

LDC Report	09/08/2021
Officer	Application Number
Matthew Dempsey	2021/2868/P
Application Address	Recommendation
42 Avenue Road London NW8 6HS	
1st Signature	2nd Signature (if refusal)
Proposal	
Implementation of planning permission Ref: 2015/4414/P (dated 31 March 2017).	
Assessment	
<p>The application site is located on the East side of Avenue Road. The application relates to a single family dwelling house. The building is not listed and is located in the Elsworthy Conservation Area.</p> <p>The application seeks to demonstrate that application 2015/4414/P has been implemented such that the development may be completed without the requirement for further consent.</p> <p>The applicant is required to demonstrate, on balance of probability that the implementation occurred prior to the expiry of the decision.</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 14/06/2021 • Schedule to outline implementation of planning application 2020/3953/P • Final Decision Notice 2015/4414/P • Final Decision Notice 2020/3953/P • Final Decision Notice 2021/0503/P <p>The applicant has also submitted the following plans:</p> <ul style="list-style-type: none"> • Site block plan 1869/P-AP-005 • 21/0293/34 D • 1920-P200-C <p>Council's Evidence</p>	

Planning history:

2015/4414/P - Installation of car stacker within front forecourt including excavation at sub-basement level. **Granted subject to 106 agreement 31/03/2017. S106 dated 31/03/2017.**

2020/3953/P - Additional Environmental Approval to extend planning permission ref 2015/4414/P dated 31/03/2017 until 01/05/2021, under Section 93B of the TCPA 1990 (as amended by Section 17 of the Business and Planning Act 2020). **Granted 28/09/2020.**

2021/0503/P - Detail of Structural Engineer as required by condition 3, and; details of Hard and Soft Landscaping as required by condition 6, of of 2020/3953/P, dated 29/03/2020, for; Additional Environmental Approval to extend planning permission ref 2015/4414/P dated 31/03/2017 until 01/05/2021, under Section 93B of the TCPA 1990 (as amended by Section 17 of the Business and Planning Act 2020). **Granted 17/05/2021.**

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.

What was the last day on which material operations could lawfully commence? (“the last day”)

01/05/2021

Were the material operations capable of being commenced on or before the last day? In other words, were all pre-start conditions that go to the heart of the permission discharged on or before the last day?

Yes. The only condition precedent was condition 3 which prohibited development until details of an engineer were submitted for approval to the LPA. The details were submitted on 3 Feb 2021 before the last day and were acceptable. Although the LPA only confirmed they were acceptable after the last day, the application also included other conditions and information. The details of the engineer remained acceptable and the same, from the date of submission onwards.

Were material operations probably commenced on or before the last day?

Yes. The applicant has provided a schedule of works to outline the implementation including photographic imagery of works as they progressed, regarding the installation of a pile that will form part of the pit in which the car lift will sit.

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 ‘on the balance of probability’ the development ref: 2015/4414/P has been implemented within the period prior to expiry of that permission as required under the Act; with

provision under Additional Environmental Approval to extend planning permission reference 2015/4414/P, dated 31/03/2017 until 01/05/2021, under Section 93B of the TCPA 1990 (as amended by Section 17 of the Business and Planning Act 2020), Granted 28/09/2020.

Recommendation:

Grant Certificate of Lawful development.