

<b>LDC Report (Proposed)</b>		
<b>Officer</b>		<b>Application Number</b>
Charles Thuaire		2019/3428/P
<b>Application Address</b>		<b>Recommendation</b>
53 Fitzroy Park London N6 6JA		Grant Certificate of Lawfulness for Proposed Development
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
Continued implementation of works for erection of new house granted by planning permission ref 2018/2104/P dated 05/02/2019 (for Variation of conditions 2 (plans), 3 (materials), 8 (noise levels) and 13 (SUDS) of planning permission ref: 2015/0441/P dated 04/07/2016 for: Erection of a three storey single dwelling following demolition of existing dwelling).		
<b>Assessment</b>		
<p><b>Site</b></p> <p>The application site has a vacant 2 storey detached dwelling which will be demolished to make way for the new house. It is located on a private road in a conservation area but is not listed.</p> <p><b>Background history</b></p> <p>4.7.16- 2015/0441/P- permission granted for Erection of a three storey single dwelling following demolition of existing dwelling (Class C3).</p> <p>5.2.19- 2018/2104/P- permission granted for Variation of Conditions 2 (plans), 3 (details/samples of materials), 8 (Noise Levels) and 13 (SuDS) to planning permission ref: 2015/0441/P dated 04/07/2016, for; Erection of a three storey single dwelling following demolition of existing dwelling (Class C3), to amend fenestration; lightwell added to north side; entrance relocated to the corner; bike storage relocated to south side boundary; metal spandrel changed to natural stone; external stair removed at rear lower ground floor level; metal balustrade changed to glass; cornices changed to plain natural stone; rear curved bay squared off at lower ground level; recessed blind window omitted and recessed wall revised on south elevation.</p> <p>27.6.19- 2019/3201/P- Non-Material Amendment approved for Amendment to wording of conditions 5, 7, 13, 14 and 15 attached to planning permission ref 2018/2104/P, dated 05/02/2019 (as above), namely to alter the trigger points for submitting and approving details.</p> <p>30.5.19- Approval of details granted for conditions 3, 9 and 18.</p> <p>26.6.19- Approval of details granted for conditions 5 and 7.</p> <p>1.7.19- Approval of details granted for conditions 14 and 15.</p> <p>17.7.19- Approval of details granted for condition 13.</p>		

## **Proposal**

The application relates to the implementation of the approved new dwelling house. It seeks to demonstrate that not only a material start has been made in implementing the approved scheme before the original planning permission's expiry date of 4<sup>th</sup> July 2019 but also to certify that the remainder of the works for that permission can be lawfully completed and the building can be lawfully occupied as a dwelling. Hence a Certificate of Lawfulness for Proposed Development has been submitted rather than for Existing Development, as the applicants are keen to ensure that the continuation of works to complete the dwelling house are lawful. The applicant has provided legal advice to support this approach with reference to a Court of Appeal judgment (*France v Kensington and Chelsea RLBC* [2017] EWCA Civ 429 - see paragraphs 43-55).

The works consisted of trial pits and then 2 concrete and steel foundation piles 6m deep in the garden. They are for the basement retaining wall and line up with the western corner of the approved house's basement footprint and are outside the footprint of the existing house, meaning no demolition was required. They were carried out on 6<sup>th</sup> and 7<sup>th</sup> June 2019.

These works were done in advance of the discharge of all but one of the 6 pre-commencement conditions imposed on the planning permission (no.9 was discharged beforehand on 30.5.19- see history above). Thus to regularise the situation in retrospect, a Non-Material Amendment (NMA) was approved on 27.6.19 to reword the trigger on the remaining 5 pre-commencement conditions so that the reference to 'any works on site' excluded the 2 piles as installed and shown on the submitted plan. No further piling and construction works would be able to be carried out until all these conditions have been fully and finally approved and until the Section 106 requirements regarding the CMP have been discharged. Since then, all these pre-commencement conditions (nos 5, 7, 9, 13, 14 and 15) have now been discharged, with 5 of them discharged anyway before the permission's expiry date of 4.7.19 (see history above).

## **Applicant's Evidence**

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

- Cover letter by Michael Burroughs dated 11<sup>th</sup> July 2019 (including 3 photos showing installation of piles).
- Email from agent dated 11.7.19.
- Super Kitten Mini Piling Rig specification data sheet.
- Piling Setting Out Plan ref 322\_100.
- Site location plan ref 1357-EX-101.
- invoice from Geobond Piling & Foundations Solutions dated 10 June 2019.
- Permit to pile at 53 Fitzroy Park from 6.5.19 to 10.6.19- document by Geobond.
- Annexes 1-11: Various decision letters from Council as referenced above in background history section.
- Case law- Court of Appeal judgment in *France v Kensington and Chelsea RLBC* [2017] EWCA Civ 429.

## **Council's Evidence**

A site visit to the property was undertaken on the 11.6.19. The officer was satisfied that the 2 pile holes had been installed in accordance with the submitted plans and that their positions correlate with the approved plans for the new house.

## **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 (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 case are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

The Council considers that the works installed on site constitute a sufficiently material operation in scope and nature to start implementing the approved scheme and, in conjunction with other applications submitted to discharge conditions, show the applicant’s serious intent to continue implementation of these works. The works are deemed to be sufficient to demonstrate that a material start has been made on site within 3 years of the original decision date of 4.7.16 to implement the planning permission. Furthermore it means that the continuation of the remaining works to complete implementation of the approved dwelling house will be lawful.

**Recommendation: Approve**