

LDC Report	27/09/2018	
Officer Obote Hope	Application Number 2018/3657/P	
Application Address Flat 1 27 Aberdare Gardens London NW6 3AJ	Recommendation Grant	
1st Signature	2nd Signature (if refusal)	
Proposal Confirmation of the implementation of operational works as permitted by planning permission 2015/0483/P dated 26/06/2015 associated with the excavation of a single storey basement level with front and rear lightwells, erection of single storey rear extension, and single storey outbuilding in rear garden.		
Assessment		
<p>1. <u>Application Site</u></p> <p>1.1 The application site relates to a three-storey property divided into 3 self-contained flats located on the north side of Aberdare Gardens. The building is not listed and is located in the South Hampstead Conservation Area. The host building is identified as making a positive contribution to the character and appearance of the Conservation Area.</p> <p>1.2 The host building is subjected to Article 4 Directives to remove permitted rights. There are four Lime trees protected by tree preservation orders on 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 2015/0483/P dated 26 June 2015 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 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 prior to three years after the date of the decision – by 26 June 2018.</p>		

3.0 Applicant's Evidence

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

- Appendix 1: Extant Decision Notice (2015/0483/P) dated 26 June 2015;
- Appendix 2: pre-commencement conditions numbers 4, 6, 8, 10;
- Appendix 3: JCT Building Contract signed on 05/06/2018;
- Appendix 4: Window Invoice no. 2429 from Dunbar Joinery dated 06 June 2018;
- Appendix 5: Photos of the works to the front elevation dated 18 June 2018 to 21st June 2018;
- Appendix 6: Email from Philip Mizon dated 22 June 2018;
- Implementation Report commissioned by MDC dated 26th June 2018;
- Site Location Plan ref 7393/19;
- Approved existing floor plans and elevation drawings ref; 7393/20
- Approved proposed floor plans and elevation drawings ref 7393/21;

3.2 The evidence submitted in support of the application as stated in the Planning implementation Report commission by Metropolitan Development and Consultancy, consist of:

1. The removal of the garage door and frame and erection of temporary hoarding internal to the garage;
2. The construction of a cavity wall from ground level;
3. Rendering the lower part of the wall and painting white to match the height and finish of the rendered plinth to the brickwork to the left and right of the garage doors;
4. Decorative works to the upper part of the new cavity wall to match the finish and materials of the brickwork to the remainder on the front elevation;
5. The formation of a masonry window sill painted white to match the existing window sills on the front elevation;
6. The installation of a timber box frame complete with two sash windows in a style to match as closely as possible the other sash windows, and;
7. All other decorating and making good.

4. Council's Evidence

Planning History

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

2015/0483/P: Excavation of a single storey basement level with front and rear lightwells, erection of single storey rear extension, and single storey outbuilding in rear garden. Granted on 26/06/2015 **subject to s106 legal agreement.**

2015/0798/P: Replacement of garage door with window at ground floor. Granted on 20/03/2015.

2017/4148/P: Details of chartered engineer as required by condition 6 of planning permission 2015/0483/P dated 26/06/2015 for the excavation of a single storey basement extension, single storey rear extension, and single storey rear outbuilding. Granted on 26/09/2017.

2017/4149/P: Details of cycle storage area as required by condition 8 of planning permission 2015/0483/P dated 26/06/2015 for the excavation of a single storey basement extension, single storey rear extension, and single storey rear outbuilding. Granted on 27/09/2017.

2017/4152/P: Details of tree protection measures as required by condition 10 of planning permission 2015/0483/P dated 26/06/2015 for the excavation of a single storey basement extension, single storey rear extension, and single storey rear outbuilding. Granted on 12/09/2017.

2017/4696/P: Details of sustainable urban drainage system as required by condition 4 of planning permission 2015/0483/P dated 26/06/2015 for the excavation of a single storey basement extension, single storey rear extension, and single storey rear outbuilding. Granted on 25/09/2017.

5. Assessment

5.1 Section 56, subsections 2 – 4, of the 1990 Act deal with the commencement of development (“the time that development is begun”). Section 56 (1) (a) states that development of land consisting of the carrying out of operations shall be taken to be initiated “at the time when those operations have begun”. Section 56 (2) explains, “development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.”

5.2 The meaning of “material operation” is set out in section 56(4) and includes:

- “(a) any work of construction in the course of the erection of a building;
- (aa) any work of demolition of a building;
- (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
- (d) any operation in the course of laying out or constructing a road or part of a road, and;
- (e) any change in the use of any land which constitutes material development.”

5.3 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.

5.4 The applicant’s claim that although the scheme was not fully implemented, works had commenced on site by way of the replacement of the existing garage door and the installation of sash windows with associated works as shown on the consented drawings under planning permission 2015/0483/P. As such, the applicants seek a certificate of lawfulness so that they can lawfully continue the implementation of the original planning permission.

6. Discussions

6.1 As outlined in section 4, in 2015 two planning permissions were granted planning permission. This included (2015/0483/P) for: excavation of a single storey basement level with front and rear lightwells, erection of single storey rear extension, and single storey outbuilding in rear garden subject to s106 Agreement. Whilst, the description of the development does not include alterations to the fenestration the proposed drawings show these changes and the officer's report summarised the works to the garage door as follows:

- *The existing garage at the front of the building will be converted into habitable space, this is considered acceptable as adequate car parking provision will still be retained on site and the proposed new window will not harm the architectural composition of the existing building.*

6.2 The planning permission ref 2015/0483/P for the extant planning permission was subject to four pre-commencement conditions. Condition 4 required 'details of sustainable urban drainage system'; condition 6 required 'details of chartered engineer'; condition 8 required 'cycle storage' and condition 10 required; 'details demonstrating how trees to be retained shall be protected during construction work'. All the pre-commencement conditions were discharged in September 2017. It is therefore accepted that after this point the applicant had no outstanding pre-commencement conditions to discharge that were associated with the rear extension, basement, lightwells and outbuilding to the rear.

6.3 The alterations to garage door would have required express planning by virtue of the property divided into flats and the use of the garage as a habitable room. 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). The evidence submitted confirmed that the alterations made to the front elevation of the property were shown on approved elevation and floor plan and whilst the works were not specifically mentioned in the description of proposed development it is accepted that the works onsite did constitute development and were made in accordance with the plans approved under the previous application (2015/0483/P).

6.4 The evidence submitted in terms of date stamped photographs, the invoice for the timber framed windows and the paperwork associated with the hiring of the contractor corroborate the suggestion that the above works were started and the windows were installed. 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 26 June 2018.

6.5 Conclusion

6.6 In this instance, the most pertinent issues remaining are therefore the extent of the development permitted under the 2015 permission (ref. 2015/0483/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 26 June 2018.

6.7 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. 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.

6.8 Recommendation:

6.9 Approve certificate of lawfulness