plus three/five storey mixed use development comprising flexible uses of retail (Class A1), restaurant (A3), office (B1) and Leisure & Entertainment (D2) at basement, ground and part first floor levels and 12 residential flats (2 x 1 bed, 8 x 2-bed, 1 x 3-bed and 1 x 4-bed) at part first, second, third and fourth floors behind retained facades of existing warehouse building.</p>		
Assessment		
<u>Planning History</u>		
<p>Planning permission granted on 28/01/2005 (Ref:PEX0300061) for the partial demolition of existing buildings and erection of a basement plus three/five storey mixed use development comprising flexible uses of retail (Class A1), restaurant (A3), office (B1) and Leisure & Entertainment (D2) at basement, ground and part first floor levels and 12 residential flats (2 x 1-bed, 8 x 2-bed, 1 x 3-bed and 1 x 4-bed) at part first, second, third and fourth floors behind retained facades of existing warehouse building.</p> <p>This establishes a number of principles in terms of the acceptability of a scheme at this location, although the decision was based on the previous UDP adopted in 2000.</p> <p>2008/5574/P-Demolition of existing building and erection of part 3, part 4 and part 5 storey building over two level basement to provide a mixed use development comprising of retail unit, restaurant, office, storage and leisure and entertainment and creation of seven residential flats (2 x 1-bedroom; 4 x 2-bedroom and 1 x 3-bedroom). WITHDRAWN 14/07/2009.</p>		
<u>Site Description</u>		
<p>The site forms a narrow plot fronting Buck Street. It is enclosed by Lawrence House, a three storey development to the north containing the Open University with private housing above; a two-storey residential apartment's development on Stuckley Place to the west; and the two storey nursery school and three storey depot to the west. The existing three storeys building on site is set back from Buck Street with an open fenced courtyard in front which allows clear views of the school house as well as the flank wall of Stuckley Place building, which houses the old Antique Fair sign denoting the previous use for the application site. The site is outside a conservation area; however, the northern boundary of Camden Town Conservation Area travels down the middle of Buck Street and the Regents Canal Conservation Area runs north to south along Kentish Town Road to the east.</p>		

The building is not listed and is not located within a Conservation Area.

Assessment

Permission is sought to establish that commencement of material operations has begun on site pursuant to planning permission dated 28/01/2005 (ref: PEX0300061). 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 erection 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 major 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:

- Evidence that a site visit was carried out by Albert Grant from Camden's Building Control on 18/10/2009 confirming that the underpinning works associated with the formation of a structural opening. A letter from Camden's Building Control has been provided confirming this visit along with the site visit electronic record completed by Albert Grant.
- A Service Management and Access Plan submitted to Camden on the 18th January 2010 and a letter of receipt confirming that clause 3.7.1 of the Section 106 Agreement is hereby discharged.
- Evidence in the form of a letter confirming that a Community Working Group was formed and in place from the commencement of the construction phase and the first meeting was held on the 14th October 2009 as required by Clause 4.1 of the section 106 Agreement.

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 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.

The Council does not have any evidence to contradict or undermine the applicant's version of events.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' that material operations had begun on site pursuant to planning permission dated 28/01/2005 (ref: PEX0300061) for partial demolition of existing buildings and erection of a basement plus three/five storey mixed use development comprising flexible uses of retail (Class A1), restaurant (A3), office (B1) and Leisure & Entertainment (D2) at basement, ground and part

first floor levels and 12 residential flats (2 x 1 bed, 8 x 2-bed, 1 x 3-bed and 1 x 4-bed) at part first, second, third and fourth floors behind retained facades of existing warehouse building prior to the five years from the date of the permission. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Recommendation: Approve

