

|   |  |                                  |             |                      |
|---|--|----------------------------------|-------------|----------------------|
| LDC (Proposed) Report - REFUSAL   |  | Application number               | 2018/5983/P |                      |
| Officer   |  | Expiry date                      |             |                      |
| Nora-Andreea Constantinescu   |  | 31/01/2019                       |             |                      |
| Application Address   |  | Authorised Officer Signature     |             |                      |
| 56 Dartmouth Park Road<br>London<br>NW5 1SN   |  |                                  |             |                      |
| Conservation Area   |  | Article 4                        |             |                      |
| Dartmouth Park Conservation Area  |  | Article 4                        | Direction   | Basement development |
| <b>Proposal</b>   |  |                                  |             |                      |
| Demolition of existing single storey rear extension and erection of a single storey extension with green roof, new window on main rear wall, relocation and enlargement of window on west side elevation, all to single family dwelling (Class C3). |  |                                  |             |                      |
| <b>Recommendation:</b>  |  | Refuse Certificate of Lawfulness |             |                      |

|  |  |         |
|--|--|---------|
| <b>Class A</b> The enlargement, improvement or other alteration of a dwellinghouse |  |         |
| If yes to any of the questions below the proposal is not permitted development     |  | Yes/no  |
| A.1 (a)  | Permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);  | No      |
| A.1 (b)  | As a result of the works, will the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)?                        | No      |
| A.1 (c)  | Will the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse?  | No      |
| A.1 (d)  | Will the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse?  | No      |
| A.1 (e)  | Will the enlarged part of the dwellinghouse extend beyond a wall which<br>(i) forms the principal elevation of the original dwellinghouse; or<br>(ii) fronts a highway and forms a side elevation of the original dwellinghouse;   | No      |
| A.1 (f)<br>(subject to<br>(g))   | Will the enlarged part of the dwellinghouse have a single storey and<br>(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or<br>(ii) exceed 4 metres in height? | Yes (i) |

|   |   |                  |
|---|---|------------------|
| A.1 (g)<br>(until 30 <sup>th</sup> May 2019)  | For a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, will the enlarged part of the dwellinghouse have more than one storey and—<br>(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse; or<br>(ii) exceed 4 metres in height; | No               |
| A.1 (h)   | Will the enlarged part of the dwellinghouse have more than a single storey and<br>(i) Extend beyond the rear wall of the original dwellinghouse by more than 3m, or<br>(ii) Be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall the dwellinghouse?  | Yes (i)          |
| A.1 (i)   | Will the enlarged part of the dwellinghouse be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part exceed 3 metres?   | No               |
| A.1 (j)   | Will the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse, and either<br>(i) exceed 4 metres in height,<br>(ii) have more than one storey, or<br>(iii) have a width greater than half the width of the original dwellinghouse?; or  | Yes (i, ii, iii) |
| A.1(k)  | Would it would consist of or include either<br>(i) the construction or provision of a veranda, balcony or raised platform,<br>(ii) the installation, alteration or replacement of a microwave antenna,<br>(iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or<br>(iv) an alteration to any part of the roof of the dwellinghouse?                    | No               |
| Is the property in a conservation area (article 2(3) land)? If yes to any of the questions below then the proposal is not permitted development |   |                  |
| A.2(a)  | Would it consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles?   | No               |
| A.2(b)  | Would the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse?; or   | Yes              |
| A.2(c)  | Would the enlarged part of the dwellinghouse have more than one storey and extend beyond the rear wall of the original dwellinghouse?   | No               |
| Conditions. If no to any of the below then the proposal is not permitted development  |   |                  |
| A.3(a)  | Would the materials used in any exterior work (other than materials used in the construction of a conservatory) be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse?   | No               |
| A.3(b)  | Would any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse be—<br>(i) obscure-glazed, and<br>(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed?   | Yes              |
| A.3(c)  | Where the enlarged part of the dwellinghouse has more than one storey, would the roof pitch of the enlarged part, so far as practicable,  | Yes              |

**Application site:**

The application site lies within Dartmouth Park Conservation Area, article 2(3) land. The building has been extended variously through time with a two-storey rear wing with hipped roof, two-storey extension to the middle of the rear elevation with sloping roof and a single storey rear extension.

**Applicant's Evidence:**

The documentation provided includes plans from 1915 and 1952, where the rear of the application building shows an approximately full width extension set in from the southern corner of the original building, towards the adjacent site at no. 54. There is no documentation provided to demonstrate whether the two storey middle extension has been built within that period. 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. As such, on balance it is considered that the middle two-storey extension is part of the original building, built prior to 1948. If this element is considered part of the original building then the extension would be considered as an extension beyond an original side wall. No evidence has been submitted by the applicant as to confirm or contradict this position.

Notwithstanding the above, if the two-storey element were demonstrated to not be part of the original building, then the cumulative enlargement of the rear extensions (i.e. the proposed single storey extension and existing non-original two-storey rear element) would be assessed as extending beyond the original rear wall of the dwelling only. Both of the scenarios have been assessed against the Town and Country Planning (General Permitted Development) Order 2016 (as amended) and would fail on various grounds. This is detailed within the assessment below.

**Assessment:**Two-storey middle extension considered part of the original dwelling (i.e. built prior to 1948)

The proposal includes the demolition of an existing ground floor structure and infill of the area between the two-storey middle extension and the boundary wall with no. 58, projecting off the original rear wall between 4.11m and 3.5m in depth. As it would project with a depth more than 4m, the proposed rear extension would be therefore contrary to Class A, A.1 (f)(i) of the Town and Country Planning (General Permitted Development) Order 2016 (as amended).

Householder Technical Guidance (dated April 2017) states that "a wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall". The two storey middle extension (considered part of the original dwellinghouse) contains original side walls, and the proposed single storey extension would project beyond the side wall of this element. The application building has a width of 10.4m and the proposed extension a width of 8.25m. As such, the proposed

extension would project beyond a wall forming a side elevation of the original building and have a width greater than half the width of the original dwellinghouse. The host dwelling is also within a conservation area, where side extensions are not permitted. Therefore, the proposal is contrary to Class A, A.1 (j)(iii), A.2 (b) of the Town and Country Planning (General Permitted Development) Order 2016 (as amended).

The host building is made of bricks, partially rendered, with tiled and lead roofs. The proposed rear extension would be fully glazed and includes a green roof, both of which are not considered to have a similar appearance with the materials used in the construction of the exterior of the existing dwellinghouse, and therefore contrary to Class A, A.3 (a) of the Town and Country Planning (General Permitted Development) Order 2016 (as amended).

As such, the proposed extension would be contrary to Class A, A.1 (f)(i), (j)(iii), A.2 (b), A.3 (a), of Town and Country Planning (General Permitted Development) Order 2016 (as amended), and therefore the proposed development is unlawful and the Certificate of Lawfulness must be refused.

#### Two-storey middle extension **NOT** considered part of the original dwelling (i.e. built after 1948)

Householder Technical Guidance (dated April 2017) states that “where the proposed extension is to be joined to an existing extension to the original house, whether that was built following a planning application or under permitted development rights, the total enlargement (being the proposed extension together with the previous extension) must meet the limits set out” within all the relevant sections of Class A. Therefore, if the two-storey element were to be considered a non-original addition to the dwellinghouse, then the cumulative extensions to the building (i.e. the in-situ two-storey element and proposed single storey extension) would form part of the assessment.

As such, the proposed part single, part two storey rear extension on article 2(3) land, would have more than a single storey and extend beyond the rear wall of the original dwellinghouse by more than 3m, contrary to A.1 (h)(i) of the Town and Country Planning (General Permitted Development) Order 2016 (as amended).

Further to the above, the cumulative enlargement would be within 2m of the boundary of the curtilage of the dwellinghouse and the height of the eaves of the enlarged part would exceed 3m, contrary to A.1 (i); and would have more than a single storey and extend beyond the rear wall of the original dwelling, contrary to A.2(c) of the Town and Country Planning (General Permitted Development) Order 2016 (as amended).

#### Conclusion

In light of the above, it is considered that regardless of the status of the two-storey middle extension, whether considered part of the original dwellinghouse or not, the proposed extension would fail to comply with Class A of Town and Country Planning (General Permitted Development) Order 2016 (as amended), and therefore the proposed development is unlawful and the Certificate of Lawfulness must be refused.

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