

LDC Report	28/02/2018
Officer	Application Number
Tony Young	2017/6888/P
Application Address	Recommendation
Foley House 11 East Heath Road London NW3 1DA	Grant Certificate of Lawfulness (Existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Retention of 2-storey ancillary building for work/studio space in connection with main dwelling.	
Assessment	
<p>The application site includes the Grade II listed Foley House dating from c1771 with some later additions. The building sits within a large square plot of land located between the junctions of East Heath Road (to the north-east) with Well Road (to the north-west) and Well Walk (to the south-east). This part of East Heath Road winds up a hill (from south to north) and forms the boundary between Hampstead and Hampstead Heath.</p> <p>The main building is Grade II listed and the site sits within the Hampstead Conservation Area.</p> <p>This application relates to a 2-storey annexe building (aka 'The Treehouse') located in the western corner of the application site, fronting onto Well Road that provides a work/studio space for the occupiers of Foley House ancillary to the existing residential use of the main dwelling.</p> <p>Planning permission (2009/2777/P) was granted in 2010 for the "<i>Erection of a two storey ancillary building for works/studio space in connection with the main dwelling following the demolition of the existing garage.</i>" However, the building works were not carried out in accordance with the approved drawings.</p> <p>This application seeks to demonstrate that on the balance of probability the building works were substantially completed more than four years before the date of this current application such that their retention would not require planning permission.</p>	
Applicant's Evidence	
The applicant has submitted the following information in support of the application:	
<ul style="list-style-type: none"> Covering statement from Leith Planning Ltd (agent) dated December 2017 provided in support of the assertion that the building works were substantially completed in February 2012; Signed Statutory Declarations: Emma Beaugeard (Nick Mason Music Limited) dated 	

24/10/2017; Mr. Nick Mason (applicant) dated 23/10/2017; Annette Mason (occupier) dated 20/11/2017; Mr. Barry Liles (Buildline Construction Limited) dated 01/11/2017 – all declaring that the building works were substantially completed in February 2012;

- Certificate of completion of works from London Borough of Camden, Building Control service (ref. 10/2/1039) dated 02/02/2012 confirming that works were seen to have been completed on this date;
- EDF documents dated 17/05/2010 confirming intention to supply and install electrical meter in 2010;
- Invoices (various dates between 2010 and 2012) from Neil Foundation Services, Buildline Construction Limited, GPC, Westwood – Interior Design, System One Plumbing, Kerry Dean TV and Blueserve Facilities Limited in relation to building works during this period;
- British Gas acceptance form dated 24/08/2010 and detailing of works dated 27/09/2010 confirming works carried out;
- Insurance letter from Green Park Insurance Services dated 21/10/2011 confirming the addition of the 'Treehouse' building to the insurance cover with the main house;
- Approved decision notices with regard to planning permission and signed Section 106 Agreement (2009/2777/P) dated 31/03/2010, and with regard to discharge of condition 2 notice (2010/5249/P) dated 22/11/2010.

The applicant has also submitted the following plans:

- Unnumbered site location plan identifying the application site;
- Survey plans (as built) numbered (LXA-1367-)020-EX, 021-EX and 022-EX showing sections, elevations and floor plans of existing works.

Council's Evidence

The relevant historic planning records are as follows:

2010/5249/P - Submission of details pursuant to Condition 2 (Sample panel of materials) of planning permission dated 16/11/2009 (ref no 2009/2777/P) for the erection of two storey ancillary building for work/studio space in connection with main dwelling following demolition of existing garage. Granted Approval of Details 08/11/2010

2009/2777/P – Erection of two storey ancillary building for work/studio space in connection with main dwelling following demolition of existing garage. Granted Planning Permission 31/03/2010

2009/2780/C - Demolition of existing garage. Granted Conservation Area Consent 13/11/2009

9200280 - The erection of double garage on Well Road frontage and the erection of a new brick wall on the East Heath Road frontage. Granted Planning Permission 03/09/1992

9270062 - The erection of double garage on Well Road frontage and the erection of a new brick wall on East Heath Road frontage behind the existing railings. Granted Listed Building Consent 03/09/1992

A certificate of completion of works from the London Borough of Camden, Building Control service (ref. 10/2/1039) dated 02/02/2012 confirms that works were seen to have been completed on this date.

Valuation Office Agency (VOA) records show council tax banding details for residential use at both the main house and annexe since 29/05/2016.

Site visit

A site visit to the property was undertaken on 19/02/2018. The officer was satisfied that the building works seen on site were consistent with those shown on the submitted survey drawings and as described in the supporting documents.

Assessment

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 (Planning Practise Guidance para. 006), 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 documents provided and Council evidence demonstrate that the the building works were substantially completed more than four years before the date of this application and appear to have remained as such until the present time.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the building works were substantially completed more than four years before the date of this application as required under the Act. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Recommendation: Approve