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| LDC Report | 08/03/2019 |
| Officer | Application Number |
| Obote Hope | 2019/0163/P |
| Application Address | Recommendation |
| Ground Floor Flat 15 Greenaway Gardens London NW3 7DH | Approve certificate |
| 1st Signature | 2nd Signature (if refusal) |
| | |
| Proposal | |
| Commencement of implementation of the works in relation to planning permission ref: 2015/5074/P granted on 14.01.2016 for the erection of a single storey rear extension and partial conversion of garage to enlarge existing residential accommodation for the ground floor flat. | |
| Assessment | |
| <p>1. <u>Application Site</u></p> <p>1.1 The application site is a two storey building sub-divided into five dwellings. The application dwelling is the ground floor flat located on the southeast corner with access to the rear garden.</p> <p>2. <u>Proposal</u></p> <p>2.1 The applicant seeks to confirm that the development permitted by Planning Permission 2015/5074/P dated 14 January 2016 was implemented in line with the attached conditions and the definitions of development outlined within the Town and Country Planning Act 1990.</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 before the date of the decision on 14 January 2016.</p> <p>3.0 <u>Applicant's Evidence</u></p> <p>3.1 The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • JM Partnership (Surveyors) Ltd Initial Notice dated 14th December 2018 • Jampel Davison & Bell drawing 1791 T2 • EDI Surveys Existing Lower Ground Floor plan 14948 • Charlton Brown Architects Proposed Lower Ground Floor Plan 1281/AP02 • JM Partnership (Surveyors) Ltd Site Inspection dated 11th January 2019 • Photographs taken on site upon completion of trench on 10th January 2019 | |

- Photographs taken on site following cast of slab on 11th January 2019;

3.2 The evidence submitted in support of the application as stated in the Planning implementation Report commission by Charlton Brown Architecture and Interiors, consist of:

1. The digging of the trench that contain part of the foundations for the structural box frame conversion in the existing garage;
2. The trench was inspected by JM Partnership (Surveyors) Ltd on Wednesday 9th January 2019;

4. Council's Evidence

Planning History

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

2019/0137/P - Details of tree protection measures required by condition 5 of planning permission 2015/5074/P dated 14/01/2016 (for the erection of a single storey rear extension and partial conversion of garage to enlarge existing residential accommodation for ground floor flat) – pending decision.

2015/5074/P - Erection of a single storey rear extension and partial conversion of garage to enlarge existing residential accommodation for ground floor flat – Granted (January 2016)

E5/14/19/35444 - Change of use and works of conversion to convert existing garage into a flat with garage – Refused (April 1983)

E5/14/19/33729 - Conversion of existing garage to a two bedroom self-contained garden flat – Refused (July 1982)

E5/14/19/31929 - The erection of a single storey extension at the rear and formation of 2 self-contained flats – Refused (May 1981)

E5/14/19/33127 - The construction of a dormer window and the formation of a bedroom in the attic – Granted (December 1981)

E5/14/19/24409 - Erection of a cast iron spiral staircase at rear – Granted (June 1977)

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 applicants claim that although the scheme was not fully implemented, works had commenced on site by way of the digging out of the trench that would contain part of the foundations for the structural box frame conversion in the existing garage.
- 5.5 It should be noted, that the extant planning permission was subjected to a pre-commencement condition, which is required to be approved prior to the commencement of construction/demolition works on site. Condition 5 requires that tree protection measures shall be installed in accordance with approved drawings and evidence of this shall be submitted to the council.
- 5.6 Condition 5 further state that the protection shall then remain in place for the duration of works on site, unless otherwise agreed in writing by the local authority. A replacement tree(s) shall be provided should any tree on or adjacent to the site die as a result of the construction/demolition works on site. The Council’s Tree Officer has assessed the tree protection plan that was submitted to discharge condition 5. The decision is still pending; however, tree officers are satisfied with the contents of the submission and that they would ensure the satisfactory protection of the trees. The officer confirmed that the tree protection measures are adequate and the condition can be partially discharged under reference 2019/0137/P.
- 5.7 It is accepted that pre-commencement condition would not materially impact on the digging of the trench, given its location within the garage. The Arboriculturalist confirmed that the tree protection measures has no function for the operation of digging out the trench. Moreover, the existing garage walls and concrete lid prevent any access to the rear garden as shown on the consented drawings under planning permission 2015/5074/P that works had commenced. As such, the applicants seek a certificate of lawfulness so that they can lawfully continue the implementation of the original planning permission.
- 5.8 As outlined in section 4, in 2015 planning permission was granted (2015/5074/P) for: Erection of a single storey rear extension and partial conversion of garage to enlarge the existing residential accommodation for ground floor flat. Whilst, the description of the proposed works does not include excavation works within the garage, the officer’s report summarised the works to the garage door as listed below:

- *‘It is noted that a limited amount of excavation is proposed, namely the reduction of the*

internal floor level within the garage (existing rear single storey extension) by 40cm and not the parent building. This element, by virtue of its extent and coverage would not trigger the policy requirements of a CPG4 and therefore a Basement Impact Assessment is not required'.

5.8 The evidence submitted includes date stamped photographs by Sherlock Construction which show works began on site to dig the trench on 11th January 2019. Evidence of inspection by JM Partnership as the appointed inspector corroborate the suggestion that the above works were started. 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 implemented on site prior to the 14 January 2019.

Conclusion

5.9 In this instance, the most pertinent issues remaining are therefore the extent of the development permitted under the 2015 permission (ref. 2015/5074/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 14 January 2019.

5.10 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.

6.0 Recommendation:

6.1 Approve certificate of lawfulness