

<b>LDC (Existing) Report</b>		<b>Application Number:</b>	2017/2461/P
<b>Officer</b>		<b>Expiry date</b>	
Lisa McCann		01/09/2017	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
50 Well Walk London NW3 1BT		See decision notice	
<b>Conservation Area</b>		<b>Article 4</b>	
Yes		No	
<b>Proposal(s)</b>			
Commencement of works in relation to planning permission ref: 2011/3636/P dated 17/04/2014 for the creation of a new underground swimming pool with ancillary plant and gym rooms next to 8 East Heath Road, connected to the main building via a basement corridor link and in relation to listed building consent ref: 2011/3639/L dated 23/04/2014 for demolition of garage adjacent to 8 East Heath Road and creation of a new underground swimming pool with ancillary plant and gym rooms connected to the main building via a basement corridor link.			
<b>Recommendation:</b>		Grant Certificate of Lawfulness	
<b>Site Description</b>			
<p>The application site comprises a two-storey plus basement and attic detached house, known as Klippan House, at the corner of East Heath Road and Well Walk. In addition, one detached garage faces towards East Heath Road. Klippan House is Grade II listed and was built in 1881 in an Arts and Crafts style. The house has recently been refurbished and restored following previous permissions/consents to extend and alter (most relevant noted below) and to overcome problems of rising damp. For some time the building was lawfully subdivided into three flats, although planning permission has allowed a change of use to two flats and a recent certificate of lawfulness (existing) has been granted for the building as a single dwellinghouse (see relevant history).</p> <p>The detached garage dates from the 1920's with red brick walls and pitched tiled roofs, adjoining the neighbouring No. 8 East Heath Road. It is a neutral building in the context of their contribution to the character of the conservation area. Up until recently there was another garage to the south-west of the garage which remains. This was demolished as part of 2007/0683/C / APP/X5210/E/07/2059108 (see relevant history). The overall site has a large garden with gravel/hard surfacing fronting the house and around the garages and has two vehicular entrances off both roads.</p> <p>The property is located in the Hampstead Conservation Area. East Heath Road faces the Heath on its north-east side with large Edwardian mansion blocks opposite the site (The Pryors) and on its south-west side has typical Victorian four-five storey semi-detached houses adjoining the site. Well Walk has a variety of 19th century residential semi-detached properties in a tree-lined verdant setting. In the previous appeal the Inspector commented at paragraph 3 that "This corner position and the large garden around the house set it apart from neighbouring more closely spaced buildings. The garden, which includes a statuesque mature cedar tree, plays a key role in the pleasant leafy character of the conservation area".</p>			

## Relevant History

2011/3636/P - Renewal of planning permission allowed on appeal dated 10/11/2008 (Appeal ref: APP/X5210/A/08/2081611) (Planning ref: 2007/4759/P) for the creation of a new underground swimming pool with ancillary plant and gym rooms next to 8 East Heath Road, connected to the main building via a basement corridor link.

Granted 17/04/14

2011/3639/L - Renewal of listed building consent allowed on appeal dated 10/11/2008 (Appeal ref: APP/X5210/E/08/2081610) (Listed Building ref: 2007/4761/L) for demolition of garage adjacent to 8 East Heath Road and creation of a new underground swimming pool with ancillary plant and gym rooms connected to the main building via a basement corridor link.

Granted 23/04/2014

2011/3641/P - Renewal of planning permission granted on 26/05/2009 (ref. 2009/1621/P) for the erection of new single storey garage plus staircase link at rear to approved underground swimming pool (following the demolition of the 2 existing garages).

Granted 29/01/2014

2007/4759/P - Creation of a new underground swimming pool with ancillary plant and gym rooms next to 8 East Heath Road, connected to the main building via a basement corridor link.

Refused 26/03/2008.

Reason for refusal: The underground swimming pool, by virtue of its siting and design would fail to preserve or enhance the character and appearance of the Hampstead Conservation Area, and would be harmful to the setting of the listed building, contrary to policies B1 (General design principles), B3 (Alterations and extensions), B6 (Listed buildings) and B7 (Conservation areas) of the London Borough of Camden Replacement Unitary Development Plan 2006.

Appeal (APP/X5210/A/08/2081611) lodged (written representations procedure) and subsequently allowed on 10/11/2008.

2007/4761/L - Demolition of garage adjacent to 8 East Heath Road and creation of a new underground swimming pool with ancillary plant and gym rooms connected to the main building via a basement corridor link. Refused 26/03/2008.

Reason for refusal: The underground swimming pool, by virtue of its siting and design would be harmful to the setting of the listed building, contrary to policy B6 (Listed buildings) of the London Borough of Camden Replacement Unitary Development Plan 2006.

Appeal (APP/X5210/E/08/2081610) lodged (written representations procedure) and subsequently allowed on 10/11/2008.

2009/1621/P - Erection of new single storey garage plus staircase link at rear to approved underground swimming pool (following the demolition of the 2 existing garages). Granted 26/05/2009.

### Other relevant history at the application site

2009/3429/P - Details relating to archaeological investigation pursuant to condition 4 of planning permission ref 2007/4759/P granted on appeal on 10/11/2008 for the 'Creation of a new underground swimming pool with ancillary plant and gym rooms next to 8 East Heath Road, connected to the main building via a basement corridor link'.

Details granted 03/09/2009.

2007/0680/P - Change of use of Klippan House from 3 flats into a single dwelling house; replacement of 2 garages by erection of a new 2 storey and basement building facing East Heath Road,

comprising ground floor garage for main house, a 1st floor selfcontained 2 bedroom flat with access off East Heath Rd, and a new basement with swimming pool and ancillary accommodation connected to main house; new hard surfacing and alterations to entrances and boundary walls on both frontages. Refused 14/09/2007. Appeal APP/X5210/A/07/2059109 (considered at a Hearing) dismissed 13/06/2008.

2007/0682/L - Internal alterations associated with conversion of Klippan House from 3 flats into a single dwelling house, plus a basement link connected to a new 2 storey and basement building to replace the existing garages; new hard surfacing and alterations to entrances and boundary walls. Refused 14/09/2007. Appeal APP/X5210/E/07/2059107 (considered at a Hearing) dismissed 13/06/2008.

2007/0683/C - Demolition of two garages. Refused 14/09/2007. Appeal APP/X5210/E/07/2059108 (considered at a Hearing) allowed 13/06/2008.

2007/3832/P - The installation of two air conditioning units in acoustic enclosure in front garden area adjacent to Well Walk frontage for residential use. Refused 27/11/2007. Appeal APP/X5210/A/08/2065584 (considered at a Hearing) allowed 13/06/2008.

2007/4391/P & 2007/4409/L - Rebuilding of brick boundary walls fronting East Heath Road to include new railings; replacement of fencing with a brick wall along Well Walk, and rebuilding of the retaining wall on rear garden boundary with 48 Well Walk. Granted 13/11/2007.

2007/5092/P & 2007/4763/L - Change of use and works of conversion from three flats into two flats. Granted 07/12/2007.

2008/2167/P & 2008/2169/L - Erection of shed, gazebo and decked area within the rear garden, creation of raised embankment feature and pond, and replacement of timber fence adjoining 8 East Heath Road with new boundary wall. Granted 15/07/2008.

2013/1152/P - Use as a single dwelling house (Class C3). Certificate of Lawfulness (Existing) Granted 30/05/2013.

#### Tree applications:

2009/0570/T - DDD - (TPO Ref: 14H) FRONTING WELL WALK: 1 x Cherry - Fell to ground level - DDD. Approve Emergency Works (TPO) 12/03/2009.

2009/0571/T - (TPO Ref: 14H) SIDE GARDEN, ALONG THE BOUNDARY WITH 48 WELL WALK: 1 x Lime - Crown reduce by 20% and reduce back from adjacent property. Approve Works (TPO) 23/03/2009.

2009/0572/T - SIDE GARDEN, ALONG BOUNDARY WITH 48 WELL WALK: 2 x Holly - Crown reduce by 20%. 1 x Elder - Fell to ground level. No objection 12/03/2009.

2009/3937/T - DDD - FRONT GARDEN, ON THE CORNER OF EAST HEATH ROAD: 1 x Oak - Remove - DDD. No Objection to Emergency Works (CA) 09/09/2009.

2012/2108/T - (TPO Ref: 14H) REAR GARDEN: 1 x Lime - Reduce the crown by 20% and thin the lateral branches by 20%. Approve Works (TPO) 11/05/2012.

## Assessment

### 1 Proposal

The applicant has submitted a certificate of lawfulness stating that works were carried out in the process of implementing the approved scheme before the permission (Ref. 2011/3636/P) expired on 17<sup>th</sup> April 2017 and before listed building consent (Ref. 2011/3639/L) expired on 23<sup>rd</sup> April 2017 and therefore the permission can be lawfully implemented.

### 2 Evidence submitted

- Cover Letter
- Letter from Shore Engineering Chartered Building Surveyors confirming photographic evidence of implemented works dated 29.11.2016.
- Existing and proposed approved plans
- Copy of decision notice for application reference 2016/2122/P
- Copy of decision notice for application reference 2016/3636/P
- Managing Director of TE Design and Build Limited Statutory declaration
- Site Location Plan
- Photographs of implemented works dated 29.11.2016.
- Application reference 2011/3636/P Section 106 Discharge notice
- Letter from Belsize architects confirming intended date for implementing works by 21.11.2016.
- TE Design and Build Sales invoice for building works dated 19.01.2017

### 3 Assessment

A site inspection on 14.08.2017 confirmed that a significantly sized hole was dug on the eastern side of the application site and covered with gravel. Under s56 of the Town and Country Planning Act 1990, development is to be taken to have commenced at the earliest date on which any “material operation” comprised in the development begins to be carried out. The photos submitted which indicate the commenced digging and piling works are considered to be such material operations. The photos also indicate that the hole dug was a significant size. Thus such works would indicate that the development has commenced.

The applicant has submitted a statutory declaration from the managing Director of TE Design and Build limited attesting that preparation and set up of the site for basement works including foundation excavation, piling and sheet piling of foundations for basement structure were carried out in November 2016. An invoice dated 19.01.2017 from the same company indicates that building works were carried out on site. Thus, on the balance of probability, and with no evidence to suggest otherwise, it is considered that the works took place before the application expires.

As well as material operations, case law has shown that any work must be related to the proposed development. It is considered that the implemented works are related to the development in that the gravel can be removed to recommence building works.

As such, it is considered, based on the evidence submitted, that the development commenced before planning permission and listed building consent expired, and therefore the development can be further implemented.

### 4 Recommendation: Grant Certificate of Lawfulness