

LDC Report		12/01/2016
Officer		Application Number
Tessa Craig		2015/6393/P
Application Address		Recommendation
43 Arkwright Road London NW3 6BJ		Grant Certificate of Lawfulness
1st Signature		2nd Signature (if refusal)
Proposal		
Erection of a basement with rear lightwells		
Assessment		
<p>The application site is located on the south side of Arkwright Road; it is a semi-detached three storey brick, single dwelling house. The building is not listed and is located in the Redington Froggnal Conservation Area.</p> <p>The application relates to an existing basement which was constructed without planning permission. The applicant is required to demonstrate, on balance of probability that the existing basement has existed for a period of 4 or more years.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application: Sworn affidavit from occupier of 41A Arkwright Road (who lived at 41A Arkwright Road between 2005-2011) dated 13 November 2015, stating the works were completed after the summer of 2006.</p> <p>The applicant has also submitted the following plans: Location Plan: 43AR_XP_GN_90; AR1- Knight Frank real-estate floor plans; AR2- Knight Frank real-estate photograph of rear garden showing basement rooflights.</p> <p>Council's Evidence</p> <p><u>Relevant History</u> PWX0302237- The erection of a single storey rear extension with lantern rooflight, and adjacent lean-to conservatory extension, for additional habitable room to the existing dwellinghouse. Granted, 21/08/2003.</p>		

A site visit to the property was undertaken on the 23rd October 2015. The officer was satisfied that the basement had been in place for some time. It would appear the basement was excavated during construction of rear extension approved under permission PWX0302237. Historic aerial photographs held by the Council show the rear rooflights associated with the basement from 2007 onwards. Images from 2006 appear to show the basement and rear extension works in construction. Therefore it can be concluded the basement has been excavated and in use since at least 2007 which would be over 4 years ago.

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’ the basement has existed for a period of more than 4 years as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Recommendation: Grant Certificate of Lawfulness