

LDC Report		30/10/2018
Officer		Application Number
John Diver		2018/4258/P
Application Address		Recommendation
Radlett House Radlett Place London NW8 6BT		Granted
1st Signature		2nd Signature (if refusal)
Proposal		
Commencement of works on site in relation to planning applications (i) 2011/5102/P dated 30/03/2012 (basement extension to main house); (ii) 2010/6316/P dated 17/01/2011 (basement to pool house); and (iii) 2012/5607/P dated 24/12/2012 (erection of two storey outbuilding).		
Assessment		
<p>1. <u>Application Site</u></p> <p>1.1. The application site is located in the north-western corner of Radlett Place, on the south western edge of Primrose Hill. Radlett Place is a gated, privately owned cul-de-sac leading from the busy thoroughfare of Avenue Road. The site is enclosed by a large red brick wall as well as heavy vegetation to the North and West. The site hosts a three storey (including habitable rooms at roof level) detached single family dwellinghouse which was constructed approximately 10 years ago.</p> <p>1.2. The site is within the Elsworthy Road Conservation Area. The buildings are not listed, nor do they adjoin any listed buildings. Furthermore, they are not noted in the Conservation Area Statement as making a positive contribution to the Conservation Area. The site borders the designated Open Space of Primrose Hill park to the North.</p> <p>2. <u>Proposal</u></p> <p>2.1. The applicant seeks to confirm that the that development permitted under three separate planning applications have been implemented on site 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 these permissions remains extant and that the carrying out of the balance of the operational works permitted would therefore not require further express consent. The three relevant permissions are as follows:</p> <p>(i) 2011/5102/P: Granted conditional permission Subject to a Section 106 Legal Agreement for the <i>'Excavation of a basement beneath the main house with front and rear lightwells and a two-storey basement link under the garden between the house and the previously approved swimming pool outbuilding, and installation of air conditioning unit and enclosure in garden, all in association with</i></p>		

the use of the single family dwelling (Class C3)' on the 30/03/2012 (basement extension to main house);

(ii) **2010/6316/P:** Granted conditional permission for the '*Erection of a two storey plus basement out building and alteration to gate in association with existing residential dwelling (Class C3)*' on the 17/01/2011 (basement to pool house); and

(iii) **2012/5607/P:** Granted conditional permission for the '*Erection of a two storey outbuilding and a single storey front extension to the main house in connection with existing residential dwelling (Class C3)*' on the 24/12/2012 (erection of two storey outbuilding).

2.2. To satisfy the above, the applicant is required to demonstrate that, on balance of probability, the previous permissions have been implemented in line with any pre-commencement condition, prior to three years after the dates of the various decisions [(i – 30/03/2015), (ii – 17/01/2014) and (iii – 24/12/2015)].

3. Applicants evidence

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

3.2. (i) 2011/5102/P - Basement extension to main house:

- 1.1_Approval Notice – Granted 30/03/2012
- 1.2_Discharge Condition 4&10 – 2013 5026 P FINAL decision con 4 and 10
- 1.3_Discharge Condition 9 – 2013 4387 P FINAL decision con 9
- 1.4_Discharge Construction Management Plan – 2371 CMP discharge
- 1.5_Approved Drawings – EVJ_010 rev C, EVJ_011 rev D, EVJ_012 rev C
- 1.6_Works undertaken site plan – EVJ_010C mark-up
- 1.7_Works undertaken sketch plan – EVJ sk basement mark-up

3.3. (ii) 2010/6316/P - Basement to pool house:

- 2.1_Approval Notice – Granted 17/01/2011
- 2.2_Discharge Condition 3 – Approval Condition 3 Trees 040913
- 2.3_Approved Drawings – ECO_500D, 501C, 502C, 503C, 504C, 505A, 506A
- 2.4_Works undertaken sketch plan – ECO sk01 Pool+basement mark up

3.4. (iii) 2012/5607/P - Erection of two storey outbuilding / pool house:

- 3.1_Approval Notice – Granted 24/12/2012
- 3.2_Discharge Condition 5 – Approval Condition 5 040913
- 3.3_Prop Plans EZE 011A, Prop Elevs + Sects EZE 012A
- 3.4_Works undertaken site plan – EZE 011 A mark-up
- 3.5_Works undertaken sketch plan – EZE sk 01 2 Storey Pool mark-up

3.5. Further evidence relating to all three applications

- 4.1_Site photos – photographs recording works to foundations
- 4.2_Site diary – Contractor's site diary during period of works
- 4.3_Approved Inspector Letter – MLM approved inspector letter to client
- 4.4_Camden LA letter – Camden Building Control letter to MLM
- 4.5_Savills Letter – Letter to client from Savills confirming work undertaken
- 4.6_Phase 1 Foundation Design – Crofton's engineering foundation design
- 4.7_Phase 1 Foundation Calculation – Crofton's engineering foundation calculation
- 4.8_Phase 2 Foundation Design – CDS engineering design and calculation

4. Council's evidence

(1) Planning History

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

Planning applications for the erection of the dwellinghouse:

2004/5444/P: Erection of a 2-storey single-family dwelling house. Granted 18/04/2005.

2006/0210/P: Erection of a new part one, part two storey dwellinghouse, as an amendment to the planning permission granted (ref 2004/5446/P) for the erection of a new dwelling house. Granted 09/03/2006.

2006/1799/P: Erection of a new part one, part two storey dwellinghouse, as an amendment to the planning permission granted on 21/06/05 (ref 2004/5446/P) for the erection of a new dwelling house. Granted 26/05/2006

2007/1124/P: Alterations to chimneys, roof eaves, rooflight and fenestration, as amendments to planning permission dated 26.05.06 (2006/1799/P) for the erection of a new dwellinghouse. Granted 29/05/2007.

Planning applications for extensions/alterations (to newly built dwelling house):

2007/4249/P & 2007/4250/C: Demolition of existing swimming pool / pavilion building adjacent to Primrose Hill with a two storey building plus roof to accommodate a swimming pool. Granted 30/11/2007.

2008/3944/P: Erection of a two storey plus basement ancillary building including pool to the dwellinghouse, following the demolition of existing pool house. Granted 24/03/2009.

2009/1954/P: The erection of a single storey porch extension to the entrance and a colonnade along the side of the house. Granted 31/07/2009.

(ii) 2010/6316/P: Erection of a two storey plus basement out building and alteration to gate in association with existing residential dwelling (Class C3)." Granted 17/01/2011.

'Prior to commencement' conditions applied for submission of:

(3) Tree protection measures

(i) 2011/5102/P: "Excavation of a basement beneath the main house with front and rear lightwells and a two-storey basement link under the garden between the house and the previously approved swimming pool outbuilding, and installation of air conditioning unit and enclosure in garden, all in association with the use of the single family dwelling (Class C3)." Granted subject to s106 legal agreement 30/03/2012

'Prior to commencement' conditions applied for submission of:

(4) SuDS / site drainage details

(9) BREEAM design stage report

(10) Basement engineer appointment details

The legal agreement stipulated the following, prior to commencement:

- *Construction Management Plan*

(iii) 2012/5607/P: Erection of a two storey outbuilding and a single storey front extension to the main house in connection with existing residential dwelling (Class C3). Granted 24/12/2012.

'Prior to commencement' conditions applied for submission of:

(5) Tree protection measures

2016/4374/P: Alterations to rear roof slope of dwelling (C3) including the repositioning of rear dormers and installation of lift overrun with faux chimney stack to facilitate the installation of internal passenger lift. Granted 03/10/2016

2017/0716/P: Creation of a crown tiled roof / attic floor above two storey rear projection of dwelling (Use Class C3) including no.5 dormer windows and linked walkway to existing loft. Granted 08/05/2017.

Relevant approval of details applications

Pre commencement conditions for application (i) 2011/5102/P:

- Condition 9 (BREEAM) was discharged on the 16/07/2013 under AoD ref. 2013/4387/P
- Conditions 4 (SuDS) and 10 (Basement engineer) were discharged on the 10/09/2013 under AoD ref. 2013/5026/P

Pre commencement conditions for (ii) 2010/6316/P:

- Condition 3 (TP measures) was discharged on the 04/09/2013 under AoD ref. 2013/4737/P

Pre commencement conditions for application (iii) 2012/5607/P:

- Condition 5 (TP measures) was discharged on the 04/09/2013 under AoD ref. 2013/4736/P

Section 106 legal agreement submissions

For application 2011/5102/P, a Construction Management Plan was submitted to the Council in 2013. On the 15 October 2013, the LPA issued a letter to confirm that the received CMP was acceptable and thereby that this clause could be discharged.

(2) Building Control applications

4.2. A summary of the relevant building control records for the property is given below:

13/5/11193: Building notice served for the '*Retaining wall to New Basement, Outbuilding & Poolhouse*' with a commencement date of 16/10/2013. Acceptance of AI issued (following 2010/6316/P, 2011/5102/P and 2012/5607/P)

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. The evidence provided by the applicant as well as Council records demonstrate that all pre commencement requirements (conditions and s106 obligations) were fully discharged for each of the applications within the respective permission periods. The evidence submitted by the applicants contains specific details of appointment, responsibility and site diary for building contractors during the course of works to implement foundations, piling and retaining walls to allow for the erection of the cumulatively approved superstructures. The Council's Building Control records corroborate this evidence as a building control notice was approved for the '*Retaining wall to New Basement, Outbuilding & Poolhouse*', which directly relates to the works approved under the three applications.

- 5.3. Since circa 2013, works have not progressed further onsite and the approved, over ground structures are yet to be fully built out. Notwithstanding this, the evidence submitted confirms that works completed on site to the property's front garden areas were as shown on approved plans drawings and that these works 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). It is therefore accepted that the works onsite did constitute development and were made in accordance with the plans approved under the three previous applications (i, ii & iii).
- 5.4. The evidence submitted corroborate the suggestion that the above works were completed circa October 2013. This remained within the permitted time period for all three applications. As no evidence has been found which might contradict this statement of events, it is considered that, on the balance of probability, the works described were completed on site prior to each of the three permissions expiring. The above assessment was made following input from the Council's 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 works completed on site did constitute development,
 - were in accordance with the scheme permitted by planning applications (i) 2011/5102/P, (ii) 2010/6316/P and (iii) 2012/5607/P and
 - were begun onsite within three years of the date of these permissions [(i – 30/03/2015), (ii – 17/01/2014) and (iii – 24/12/2015)].
- 6.2. 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 these permissions remain extant.

7. Recommendation

- 7.1. **Approve certificate of lawfulness**