

<b>LDC Report</b>	14/04/2021
<b>Officer</b>	<b>Application Number</b>
Nora-Andreea Constantinescu	2021/0744/P
<b>Application Address</b>	<b>Recommendation</b>
251 Goldhurst Terrace London NW6 3EP	Grant approval
<b>1<sup>st</sup> Signature</b>	<b>2<sup>nd</sup> Signature (if refusal)</b>
<b>Proposal</b>	
Commencement of works in accordance with condition 1 (within three years from date of permission) of planning permission 2016/6697/P granted on 09/04/2018 (as amended under application ref 2019/4239/P dated 30/10/2020) for basement excavation with front lightwells and sunken terrace with steps for access to the rear; increase in height of the existing ground floor projection and replacement of rear doors, to dwellinghouse (Class C3).	
<b>Assessment</b>	
<p><b>1. Application site</b></p> <p>1.1 The application site is located on the southern side of Goldhurst Terrace and lies within South Hampstead Conservation Area. The application building is a three-storey semi-detached single family dwellinghouse, with existing storage space at basement level. The property with its semi-detached pair are part of a group of three semi-detached properties with similar features and unaltered roofs.</p> <p>1.2 There are no site specific Article 4 Directives, which have been applied to remove permitted development rights. There are no trees protected by tree preservation orders on or adjacent to the application site. The site is subject to a number of underground development constraints including Slope Stability and Surface water flow and flooding.</p> <p><b>2. Proposal</b></p> <p>2.1 The application seeks to confirm that the development permitted by Planning Permission 2016/6697/P dated 09/04/2018 (as amended under application ref 2019/4239/P dated 30/10/2020) was implemented in line with the attached conditions and the definitions of development outlined within the Town and Country Planning Act 1990. They therefore seek to confirm that the permission remains extant and that the carrying out of the balance of the operational works permitted would therefore not require further express consent.</p>	

2.2 To satisfy the above, the applicant is required to demonstrate, on balance of probability that the previous permission was implemented in line with any pre-commencement condition, prior to three years before the expiry date of the decision (9th April 2021).

### 3. Applicant's Evidence

3.1 The applicant has submitted the following information in support of the applications:

- Application form
- Site Location Plan
- Cover letter dated 16/02/2021
- Site Inspection
- Drainage layout – basement slab details

### 4. Council's Evidence

4.1 A summary of the relevant planning history for the property is given below:

#### Planning History:

**2016/6697/P** - Basement excavation with front lightwells and sunken terrace with steps for access to the rear; increase in height of the existing ground floor projection and replacement of rear doors, to dwellinghouse (Class C3). – **Granted subject to s106 legal agreement 09/04/2018**

**2019/4239/P** - Variation of Condition 3 (approved plans) of planning permission dated 09/04/2018 ref 2016/6697/P for Basement excavation with front lightwells and sunken terrace; increase in height of the existing ground floor projection and replacement of rear doors, to dwellinghouse (Class C3); changes to include installation of railings and planters at first floor level to form terrace over the extension. – **Granted subject to s106 legal agreement 30/10/2020**

#### Building Control:

**20/5/06329** - Construction of lower basement floor level with extension to rear, roof terrace above and refurbishment. – **Accept Initial Notice of Approved Inspectors issued on 08/10/2020**

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

5.2 As outlined in section 4 above, in 2018 planning permission (2016/6697/P) was granted for works described as “Basement excavation with front lightwells and sunken terrace with steps for access to the rear; increase in height of the existing ground floor projection and replacement of rear doors, to dwellinghouse”. The permission was not subject to any pre-commencement conditions; however, a s106 legal agreement was secured for a Construction Management Plan, Highways Contribution and Notice of Implementation. All s106 planning obligations have been satisfied and the notice of implementation was secured on 11/02/2021. It is therefore accepted that at this point the applicant had no outstanding pre-commencement requirements and would have been able to lawfully implement their permission.

5.3 In this instance, the most pertinent issues remaining are therefore the extent of the development permitted under 2016 permission; whether or not the development carried out on site constitutes commencement of works in line with the condition attached to this permission, and if so; whether these begun before 09/04/2021.

5.4 The applicant states that the above permission has been implemented on site by virtue of digging a trench of 600mm wide, 5m long and 2.8m deep and installing a drainage pipe which links the existing manhole in the front garden with the basement lightwells as granted consent. A drawing was submitted “Drainage Layout Basement Slab Details”, which shows the lines of the drainage pipes and directions.

5.5 The evidence submitted includes a Site Inspection Record from Act Surveyors dated 15/02/2021 which confirms that a backdrop connection to the manhole has been formed to the proposed lightwell area. Photographs are included which show the area excavated in the front garden, the pipes and connections to the manhole. As no evidence has been found which might contradict this statement of events, it is considered that, on the balance of probability, these works described were completed on site prior to 09/04/2021.

## **6. Conclusion**

6.1 It is considered that the evidence submitted along with the Council’s records are adequate to demonstrate that on the balance of probability, the works completed on site did constitute development, were in accordance with the scheme granted under planning permission 2016/6697/P, and were begun on site within three years of the date of the permission. It is therefore confirmed that this development commenced in line with the attached conditions and the definitions of development outlined within the Town and Country Planning Act 1990, and therefore remains extant.

## **7. Recommendations:**

7.1 Approve certificate of lawfulness existing use