

8th November 2019

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VIA PLANNING PORTAL REF: PP-08264384

Dear Sir/Madam

RE: APPLICATION UNDER SECTION 191 TOWN AND COUNTRY PLANNING ACT (AS AMENDED) 1990 FOR A CERTIFICATE OF LAWFULLNESS OF EXISTING USE OR DEVELOPMENT AT 28 HARLEY ROAD, LONDON NW3 3BN

We are instructed by and act on behalf of Sheikh Mohamed and Sheikh Hamdan Shaya Alhamed and enclose an application for a Certificate of Lawfulness of Existing Use or Development, with respect to 28, Harley Road, London NW3 3BN (the 'Property').

This Certificate of Lawfulness application comprises electronic copies of the following documents: -

1. The completed and dated application form;
2. Site Location Plan 1663-200;
3. Existing Basement Plan 1663-301;
4. Sworn Affidavit of Mr Hassan Malik dated 16th October 2019, together with supporting appendices;
5. A copy of email correspondence between LB Camden and the previous architects/contractors dated between 17th March 2016 and 14th April 2016; and
6. The planning fee of £462 which has been paid via the Planning Portal.

Purpose of the Application

The application seeks to establish the lawful development of the basement located at 28 Harley Road under permitted development rights. The Description of Development for the purposes of the application is:



“Existing Basement development under Class A of the GDPO (As Amended) 1995 at 28 Harley Road”

The Property

The Property forms an existing, detached 1920's residence (C3 Use Class) of some 7,000 sq.ft that has been subject to various improvements and extensions over time. The Property is situated on Harley Road near its junction with Wadham Gardens. The immediate area is characterised as a mature residential neighbourhood and is within the designated Elsworthy Conservation Area (1985). The Property is not statutorily Listed or a locally listed Building of Townscape Merit.

The Site has a long planning history which the Council are aware of. With specific regards to the basement area, the development was subject to a letter from the Council's Enforcement Team dated 6th January 2017 (reference **EN16/1213**). The letter refers to the basement development following the submission of a Building Control application for this. The position was that if the view was that it was permitted development then a Certificate of Lawfulness should be submitted for the Council to assess.

The London Borough of Camden introduced an Article 4 Direction on the Development of Basements across the Borough which removed permitted development rights and required planning permission to be granted prior to the development of basements. This Article 4 Direction came into force on 1st June 2017. As a result of this Article 4 Direction any basement development which was substantially completed prior to the adoption of the Direction, requires a Certificate of Lawfulness to confirm its legal status as permitted development. This application is seeking to achieve the Certificate on these grounds. The basement provides additional living space and is part of the single residential dwelling at 28 Harley Road.

Separately from the basement matter there are a number of other outstanding planning matters that the Applicants are working on to resolve of which the Council are fully aware. The other matters have been the subject of pre-application advice including a site visit held with Ms Kate Henry of the Borough Council on 27th March 2019 (reference: **2019/1138/PRE**).

Permitted Development

The basement of 28, Harley Road as constructed is shown on the Existing Basement Plan 1663-301. This has been assessed against the Permitted Development Right criteria pertaining to Class A (the enlargement, improvement or other alteration of a dwellinghouse) of Part 1 of the *General Permitted Development Order (GPDO) (As Amended) 1995*. The assessment is set out below against the detailed criterion text of the Class A Permitted Right (our comments/conclusions are in bold text):

A.1 Development is not permitted by Class A if:

- (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); **Not applicable to these works**
- (b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse); **the basement is mostly directly within the original footprint of the dwelling, bar the extension to the kitchen side. This extends beyond the original rear elevation. However, it does not exceed 50% of the total area of curtilage i.e. it has not taken up 50% of the garden space, even when the ground floor extension is factored in.**
- (c) 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; **not application to these works.**
- (d) 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; **not applicable to these works.**
- (e) the enlarged part of the dwellinghouse would extend beyond a wall which—
- (i) forms the principal elevation of the original dwellinghouse; **the rear elevation is not a principal elevation of the building.**
 - (ii) fronts a highway and forms a side elevation of the original dwellinghouse; **not applicable to these works.**
- (f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey; and
- (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; **the basement, when measured from the as-built plans does not extend beyond the rear wall of the original dwelling house by more than four metres;**
 - (ii) exceed 4 metres in height; **the basement height is not greater than four metres.**
- (g) until 30th May 2019, for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and—
- (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



- (ii) exceed 4 metres in height; **the basement extension does not extend more than 8m from the original rear wall.**
- (h) the enlarged part of the dwellinghouse would have more than a single storey and— **this is not applicable to these works as the enlarged part is single storey**
 - (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or
 - (ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse;
- (i) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres; **not applicable as no eaves to the basement extension**
- (j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—
 - (i) exceed 4 metres in height,
 - (ii) have more than a single storey, or
 - (iii) have a width greater than half the width of the original dwellinghouse; or **not applicable as extending beyond a rear elevation**
- (k) it would consist of or include—
 - (i) the construction or provision of a verandah, balcony or raised platform,
 - (ii) the installation, alteration or replacement of a microwave antenna,
 - (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
 - (iv) an alteration to any part of the roof of the dwellinghouse. **None of these elements are applicable**

Based on the above assessment the basement development that the Applicants now seek a Lawful Use Certificate for meet the criteria of Permitted Development prior to the relevant Article 4 Direction coming into force.

Affidavit and Supporting Evidence



The onus is on the Applicant to prove that the basement development was substantially completed prior to 1st June 2017 in order to benefit from the Permitted Development Right prior to the implementation of the Article 4 Direction.

Supporting evidence for this application includes the following:

- A sworn Affidavit by Mr Hassan Malik who was the housekeeper at the time of the basement works being started and completed, as well as other renovations undertaken at the Property. The sworn Affidavit is supported by a number of appendices which reference the timing and nature of the development of the basement. The Affidavit confirms that Mr Malik recalls that the basement works were started and substantially completed prior to the implementation of the Article 4 Direction.
- A copy of the publicly available Building Control records for the basement development is also submitted. Unfortunately, it has not been possible to obtain from the relevant officers a further statement with regards to the complete written records of the Building Control applications, but a copy of the validation letter from Building Control with regards to the basement works is enclosed which is dated pre-1st June 2017.
- The application is also supported by photographic evidence of the basement development taken in April 2016. This corresponds with the submitted emails between Planning Officer Tessa Craig of LB Camden and Amit Patel of Construction 360 Ltd, which are dated between 17th March 2016 and 14th April 2016 and make reference to the basement being started and proceeding at substantial rate. More recent site photographs dated 27th March 2019 were taken during a pre-application site visit (reference: 2019/1138/PRE) by Kate Henry of the Council which show the current state of the basement works as substantially completed.

Conclusions

For the reasons set out above and the evidence submitted herewith, it is concluded that the basement development at 28, Harley Road NW3 3BN was substantially completed by virtue of Permitted Development rights available to the Property owners prior to LB Camden's implementation of an Article 4 Direction on Basement developments coming into force on 1st June 2017.

If you have any queries or would like clarification on any aspect of our Certificate application, please do not hesitate to contact Renu Prashar Prinjha via email or on (0330) 223 1510.

Yours sincerely,

RENU PRASHAR PRINJHA BSc (Hons) MSc MRTPI

Senior Consultant, Chilmark Consulting Ltd.



Encl. As Above