

LDC Report (Proposed)	
Officer	Application Number
Matthew Dempsey	2020/0699/P
Application Address	Recommendation
14 Templewood Avenue London NW3 7XA	Grant Certificate of Lawfulness (Proposed)
1st Signature	2nd Signature (if refusal)
Proposal	
Implementation of planning permission ref 2013/6912/P dated 29/04/2016 (for Excavation works to provide single basement floor level, side and rear extensions at ground floor level, extension and alterations to coach house and other external alterations, removal of car port and erection of cycle store, associated landscaping, and conversion from five self-contained flats to a dwelling house).	
Assessment	
<p>Proposal</p> <p>The approved scheme is for excavation works to provide single basement floor level, with side and rear extensions at ground floor level, and; extension and alterations to the coach house and other external alterations, removal of car port and erection of cycle store, associated landscaping, and conversion from five self-contained flats to a dwelling house (Class C3).</p> <p>Planning permission (2013/6912/P) and listed building consent (2013/6973/L) were granted, dated 29/04/2016.</p> <p>The application for this certificate seeks to establish that works to implement the approved scheme commenced before the permission expired on 29/04/2019, and that the implementation of the scheme is therefore lawful and such development can continue as approved under this permission.</p> <p>Applicant's Evidence</p> <p>The applicant has submitted the following information in support of the application:</p> <ul style="list-style-type: none"> • Cover letter, from Ian Trehearne dated 12/02/2020. • Photographs of the site prior to and following 26/04/2019 showing; (i) the demolition of the car port, and (ii) laying of a pipe within a trench in rear garden. • Statutory declaration of Mr Sebastien Nyk (Director of Nyk Construction), dated 02/04/2020. • Invoice from Nyk Construction, re: "Demolition of car port, digging of trench in rear 	

garden, piping works, connections to manholes, collection of debris and cart away”, dated 03/05/2019.

- 14 Templewood Avenue Schedule of works.
- CIL Commencement Notice ref: LN00004149.

The applicant has also submitted the following plans:

- Site Location Plan, 1:1250.
- Site Plan ref: 1861/ASP 001.

Council's Evidence

A condition no.6 attached to 2013/6912/P required that; The development as approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

This condition was discharged on 28/12/2018 reference 2018/6028/P and therefore gave the opportunity under the planning permission 2013/6912/P for works to commence.

Planning enforcement: There is no planning enforcement history at this property for the last 10 years.

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 (Planning Practise Guidance para. 006), 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 accompanied by the documents listed above (including photos dated 26.4.19) by way of evidence in support of the assertion that planning permission was implemented prior to 29th April 2019- this included the commencement of works to demolish the carport (which was specifically referred to in the above description of development), dig a trench and carry out pipe-works with manhole connections to the rear. These works are considered to be ‘material operations’ which are sufficient to constitute a material start to implementing the planning permission and were commenced prior to the expiry of 3 years in compliance with Condition 1 of the planning permission.

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ the works commenced before the planning permission (2013/6912P) expired, and as such, the implementation of the scheme would be lawful, and any work approved under this permission and yet to commence can be completed at

any time in the future. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Recommendation: grant certificate

It is considered that operational works of demolition permitted under planning permission 2015/6106/P dated 29th March 2017 had begun on site within three years of the date of the permission and that the permission has therefore been implemented.