

LDC (Existing) Report		Application number	2020/0401/P
Officer		Expiry date	
Ben Farrant		22/04/2020	
Application Address		Authorised Officer Signature	
36 Primrose Gardens London NW3 4TP			
Conservation Area		Article 4	
Belsize Park			
Proposal			
Formation of external staircase as shown on plan number: 01Rev.01, in accordance with section 56(4) of the Town and Country Planning Act 1990, constituting a material operation for commencement of planning permission 2016/5914/P dated 13/04/2017 in accordance with condition 3.			
Recommendation:		Grant certificate of lawfulness existing	

The approved scheme is for the conversion of 1 x 4 bed maisonette at first, second and third floor levels into first floor 1 bed flat and second and third floor 3 Bed flat, with associated elevational changes and installation of staircase to rear elevation at upper ground floor level.

Planning permission (ref: 2016/5914/P) was granted on 13/04/2017.

The certificate seeks to establish that works to implement the approved scheme have commenced before the application 2016/5914/P expires on 13/04/2020, and that the implementation of the scheme is therefore lawful and such development can continue as per the previous permission.

Applicant's Evidence

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

- Photographs of the completed external staircase from upper to lower ground floor levels. The application form indicates that this work was completed on 01/07/2019.

Council's Evidence

Under planning permission 2016/5914/P, condition 4 states the following:

Prior to the commencement of the development, details of all proposed tree pruning required to facilitate the development shall be submitted to and approved in writing by the Local Planning Authority. The approved tree pruning works shall be carried out in accordance with BS399:2010.

Reason: To ensure the preservation of the amenity value and health of the tree(s).

The tree in question is within the ownership of a neighbouring property, though it overhung the application site (as was the reason for the condition). The neighbour has since removed the tree and so the condition is now void. There are no further conditions which require discharge prior to the commencement of development.

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

The application was submitted on 26th February 2020 accompanied by photographs of the completed external staircase which was approved as part of the previous planning consent (ref: 2016/5914/P dated 13/04/2017).

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the works have commenced before the application expires and the implementation of the scheme would be lawful. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

Recommendation: Grant Certificate of Lawfulness