

<b>LDC (Proposed) Report</b>		<b>Application number</b>	2018/3407/P
<b>Officer</b>		<b>Expiry date</b>	
Tony Young		13/09/2018	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
Capo Di Monte Windmill Hill London NW3 6RJ			
<b>Conservation Area</b>		<b>Article 4</b>	
<b>Proposal</b>			
Commencement of works in accordance with condition 1 (within three years from date of permission) of planning permission (2014/6987/P) granted 14/08/2015 for change of use from two residential units to a single dwelling house, reconfigured rear extension, extension to existing basement and associated internal and external alterations, landscaping and parking; and as amended 2017/2417/P dated 17/05/2017 and 2017/4419/P dated 22/05/2018.			
<b>Recommendation:</b>		Grant Certificate of Lawfulness (Proposed)	

The approved scheme is for the change of use from two residential units to a single dwelling house, reconfigured rear extension, extension to existing basement and associated internal and external alterations, landscaping and parking.

Planning permission (2014/6987/P) was granted on 14/08/2015, and as amended 2017/2417/P dated 17/05/2017 and 2017/4419/P dated 22/05/2018.

The certificate seeks to establish that works to implement the approved scheme commenced before the permission expired on 14/08/2018, and that the implementation of the scheme is therefore lawful and such development can continue as approved under this permission.

### **Applicant's Evidence**

The applicant has submitted the following information in support of the application:

- Cover letter from Montagu Evans (ref.PD10346/TM/SS) dated 17/07/2018;
- Decision notice (ref: 2014/6987/P) granted 14/08/2015 (Appendix 1);
- Decision notice (ref: 2017/2417/P) granted 17/05/2017 (Appendix 2);
- Decision notice (ref: 2017/4419/P) granted 22/05/2018 (Appendix 3);
- High Court Judgement (ref:C1/2015/4066) dated 12/06/2017 (Appendix 4);
- Decision notice (ref: 2016/0293/P) granted 09/03/2016 (Appendix 5);
- Photograph of extension (Appendix 6);

- Deed of variation from Wheeler Group plc (dated November 2016) and associated building contract (Appendix 7);
- Various building contract invoices (between period 06/11/2015 - 10/05/2018) (Appendix 8);
- Extract from valuation report from Knight Frank (undertaken in 2018) (Appendix 9).

The applicant has also submitted the following plans:

- Site location plans outlining the application site (ref: 1249/S/00).

### **Council's Evidence**

There is one condition attached to planning permission (2014/6987/P) which required further details to be submitted and discharged prior to the commencement of any works:

- Condition 6 (Tree protection measures during construction work).

This condition was discharged on 09/03/2016 under approval reference 2016/0293/P and therefore provided the opportunity under the planning permission (2014/6987/P) for works to commence.

### **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 application was submitted on 18/07/2018 accompanied by the documents listed above by way of evidence in support of the assertion that planning permission was implemented in January 2016 following the commencement of works to facilitate the change of use and amalgamation of the two properties on the application site and the reconfigured rear extension; the material operations having commenced prior to the expiry of 3 years in compliance with Condition 1 of the planning permission.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that 'on the balance of probability' the works commenced before the planning permission (2014/6987/P) expired, and as such, the implementation of the scheme would be lawful, and any work approved under this permission and yet to commence can be completed at any time in the future. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

**Recommendation:** Grant Certificate of Lawfulness (Proposed)