

LDC (Existing) Report		Application number	2022/0575/P
Officer		Expiry date	
Tony Young		07/04/2022	
Application Address		Authorised Officer Signature	
Flat 1 3 Eton Avenue London NW3 3EL			
Conservation Area		Article 4	
Belsize Park		Yes	
Proposal			
Commencement of works in accordance with condition 1 (within three years from date of permission) of planning permission (2017/6275/P) granted 25/01/2019 for extensions to ground floor flat including basement excavation with rear extension and roof terrace, replacement conservatory at ground floor level, and associated landscaping including erection of replacement garden shed.			
Recommendation:		Grant Certificate of Lawfulness	

Planning permission (2017/6275/P) was granted on 25/01/2019 subject to a Section 106 Legal Agreement and conditions. The approved scheme is for extensions to the ground floor flat, including basement excavation with rear extension and roof terrace, replacement conservatory at ground floor level, and associated landscaping including erection of replacement garden shed.

The certificate seeks to establish that works to implement the approved scheme commenced before the permission expired on 25/01/2022, and that the implementation of the scheme is therefore lawful and such development can continue as approved under this permission.

Applicant's Evidence

The applicant has submitted the following information in support of the application:

- Cover letter from RPS Consulting Services Ltd. dated 10/02/2022;
- Site Inspection Report from Building Control Approval Ltd. (ref. IT/4915) dated 21/01/2022;
- Letter from VIN-DEC Professional Refurbishment Ltd. (ref. Estimate-0250) dated 29/12/2021;
- Photo sheets (evidence of works and tree protection measures).

The applicant has also submitted the following plan:

- Site location plan outlining the application site (ref. FRB_01).

Council's Evidence

There is one pre-commencement condition attached to planning permission (2017/6275/P) which required further details to be submitted and discharged prior to the commencement of any works:

- Condition 4 (Landscaping specifications).

This condition was discharged on 13/10/2021 under approval reference 2021/3360/P.

The associated Section 106 Legal Agreement has a number of obligations which are also required to be discharged prior to the commencement of any works:

- Clauses 4.2.2 & 4.2.4 require the submission and approval of the Level Plans;
- Clause 4.1(i) requires payment of the Construction Management Plan Implementation Support;
- Clause 4.1 (ii) requires the submission and approval of a Construction Management Plan; and
- Clauses 4.2.1 & 4.2.3 require payment of the Highways Contribution.

The Council's Planning Obligations Team have confirmed that all the above obligations were discharged by 04/01/2022.

As such, all necessary pre-commencement planning conditions and implementation planning obligations have therefore been discharged and provide the opportunity under planning permission (2017/6275/P) for works to commence.

Assessment

The application was submitted on 10/02/2022 accompanied by the documents listed above by way of evidence in support of the assertion that planning permission was lawfully implemented prior to 25/01/2022, following the commencement of works as approved under planning permission (2017/6275/P); the material operations having commenced prior to the expiry of 3 years in compliance with Condition 1 of the planning permission.

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: Application and determination procedure, paragraph 006 dated 06/03/2014). The relevant test is the 'balance of probability' and authorities are advised that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone 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 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 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.

The Council's evidence does not contradict or undermine the applicant's version of events, and as such, the development is considered to have been lawfully implemented and a Certificate of Lawfulness can be issued.

Recommendation: Grant Certificate of Lawfulness