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| LDC Report | |
| Officer Kate Henry | Application Number 2019/5665/P |
| Application Address 28 Harley Road London NW3 3BN | Recommendation |
| 1st Signature | 2nd Signature (if refusal) |
| | |
| Proposal | |
| Excavation of single storey basement | |
| Assessment | |
| <p><u>Site description</u></p> <p>No. 28 Harley Road is a detached residential dwelling on the south-western side of the road. There is a driveway to the front with room to park a number of cars and a private garden at the rear.</p> <p>The application site is in the Elsworthy Conservation Area. The building is not listed.</p> <p><u>Relevant history</u></p> <p>2019/4214/P: Formation of a new driveway access including a new vehicle crossover; associated boundary treatment alterations; resurfacing of the existing driveway. Refused 06/03/2020.</p> <p>2019/6350/P: Installation of boiler flue and vents on the rear elevation and alterations to the roof of the existing summer room. Decision pending.</p> <p>2019/4448/P: Non-material amendments to planning permission 2016/2889/P, dated 26/09/2016 (for Erection of part single storey part two storey rear extension. Installation of bi-folding doors to north facing ground floor closet wing, new windows to match the existing and the replacement of the roof tiles on the main roof), namely alterations to window and door openings. Granted 13/12/2019.</p> <p>2018/1245/P: Formation of new driveway access including new vehicle crossover and associated boundary alterations, and removal of a tree. Withdrawn 21/05/2019.</p> <p>2017/6500/P: Proposed Alterations to Existing First Floor Rear Bay Roof Detail and Alterations to Fascia to Include Dentil Details. Granted 13/09/2018.</p> | |

2016/2889/P: Erection of part single storey part two storey rear extension. Installation of bi-folding doors to north facing ground floor closet wing, new windows to match the existing and the replacement of the roof tiles on the main roof. **Granted 26/09/2016.**

2015/5846/P: Erection of a part width single storey rear extension. Installation of a new front door and porch canopy. **Granted 25/04/2016.**

2004/5549/P: The erection of a single storey conservatory at rear ground floor level and infill roof extension at rear first floor level to the residential dwellinghouse. **Granted 11/02/2005.**

2003/0403/P: The erection of a single storey timber framed glazed conservatory. **Refused 07/10/2003.**

P9601769R1: Extension of roof, including new dormer window to form en-suite bathroom and formation of new window at first floor level on rear elevation of main building. **Granted 28/09/1996.**

9301559: The partial demolition of a first floor side addition above a garage and the construction of a larger side addition. **Granted 11/02/1994.**

9300546: The construction of a single storey rear extension to existing dwelling house. **Granted 13/08/1993.**

8905785: Erection of a two storey rear extension side extension and formation of underground swimming pool in rear garden of existing single family house. **Granted 31/05/1990.**

J8/1/3/8685: The erection of a single storey games room extension at the rear. **Granted 07/05/1970.**

Applicant's evidence

- Cover letter, dated 08/11/2019
- Site Location Plan
- Existing basement plan (updated 09/03/2020 to include revised outline of existing dwelling)
- Existing section plan
- Sworn affidavit of Hassan Malik (dated 16/10/2019) (employee of owner), including:
 - Specification of Building Work for Extension and Refurbishment (dated 24/08/2015)
 - Kube Creations – Construction Attendance Report (dated 16/01/2017)
- Email correspondence between LB Camden and contractor 17/03/2016 to 14/04/2016
- Photographs of basement construction (dated 11/04/2016)

Council's evidence

The relevant planning history for the site is provided above. None of the development descriptions refer to a basement; however, the original plans provided as part of planning application reference 2015/5846/P (Erection of a part width single storey rear extension. Installation of a new front door and porch canopy, granted 25/04/2016) did show a proposed basement, albeit not of the same shape as the basement which is the subject of this application. The plan showing the basement was superseded during the course of the application and the final approved floorplans do not show a basement.

A site visit to the property was undertaken on 27/03/2019 and the basement was inspected.

The Council's Building Control team was consulted due to the correspondence with the Building Control Officer that was submitted as part of the application. They have confirmed that the application was submitted by the London Borough of Brent (a partnership application) but no decision is recorded so it is unclear whether or not the plans were approved. It appears that additional information was requested but not supplied. At the time of writing, LB Brent have not responded to correspondence asking for confirmation whether or not the plans were approved.

Discussion

An Article 4 direction which removed permitted development rights for basements in the borough came into force on **01/06/2017**. The applicant is therefore required to demonstrate that the basement was substantially completed before that date.

The Town and Country Planning Act 1990 Section 171B (1) states: Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of **four years** beginning with the date on which the operations were substantially completed.

The applicant claims that the basement was completed by **November 2016**. On the basis that a period of four years has not passed, this application must also assess whether or not the basement would have been permitted development at the time it was completed (i.e. before the Article 4 direction came into force on **01/06/2017**).

Whether or not the basement was completed prior to 01/06/2017

The sworn affidavit of Hassan Malik notes that the owners of the house decided to undertake substantial modernising works at the property in 2015, including a new basement. It is noted that the works to the building began **circa 25/08/2015** and the basement works began **circa October 2015**. The sworn affidavit notes that the basement was substantially completed around the end of **November 2016**.

A Construction Attendance Report from Kube Creations is referred to in the sworn affidavit and provided as an appendix. The report was finalised on **16/01/2017**. The basement is referred to on page 27 of the document. It notes: "*the layout (of the basement) altered substantially during construction. Due in part to the Camden Council building controller requiring the basement structural walls to be double the thickness resulting in a loss of space*".

The document includes floorplans to show the ground and first floor of the property but not the basement.

On page 34, two photographs are provided and the sub-text notes: "*Stair case to basement has been filled in, and cancelled (as instructed)*". On page 35, 2 photographs are provided and the sub-text to each notes: "*Partition wall constructed for Ground Flr Stair to basement*" and "*Temporary stair to basement*".

Email correspondence between a Council planning officer (Tessa Craig) and the Amit Patel from Construct 360 is provided, albeit it has been copied and pasted into a Word document rather than produced in email form. [The Council has the same correspondence on file in relation to

planning application reference 2015/5846/P]. An email dated **17/03/2016** notes: “As we are now building the basement within the foot print of the house (No light wells) I understand that we can build this under an Article 4 Direction and do not require permission for this. If this is the case, I would like to omit the basement from this application and leave all the other items. This will in no doubt reduce the amount of paper work required and make your life easier...”. The planning officer’s reply states: “Please confirm you wish to withdraw the basement level from the development? Could you please provide revised 'Proposed' plans so that I can complete the rest of the application?” and a later email confirms that a basement could be constructed under permitted development rights, provided it meets all the relevant criteria.

Photographs of the basement development are provided; however, it is not clear where they are taken from and the depth of the basement does not appear to be sufficient.

The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness lies 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.

In this case, whilst the evidence provided to prove the basement was substantially completed by November 2016 is not particularly persuasive, the Council does not have any evidence to contradict or undermine the applicant’s version of events. The information provided by the applicant is deemed to be sufficient to demonstrate that ‘on the balance of probability’ the basement was substantially completed before **01/06/2017** (i.e. the date at which the Article 4 direction came into force).

Whether or not the basement would have been permitted development at the time it was completed

At the time the basement was substantially completed (**November 2016**), The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1, Class A allowed for the enlargement, improvement or other alteration of a dwellinghouse.

Development was **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, PA or Q of Part 3 of this Schedule (changes of use);

The proposal complies.

(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 proposal complies.

(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;

The proposal complies.

(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;

The proposal complies.

*(e) the enlarged part of the dwellinghouse would extend beyond a wall which—
(i) forms the principal elevation of the original dwellinghouse; or
(ii) fronts a highway and forms a side elevation of the original dwellinghouse;*

The proposal complies.

*(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, or
(ii) exceed 4 metres in height;*

The proposal complies.

*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 proposal complies.

*(h) the enlarged part of the dwellinghouse would have more than a single storey and—
(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 being enlarged which is opposite the rear wall of that dwellinghouse*

The proposal complies.

(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;

The proposal complies.

*(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;*

The proposal complies. Although the basement does extend beyond the rear building line

of the original building and also extends to the side of the existing rear projection, the rear projection is not original, it was approved in 1970 pursuant to planning application reference J8/1/3/8685.

(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.*

The proposal complies.

In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if—

(a) it would 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;

The proposal complies.

(b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse;

The proposal complies. As noted above, although the basement does extend beyond the rear building line of the original building and also extends to the side of the existing rear projection, the rear projection is not original, it was approved in 1970 pursuant to planning application reference J8/1/3/8685.

(c) the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse.

The proposal complies.

(d) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (b) and (c).

The proposal complies.

At the time the basement was substantially completed (**November 2016**), it constituted permitted development in accordance with The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1, Class A.

Recommendation: Approve lawful development certificate.