

LDC Report	18/08/2022
Officer	Application Number
Fast Track GG	2022/2701/P
Application Address	Recommendation
36 Christchurch Hill London NW3 1JL	Grant Certificate of Lawfulness (existing)
1st Signature	2nd Signature (if refusal)
Proposal	
Alterations to the boundary wall to front garden and gate.	
Assessment	
<p>No. 36 Christchurch Hill is a two-storey dwelling on the north-east side of the road, towards the higher end of the hill (where the road meets Cannon Place).</p> <p>The application relates to a variation to the boundary wall to front garden and gate following planning permission granted on 10th May 2016 for the conversion of garage to living accommodation; erection of entrance porch; creation of walled front courtyard; insertion of 2x front roof lights and 2x additional rear roof lights; alterations to existing door and window openings; associated works.</p> <p>The building is not listed and is located in the Hampstead Conservation Area.</p> <p>The application seeks to demonstrate that the boundary wall to the front garden and gate has existed for a period of 4 years or more. The wall and gate according to the document that has been provided were constructed prior to February 2018.</p> <p>The evidence submitted supports these dates proving a greater than 4 years use. The boundary wall to the front garden and gate has existed for a period of 4 years or more such that the continued use would not require planning permission.</p> <p>The applicant is required to demonstrate, on balance of probability that the existing boundary wall and gate has existed for a period of 4 or more years.</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"> Final Certificate from Salus dated 9th February 2018 	

The applicant has also submitted the following plans:

- Site location plan 21.17.04
- Existing plans and elevations 21.17.02
- Proposed plans and elevations 21.17.03
- Design and Access Statement dated 22 June 2022

Council's Evidence

The aerial photograph (Street View) from February 2018 demonstrates that the boundary wall to the front garden and gate had already been constructed.

There is a current enforcement investigation (EN21/0167) in relation to the front of the house not being in accordance with the approved plans, however, as the works was completed more than 4 years ago and no formal enforcement action has been taken, it is immune from enforcement action.

History

2015/4661/P - Conversion of garage to living accommodation; erection of entrance porch; creation of walled front courtyard; insertion of 2x front roof lights and 2x additional rear roof lights; alterations to existing door and window openings; associated works

Planning permission granted on 10th May 2016

2016/6173/P - Details/samples of external materials, required by condition 3 of planning permission 2015/4661/P, dated 10/05/2016 (for conversion of garage to living accommodation and associated works)

Planning permission granted on 8th March 2017

2022/1131/P - Non-material amendment to planning permission (2015/4661/P) dated 10/05/2016; "conversion of garage to living accommodation; erection of entrance porch; creation of walled front courtyard; insertion of 2x front roof lights and 2x additional rear roof lights; alterations to existing door and window openings; associated works." Changes include alterations to the windows, doors and rooflights.

Planning permission granted on 31st March 2022

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.

Evidence has been submitted which demonstrates that the boundary wall to the front garden and gate have been completed for more than 4 years, the council's evidence (aerial photograph)

shows that the wall and gate have been there since February 2018.

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 front boundary wall and gate has existed and been in use for a period of more than 4 years as required under the Act. Furthermore, the Council's evidence does not contradict or undermine the applicant's version of events.

Recommendation: Approve