

<b>LDC Report</b>		<b>Expiry date</b> 13/04/2018
<b>Officer</b> Lisa McCann		<b>Application Number</b> 2018/0852/P
<b>Application Address</b> 135-137 Whitfield Street London W1T 5EL		<b>Recommendation</b> Grant Certificate of Lawfulness
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
<p>Commencement of works in relation to planning permission ref M12/29/D/35161 and Listed building consent reference M12/29/D/HB3037 dated 25/04/1983 for the conversion of the third floor of 135 &amp; 137 Whitfield Street to form a two bedroom/3 person flat; and also in relation to planning permission ref M12/29/D/37095 and Listed building consent reference M12/29/D/HB3352 dated 22/02/1984 for works of alteration, conversion and extension at 135-137 Whitfield Street to provide 2 x flats on the first and second floors, including the erection of a first floor rear extension; the uniting of the restaurant use on the ground floor by breaches of the party wall; and the erection of a 2 storey extension at the rear to form an extension to the kitchen and store.</p>		
<b>Site Description</b>		
<p>The application site comprises a three storey plus basement level mid-terrace property on the western side of Whitfield Street. The subject property forms part of a group of grade II listed buildings within this terrace row (no.131 - 137) and is located in the Fitzroy Square Conservation Area. The use of the property is a restaurant at ground floor level (Class A3) and residential on the upper floors (Class C3).</p>		

## Relevant History

**M12/29/D/35161** – The conversion of the 3rd floor of 135 & 137 Whitfield Street,W1 to form a two bedroom/3 person flat.  
Granted 25/04/1983

**M12/29/D/HB3037** - The conversion of the third floor of 135 & 137 Whitfield Street,W1 to form a 2 bedroom/3 person flat.  
Granted 25/04/1983

**M12/29/D/37095** - Works of alteration, conversion and extension at 135/137 Whitfield Street, W1, to provide 2 flats on the first and second floors, including the erection of a first floor rear extension; the uniting of the restaurant use on the ground floor by breaches of the party wall; and the erection of 2 storey extension at the rear to form as extension to the kitchen and store, including the erection of a duct on the rear elevation of the building.  
Granted 22/02/1984

**M12/29/D/HB3352** - The conversion of the first and second floors into 2 flats, the construction of a bathroom extension an half landing level between ground and first floors and alterations and extension of the kitchen and alterations to the restaurant at 135/137 Whitfield Street, W1.  
Granted 22/02/1984

## 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 permissions (M12/29/D/35161 and M12/29/D/37095) and listed building consents (M12/29/D/HB3037 and M12/29/D/HB3352) expired on 25/04/1988 and 22/02/1989 and therefore the permission can be lawfully implemented.

### 2 Evidence submitted

- Location Plan 5001/01/LP01
- Site plan 5001/01/SP01
- Site photos 1 5002/01/PH01
- Site photos 2 5002/01/PH02
- Document reference 5005002P 180208 D&A&H MG1 including: Appendix 1.0 Approved listed building and planning application drawings
  - 1983 applications and decision notice - M12/29/D/35161 and M12/29/D/HB3037
  - 1984 applications and decision notice - M12/29/D/37095 and M12/29/D/HB3352
- Basement plan as existing 5002/00/01
- Ground floor plan as existing 5002/00/02
- First floor plan as existing 5002/00/03
- Second floor plan as existing 5002/00/04
- Third floor plan as existing 5002/00/01
- Contract for agreement for renovation grant works dated 23/10/1985

### **3 Assessment**

A site inspection on 23.05.2018 confirmed that the following internal demolition works and alterations have been carried out within the subject properties at no 135 and 137 Whitfield Street:

- Internal openings have been created to provide new doors on all floor levels of both properties
- A partition wall has been removed at ground floor level within the restaurant at no 137
- A previously existing door opening has been infilled on the first floor
- A new partition wall has been built on the second and third floor

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 site visit confirmed the alterations and demolition work outlined above as shown on the submitted plans and are considered to be such material operations. Thus such works would indicate that the development has commenced.

The applicant has also submitted a Contract for agreement for renovation grant works dated 23/10/1985 by a contractor named as Design Associates who agree that the restoration and improvements at no. 135-137 Whitfield Street would be carried out within 6-8 weeks from the contract date. 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 demolition works, internal alterations and new door openings were included on the historic approved plans outlined in the history section of the report.

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**