

<b>LDC Report</b>		29/08/2022	
<b>Officer</b>		<b>Application Number</b>	
Fast Track SC		2022/0999/P	
<b>Application Address</b>		<b>Recommendation</b>	
Radlett House Radlett Place London Camden NW8 6BT			
<b>1<sup>st</sup> Signature</b>		<b>2<sup>nd</sup> Signature (if refusal)</b>	
<b>Proposal</b>			
Implementation of planning permission reference 2018/5673/P dated 12/02/2019 for 'Erection of garden pergola to front garden of property to link main house with garden outbuilding / pool house previously permitted/implemented under previous application references 2010/6316/P dated 17/01/2011 and 2018/4258/P dated 12/10/2018.'			
<b>Assessment</b>			
<p><b><u>1. Application Site</u></b></p> <p>1.1 The application site is located in the north-western corner of Radlett Place, on the south western edge of Primrose Hill. Radlett Place is a gated, privately owned cul-de-sac leading from the busy thoroughfare of Avenue Road. The site is enclosed by a large red brick wall as well as heavy vegetation to the North and West. The site hosts a three storey (including habitable rooms at roof level) detached single family dwellinghouse which was constructed approximately 10 years ago.</p> <p>1.2 The site is located within the Elsworthy Road Conservation Area. The buildings are not listed, nor do they adjoin any listed buildings.</p> <p><b><u>2. Proposal</u></b></p> <p>2.1 The applicant seeks to confirm that the that development permitted under planning application 2018/5673/P dated 12/02/2019 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> <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 from the date of the decision. The decision was made on 12/02/2019 and condition 1 states that:</p>			

The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

Therefore, the expiry date of the permission is 12/02/2022.

### **3. Applicant's Evidence**

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

- Application form
- Site block plan
- HSE - F10 Notification of Construction Project
- Initial Building Notice
- Pre-Construction Information
- Radlett House Implementation supporting images
- Radlett House Pergola Final Decision Notice (2018.5673.P)
- Building Inspection reported dated 04/02/2022 by The Buildings Inspectors.

The applicant has also submitted the following plans:

- FWZ.199\_SITE LOCATION PLAN
- FWZ.200\_PROPOSED SITE PLAN
- FWZ.201\_PROPOSED ROOF PLAN
- FWZ.203\_PROPOSED ELEVATION AND SECTION
- FWZ.204\_PROPOSED DESIGN INTENT BASE and EAVES DETAIL
- FWZ-199.1\_EXISTING ROOF PLAN
- FWZ-199.2\_EXISTING FRONT ELEVATION
- FWZ-199.3\_EXISTING SIDE ELEVATION
- FWZ-199.4\_EXISTING SIDE ELEVATION
- FWZ-199.5\_EXISTING REAR ELEVATION
- FWZ-199.6\_EXISTING SECTION AA

### **4. Council's Evidence**

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

Planning applications related to the garden pergola:

**2018/5673/P:** Erection of garden pergola to front garden of property to link main house with garden outbuilding / pool house previously permitted/implemented under previous application references 2010/6316/P dated 17/01/2011 and 2018/4258/P dated 12/10/2018. **Granted 12/02/2019.**

This permission was subject to three conditions, the standard time limit condition, a condition stating that the development shall be carried out in accordance with the approved details and that trees shall be protected. None of these conditions require further details to be submitted and approved prior to works commencing.

Planning applications for the erection of the dwellinghouse:

**2004/5444/P:** Erection of a 2-storey single-family dwelling house. Granted 18/04/2005.

**2006/0210/P:** Erection of a new part one, part two storey dwellinghouse, as an amendment to the planning permission granted (ref 2004/5446/P) for the erection of a new dwelling house. Granted 09/03/2006.

**2006/1799/P:** Erection of a new part one, part two storey dwellinghouse, as an amendment to the planning permission granted on 21/06/05 (ref 2004/5446/P) for the erection of a new dwelling house. Granted 26/05/2006

**2007/1124/P:** Alterations to chimneys, roof eaves, rooflight and fenestration, as amendments to planning permission dated 26.05.06 (2006/1799/P) for the erection of a new dwellinghouse. Granted 29/05/2007.

Planning applications for extensions/alterations (to newly built dwelling house):

**2007/4249/P & 2007/4250/C:** Demolition of existing swimming pool / pavilion building adjacent to Primrose Hill with a two storey building plus roof to accommodate a swimming pool. Granted 30/11/2007.

**2008/3944/P:** Erection of a two storey plus basement ancillary building including pool to the dwellinghouse, following the demolition of existing pool house. Granted 24/03/2009.

**2009/1954/P:** The erection of a single storey porch extension to the entrance and a colonnade along the side of the house. Granted 31/07/2009.

**(ii) 2010/6316/P:** Erection of a two storey plus basement out building and alteration to gate in association with existing residential dwelling (Class C3).” Granted 17/01/2011.

‘Prior to commencement’ conditions applied for submission of:

(3) Tree protection measures

**(i) 2011/5102/P:** “Excavation of a basement beneath the main house with front and rear lightwells and a two-storey basement link under the garden between the house and the previously approved swimming pool outbuilding, and installation of air conditioning unit and enclosure in garden, all in association with the use of the single family dwelling (Class C3).” Granted subject to s106 legal agreement 30/03/2012

‘Prior to commencement’ conditions applied for submission of:

(4) SuDS / site drainage details

(9) BREEAM design stage report

(10) Basement engineer appointment details

The legal agreement stipulated the following, prior to commencement:

- Construction Management Plan

**(iii) 2012/5607/P:** Erection of a two storey outbuilding and a single storey front extension to the main house in connection with existing residential dwelling (Class C3). Granted 24/12/2012.

‘Prior to commencement’ conditions applied for submission of:

## (5) Tree protection measures

**2016/4374/P:** Alterations to rear roof slope of dwelling (C3) including the repositioning of rear dormers and installation of lift overrun with faux chimney stack to facilitate the installation of internal passenger lift. Granted 03/10/2016

**2017/0716/P:** Creation of a crown tiled roof / attic floor above two storey rear projection of dwelling (Use Class C3) including no.5 dormer windows and linked walkway to existing loft. Granted 08/05/2017.

**2018/4258/P:** Confirmation of commencement of works on site in relation to planning applications (i) 2011/5102/P dated 30/03/2012 (basement extension to main house); (ii) 2010/6316/P dated 17/01/2011 (basement to pool house); and (iii) 2012/5607/P dated 24/12/2012 (erection of two storey outbuilding). **Granted 12/10/2018**

### Relevant approval of details applications:

Pre commencement conditions for application (i) 2011/5102/P:

- Condition 9 (BREEAM) was discharged on the 16/07/2013 under AoD ref. 2013/4387/P
- Conditions 4 (SuDS) and 10 (Basement engineer) were discharged on the 10/09/2013 under AoD ref. 2013/5026/P

Pre commencement conditions for (ii) 2010/6316/P:

- Condition 3 (TP measures) was discharged on the 04/09/2013 under AoD ref. 2013/4737/P

Pre commencement conditions for application (iii) 2012/5607/P:

- Condition 5 (TP measures) was discharged on the 04/09/2013 under AoD ref. 2013/4736/P

### Section 106 legal agreement submissions

For application 2011/5102/P, a Construction Management Plan was submitted to the Council in 2013. On the 15 October 2013, the LPA issued a letter to confirm that the received CMP was acceptable and thereby that this clause could be discharged.

## **(2) Building Control applications**

4.2. A summary of the relevant building control records for the property is given below:

**13/5/11193:** Building notice served for the 'Retaining wall to New Basement, Outbuilding & Poolhouse' with a commencement date of 16/10/2013. Acceptance of AI issued (following 2010/6316/P, 2011/5102/P and 2012/5607/P)

## **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’s records show that there are no pre-commencement conditions for the relevant planning permission. Evidence submitted by the applicant includes the building control approval documentation for the pergola and photos of the works which have commenced, namely a foundation trench to a depth of 1m 0.6 m wide, now filled with a concrete foundation. The evidence submitted sufficiently predates the planning permission expiry date of 12/02/2022. Evidence of further construction works has not been provided. Notwithstanding this, the evidence submitted confirms that works completed, namely the digging of the trench and laying of a concrete foundation, would fall within the definition of development/building operation as specified by section 55 (1A) of the Town and Country Planning Act 1990 (as amended). It is therefore accepted that the works onsite did constitute development and were made in accordance with the plans approved under application reference: **2018/5673/P**

The information provided by the applicant is deemed to be sufficiently precise and unambiguous to demonstrate that ‘on the balance of probability’ that the above permission was implemented. Furthermore, the Council’s evidence does not contradict or undermine the applicant’s version of events.

**Recommendation: Approve**