|  |  |
| --- | --- |
| **LDC Report** | 22/07/2020 |
| **Officer** |  |
| Raymond Yeung | 2020/3257/P |
| **Application Address** | **Recommendation**  |
| 20 Belsize SquareLondonNW3 4HT | Approve Certificate of Lawfulness |
| **1st Signature**  | **2nd Signature (if refusal)** |
|   |   |
| **Proposal**  |
| Confirmation of the lawful implementation of planning permission 2018/1956/P dated 08/06/2018 as amended by 2018/3068/P dated 23/08/2018 (Conversion of 2 x 4 bed flats into a 1 x 6 bed single family dwellinghouse). |
| A lawful development certificate has been submitted to establish the commencement in accordance with condition 1 (within three years from date of permission) of planning permission 2018/1956/P dated 08/06/2018 (Conversion of 2 x 4 bed flats into a 1 x 6 bed single family dwellinghouse ) as amended by 2018/3068/P (to add a rooflight) dated 23/08/2018, the application expires on 08/06/2021.The applicant is required to demonstrate that, on the balance of probability, a material operation for the purposes of section 56(1) of the 1990 Act has been carried out. In this case the planning permission description of development explicitly refers to the rooflight and its provision is shown on the approved plans for the planning permission.  It is therefore clear that the operation is not de minimus as it is ‘comprised in the development’ - i.e it clearly relates to the approved plans / permission**.** Its construction involved a material operation, namely the demolition of the relevant area of roof and the installation of a new window.  The relevant case law here is Court of Appeal’s decision in *Malvern Hills DC v. Secretary of State for the Environment*[1982] J.P.L. 439.  It’s judgement makes clear a “*material operation*” does not require “*a change in the character of the land or anything that might be called development*”.  As to whether that comprises a material operation under Section 56 (4) of the TCPA 1990, the works are a material operation as they constitute “*any work of construction in the course of the erection of a building*” under s.56(4)(a) of the TCPA 1990. In consideration whether the installation of a rooflight accords with a subsection that uses thewords *“erection*” and “*building*”. However, in s. 336 of the TCPA 1990 the word“*building*” as used in the Act is defined as including “*any structure or erection, and any part of a building, as so defined*” and the word "*erection*" is defined “*in relation to buildings as defined in this subsection*” as including “*extension, alteration and re-erection*”.Accordingly, one should read s. 56(4)(a), in the light of s. 336 of the TCPA 1990,as defining a “*material operation*” as meaning “*any work of construction in the course of the [alteration]of [part of a] building*”.Such example of a certificate of lawfulness is under ref: 2014/1837/P which was granted by the Council where the material operation was the installation of a rooflight.  The legislation surrounding Section 56 has not changed since the date of the attached certificate.**Applicant’s Evidence** The applicant has submitted the following information in support of the application, showing that the lift shaft has been built and therefore classifies that the proposal has been implemented:* Photographs taken of the works with the rooflight
* Receipts relating to work materials
* Invoices from the sub-contracted roofer
* Invoices overseeing of the works
* Article of works
* Rooflight order

The applicant has also submitted for approval a site location plan, proposed plans of second floor and roof level, decision notices of the original permission 2018/1956/P and minor material amendment 2018/1956/P.**Council’s evidence** The application does not have any outstanding pre-commencement planning conditions to be discharged.There are no relating enforcement cases to this property.**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 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 sufficiently precise and unambiguous to demonstrate that the development has commenced prior to the date mentioned above. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events. |
| **Recommendation:** Grant certificate of lawfulness  |