

<b>LDC Report</b> (Existing)		12/06/2020
<b>Officer</b>		<b>Application Number</b>
Angela Ryan		2020/1733/P
<b>Application Address</b>		<b>Recommendation</b>
Flat 1st and 2nd Floor 34 Compayne Gardens London NW6 3DP		Refuse Certificate of Lawfulness
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>		
Conversion of 5 bed maisonette into one 2 bed flat and one 3 bed maisonette, erection of rear dormer roof extension with inset roof terrace and installation of 2 front roof lights and 2 rear roof lights.		
<b>Assessment</b>		
<p><b>1. <u>Site description:</u></b></p> <p><b>1.1</b> The site comprises a 3 storey mid-terrace building, plus semi-basement, located on the north side of Compayne Gardens. The area is characterised by residential properties. The building is was originally two 5 bed maisonettes. Planning permission was granted on 21/07/2015 reference 2014/5359/P for the upper floor (1<sup>st</sup> and 2<sup>nd</sup>) maisonette to be converted into 1 x 2 bed flat and 1x 3 bed maisonette, plus various roof alterations.</p> <p><b>1.2</b> The site is located in the South Hampstead Conservation Area and, while not listed, the building is identified in the Conservation Area Statement as making a positive contribution to the character and appearance of the Conservation Area.</p> <p><b>2. <u>Proposal:</u></b></p> <p><b>2.1</b> The applicant seeks to demonstrate that the development that was granted planning permission on 21/07/2015 under reference 2014/5359/P benefitted from having planning permission. This permission expired 3 years later on 21/07/2018.</p> <p><b>2.2</b> In order to satisfy the above, the applicant is required to demonstrate that, on the balance of probability, the development as approved under ref 2014/5359/P commenced prior to or on the final implementation date which would have been 21/07/2018.</p> <p><b>3. Applicant's Evidence</b></p> <p><b>3.1</b> The applicant has submitted the following information in support of the application:</p>		

- Design and Build contract- Agreed 25/05/2018 -signed 21/02/2015 date crossed out to say 2018
- Building Control Notification dated 20/06/2017- relating to dormer extension
- Planning permission granted 21/05/2015 ref: 2014/5359/P
- Interim progress payment issued 12/12/2018
- HSE notification submitted 02/07/2018
- Building Regulations Specification Rev C – last revision attic floor 31/03/2017
- Contractors cost- undated
- 13 x Undated photographs
- Revised Amended Building Notices dated 11/05/2020, 20/02/2015, 28/01/2015
- 12/05/2020- E-mail from applicant's agent confirming description in building notice was not fully accurate; however the drawings submitted to building control were those approved by planning

**3.2** The applicant has also submitted the following plans:

- A site location plan outlining the application site
- Demolition Plan- Ref: 1-100
- BBA 656 102 Rev G- First floor plan
- BBA 656 103 Rev F- section AA
- BBA 656 104 Rev D- Attic floor plan

**4. Council's Evidence;**

**Relevant Planning History:**

**34B Compayne Gardens:**

**4.1** A summary of the relevant planning history relating to the property is set out below in chronological order:

06/06/2014 – 2 x permissions **granted** for the erection of rear dormer roof extension, inset rear roof terrace and installation of 2 front roof lights and 2 rear roof lights. Granted. Refs 2014/2118/P and 2014/2119/P.

21/07/2015 - Permission **granted** for the conversion of 5 bed maisonette into 1 x 2 bed flat and 1 x 3 bed maisonette, erection of rear dormer roof extension, inset roof terrace and installation of 2 front roof lights and 2 rear roof lights (ref 2014/5359/P). This development is the one subject of this application.

**Enforcement:**

**4.2** The following enforcement case was recorded for the site:

18/03/2020- complaint received in respect of the development being implemented after 2015 permission (Ref: 2014/5359/P) had expired (Ref: EN20/0246)

**5. Assessment :**

**5.1** 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 or development undertaken are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining this application.

**5.2** The relevant permission (2014/5359/P) subject to this CLEUD application was granted on 21/07/2015, for conversion of 5 bed maisonette into 1 x 2 bed flat and 1 x 3 bed maisonette erection of rear dormer roof extension, inset roof terrace and installation of 2 front roof lights and 2 rear roof lights.

*Review of submitted evidence:*

**5.3** The Council’s Building Control team confirmed that the Initial Notice has been received on 28.01.2015:

Job description of development: ***Proposed change of use of existing flat at first and second floor levels into two flats including a third floor dormer loft conversion (works to include material alterations to structure, controlled services, fittings and thermal elements).***

**5.4** An Amendment Notice was then received by Building Control on 20.02.2015:

Job description changed to: **Proposed third floor dormer loft conversion to existing flat at first and second floor level (works to include material alterations to structure, controlled services, fittings and thermal elements)**

**5.5** The dates of the initial and amended notices submitted pre-dates the date that the relevant planning permission was granted. Plans were never submitted with the above notices, and therefore the Council is unable to confirm whether the plans that the applicant refers to in the notice and that were submitted via an e-mail on 13/05/2020 were the ones that the applicant/contractors were working to.

**5.6** A revised amended notice was then submitted on 13/05/2020:

Job description: **Proposed roof conversion and dormer to form self contained flat at 1st floor and self contained duplex flat at 2nd & roof (works to include material alterations to structure, controlled services, fittings and thermal elements)**

**5.7** In the Council’s opinion, it appeared that the description of the development on the revised notice had been altered/tailored to correlate with the description on the relevant planning permission granted on 21/07/2015. There was also a concern that the revised amended notice alters the status of the works from ‘minor’ (when the notice was submitted in 2015) to ‘not minor’ works (when revised notice submitted in 2020), which appears to be an indication that the works referred to in the revised notice has been intensified.

**5.8** The revised amended notice does not provide any evidence that the development was commenced on time, there is no validity of proof that the Approved Inspector went on site, as no record has been submitted relating to the development that was inspected nor any record of the commencement date.

**5.9** The Design and Building contract submitted confirms that it was **agreed** on 25/05/2015 but is later signed by JPK(contractor) on 21/02/2015 and then the date has been crossed out to read

that it was signed by JPK (contractor) on 21/02/2018 (3 years later).

**5.10** The Interim progress payment submitted confirms that the contract was dated July 2018- however the exact date was not specified. It also confirms that the receipt was issued on 12 December 2018 and a valuation done in October 2018- again dates not specified, all of which do not substantiate that the permission was implemented on time before 21<sup>st</sup> July 2018.

**5.11** The Building specification document submitted is undated, and the drawing numbers referred to in this document do not correlate with the drawing numbers that were submitted and approved at the application stage, and those that were sent via an e-mail on Wednesday 13<sup>th</sup> May 2020.

The application drawings:

- BBA 656/B/101
- BBA 656 102 Rev G
- BBA 656 103 Rev F
- BBA 656 104 Rev D

Building Spec drawings:

- BBA 565/ B 101
- BBA 656 102 G
- BBA 656 103 E
- BBA 656 104 C

**5.12** The Photographs, and JPK's contractor's cost documents submitted are undated, and therefore do not provide any evidence of the development commencing on time.

## **Conclusion:**

**5.13** The anomalies listed above cast doubt on the validity of the evidence provided. When submitting applications of this nature, the onus is on the applicant to provide the burden of proof. In this regard, the 'balance of probability' has not been proven that the development as described under application ref: 2014/5359/P commenced on or prior to the final implementation date of 21.7.18, given that insufficient information has been provided in support of this application.

## **6. Recommendation: Refuse certificate**

### 6.1 Reason for refusal:

The applicant has provided insufficient evidence to demonstrate that, on the balance of probability, the development approved by planning permission ref: 2014/5359/P commenced within 3 years of its decision date of 21/07/2015 and prior to the final implementation date of 21/07/2018.