

LDC Report	27/10/2017
Officer	Application Number
John Diver	2017/4691/P
Application Address	Recommendation
34 Crediton Hill London NW6 1HP	Grant approval
1st Signature	2nd Signature (if refusal)
Proposal	
Confirmation of the implementation of operational works permitted by planning permission 2013/8243/P dated 20/08/2014 for the 'Basement excavation to extend existing basement level into front garden, two front lightwells with associated windows and grilles, and alterations to front boundary wall'	
Officers' Report:	
<p>1. <u>Application Site</u></p> <p>1.1. The application site relates to a 2 storey semi-detached single family dwelling house on the eastern side of Crediton Hill. The building has an existing recently completed basement extension to the rear half of the dwelling which extends under the rear garden. While the area is generally characterised by residential properties the land to the rear of the site is predominantly playing fields. The site is located in the West End Green Conservation Area and, while not listed, the building on the site is identified in the Conservation Area Statement as making a positive contribution to the character and appearance of the Conservation Area.</p> <p>1.2. There are no site specific Article 4 Directives which have been applied to remove permitted rights. There are no trees protected by tree preservation orders on or adjacent to the application site. The site is subject to a number of underground development constraints including Slope Stability and Subterranean (groundwater) flows.</p> <p>2. <u>Proposal</u></p> <p>2.1. The applicant seeks to confirm that the development permitted by Planning Permission 2013/8243/P dated 20 August 2014 was implemented in line with the attached conditions and the definitions of development outlined within the Town and Country Planning Act 1990. They therefore seek to confirm that the permission remains extant and that the carrying out of the balance of the operational works permitted would therefore not require further express consent.</p> <p>2.2. To satisfy the above, the applicant is required to demonstrate that, on balance of probability, the previous permission was implemented in line with any pre-commencement condition,</p>	

prior to three years before the date of the decision (20 August 2017).

3. Applicant's Evidence

3.1. The applicant has submitted the following information in support of the applications:

- Supporting Statement produced by Marek Wojciechowski Architects (dated 19/08/17)
- Site Location Plan;
- Decision Notice (2013/8243/P);
- Approved ground floor plan and street elevation;
- Decision Notices of pre-commencement condition number 5 (ref. 2015/2438/P);
- Structural engineer's appointment letter;
- Photographs of the site before works were carried out, and after works were completed;
- Works invoice from PJV Property Refurbishments (dated 31 July 2015)

4. Council's Evidence

Planning History

4.1. A summary of the relevant planning history for the property is given below:

2013/8243/P: Basement excavation to extend existing basement level into front garden, two front lightwells with associated windows and grilles, and alterations to front boundary wall. Granted 20/08/2017.

2015/2438/P - Details of appointment of qualified chartered engineer required by condition 5 of planning permission 2013/8243/P Granted 27/05/2015 (only pre-commencement condition attached)

2013/2943/P: Erection of new retaining wall, replacement of existing wooden fence with steel railings, and associated works to provide new hardwood timber decking and render to walls to house (Class C3) Granted 25/07/2013

2010/2835/P: Replacement of existing rear conservatory with single storey rear extension, to dwellinghouse (Class C3). Granted 18/06/2010

2010/0609/P: Replacement of existing rear conservatory with single storey rear extension, to dwellinghouse (Class C3). Refused 07/04/2010

Reasons for refusal:

- 1) *The proposed extension would include the cladding of its exterior with render to a property within a conservation area. The proposal therefore fails to comply with Class A.2(a)*

2010/0530/P: The excavation of a basement and replacement of a rear ground floor conservatory with a door opening onto a terrace overlooking a sunken garden accessed from the basement and via steps linking basement and ground floor levels, the installation of an obscure glazed window within the flank wall and replacement boundary brick wall and timber fence. Granted 16/03/2010.

2009/0205/P: Excavation of lower ground floor level with front lightwell and erection of single-storey rear extension to existing single-family dwellinghouse (following demolition

of existing rear glazed conservatory). Granted 09/02/2019

2009/4798/P: Additions and alterations including erection of single storey full width rear extension and excavation to create basement level, to dwelling house (Class C3) Refused 21/12/2009

Reasons for refusal:

- 1) *The proposed extension, basement level, and lightwell, by reason of their adverse cumulative impact and detailed design, would dominate the rear elevation, representing an incongruous addition to the detriment of the host building and failing to preserve or enhance the character of the conservation area contrary to policies*

Building Control Applications:

4.2. A summary of the planning history for the property is given below:

14/5/02650: Initial notice of approved inspectors served for the 'Extension to existing basement to create additional habitable space, internal alterations at ground floor and associated works to existing dwelling house'. Acceptance of AI issued on the 04/11/2016 (following 2013/8243/P)

10/1/0544: Building Notice served for the 'Demolition of existing rear conservatory and bay window, new Basement and internal/external works' Certificate Issued on the 02/02/2012 (following 2010/0530/P).

Other public records

4.3. Google 'Streetview' images taken in June 2012, July 2014, June 2015 and July 2016 indicated sequential alterations formed to the front boundary wall.

5. Discussion

5.1. 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.

5.2. As outlined in section 4, in 2014 planning permission (2013/8243/P) was granted for works described as "*Basement excavation to extend existing basement level into front garden, two front lightwells with associated windows and grilles, and alterations to front boundary wall*". This permission was subject to a single pre-commencement condition (details of appointed engineer). This single pre-commencement condition (5) was discharged in the May 2015 when the relevant approval of detail application (2015/2438/P) was granted. The Council's records also show that in November 2016, an application for Building Control consent for an Approved Building Inspector for these works was approved. As such, it is accepted that after this point the applicant had no outstanding pre-commencement requirements and would

have been able to lawfully implement their permission. Their ability to implement works was however time restricted by condition 1 of the permission which stipulated that the development permitted must be begun not later than the end of three years from the date of permission (i.e. before 20 August 2017).

- 5.3. In this instance the most pertinent issues remaining are therefore the extent of the development permitted under the 2014 permission (ref. 2013/8243/P); whether or not the development carried out on site constitutes the commencement of works in line with the condition attached to this permission and, if so, whether these were begun before 20 August 2017.
- 5.4. The applicant states that the above permission has been implemented on site by virtue of the commencement of works to alter the front boundary wall in line with the approved scheme (increase width of opening and replaced brick piers). The applicant reasons that the alterations formed to the front boundary wall were a) an integral element of the approved scheme; and b) enabling works in order to implement the rest of the development.
- 5.5. These alterations to front boundary wall would have required express planning permission (erections over 1m and adjacent to a highway are not permitted under the GPDO) and these works so would fall within the definition of development/building operation as specified by section 55 (1A) of the Town and Country Planning Act 1990 (as amended). The evidence submitted confirmed that the alterations made to the properties front boundary wall were shown on approved elevation and plan drawings and were specifically mentioned in the description of proposed development. It is therefore accepted that the works onsite did constitute development and were made in accordance with the plans approved under the previous application (2013/8243/P).
- 5.6. The evidence submitted in terms of photographs and the invoice for the completion of building works as well as that publicly available online (street view photography) corroborate the suggestion that the above works were completed circa July 2015. As no evidence has been found which might contradict this statement of events, it is considered that, on the balance of probability, these works described were completed on site prior to the 20 August 2017. The above assessment was made following input from the Council's legal and planning enforcement officers.

6. Conclusion

- 6.1. It is considered that the evidence submitted along with the Council's records are adequate to demonstrate that, on the balance of probability, the work completed on site did constitute development, that they were in accordance with the scheme permitted by Planning Permission 2013/8243/P and were begun onsite within three years of the date of the permission (20 August 2017). It is therefore confirmed that this development commenced in line with the attached conditions and the definitions of development outlined within the Town and Country Planning Act 1990 and therefore remains extant.

7. Recommendations:

- 7.1. Approve certificate of lawfulness**