

Officer's Report

Application Number	HGY/2023/0990
Type	Lawful development: Proposed use
Location	4 Broughton Gardens, Hornsey, London, N6 5RS
Proposal	Certificate of Lawfulness establishing that the proposed demolition of a concrete walled planter at ground floor level at the front of the property, would constitute the carrying out of a 'material operation' comprised in the development granted planning permission under application reference: HGY/2020/2352 on the 18 November 2020, and for the purposes of Section 56 (1) of the Town and Country Planning Act 1990 would represent the initiation of the development.
Case Officer	Neil McClellan
Valid Date	11/04/2023
Applicant	Mr Lloyd Simon
Agent	Mr Daniel Rinsler

RECOMMENDATION

Approve

SITE DESCRIPTION

Three-storey semi-detached house located within Broughton Gardens, a 1930's development of modernist houses located off Shepherds Hill.

The property is not listed, however it is located within the Crouch End Conservation Area and is noted as a positively contributing building.

DETAILS OF PROPOSAL

Certificate of lawfulness establishing that the proposed demolition of a concrete walled planter at ground floor level at the front of the property, would constitute the carrying out of a 'material operation' comprised in the development granted planning permission under application reference: HGY/2020/2352 on the 18 November 2020, and for the purposes of Section 56 (1) of the Town and Country Planning Act 1990 would represent the initiation of the development.

RELEVANT PLANNING AND ENFORCEMENT HISTORY

The property has quite an extensive planning history. The more recent decisions are set out below.

CON/2022/0233 – Notification of proposed works to trees in a conservation area comprising the re-pollarding of 1 London plane and 8 lime trees in the property's rear garden. No objection was raised to the proposed works. Decided 05.07.2022.

HGY/2020/2352 – Planning permission granted for the construction of a new ground floor and lower ground floor side extension with a new terrace and addition of a new garage to the front of the existing dwelling. Decided 18.11.2020.

HGY/2018/2503 – Approval of a non-material amendment following as grant of planning permission HGY/2016/1965 involving the removal of the approved lower ground floor. Decided 24.08.2018.

HGY/2016/1965 – Planning permission granted for the erection of a side extension at ground floor and lower ground floor level. Decided 02.09.2016.

HGY/2012/0789 – Planning permission granted for the replacement of the property's existing second floor extension with a new larger second floor extension. Decided 03.08.2012.

HGY/2010/0187 – Certificate of lawfulness granted for the erection of a single storey rear extension. Decided 24.03.2010.

There have also been the following previous enforcement investigations relating to the property:

UNW/2010/00467 – Investigation into a complaint that the single storey rear extension being erected at the property exceeded the relevant permitted development height restrictions. The extension was found to meet the relevant PD restrictions and conditions and the case was closed on the 11.08.2010.

TPC/2007/00150 - Investigation into a complaint that unauthorised tree works had been carried out at the property in contravention of s.211 of the Town & Country Planning Act 1990. The investigation revealed that unauthorised tree works had been carried, with the owner/occupier stating they were unaware their property was inside a conservation area. The works were not considered significant to take further action and the case was closed on the 09.21.200, with the owner/occupier being advised of their obligations under sections 210 & 211 of the 1990 Act.

RELEVANT PLANNING LEGISLATION

The application has been made under section 192 of the Town and Country Planning Act 1990 and relevant amendments. This not a planning application but instead the applicant seeks confirmation that the proposed development is lawful. As such, the impact of the proposed development of the neighbour's amenities or the character of the area cannot be taken into consideration for this submission.

Section 56 of the of the Town and Country Planning Act 1990

The applicant is seeking to establish that the proposed demolition of a walled planter located to the front of their property would constitute the commencement of their planning permission reference: HGY/2020/2352 for a ground and lower ground floor side extension, new garage and new rear terrace (see planning history) and thus meeting the requirement of Condition 2 that the development be begun within three years of the grant of that permission (18.11.2022):

The development hereby authorised must be begun not later than the expiration of 3 years from the date of this permission, failing which the permission shall be of no effect.

Reason: This condition is imposed by virtue of the provisions of the Planning & Compulsory Purchase Act 2004 and to prevent the accumulation of unimplemented planning permissions.

In order to lawfully 'commence' development it is necessary to satisfy the legal requirements in section 56(4) of the Town and Country Planning Act 1990. This says that "development is taken to be begun on the earliest date on which a material operation is carried out". A material operation can include any works of construction, demolition, digging foundations, laying out or constructing a road and a material change in the use of the land.

In practice, very minor works are usually sufficient to commence development. This could be as simple as putting in footings or even just pegging-out a roadway. The proposed demolition of the concrete wall planter is in accordance with the approved drawings and as such is comprised within the development. Officers therefore acknowledge that the physical works to be carried out at the application site proposed in this certificate meet the definition of what comprises a 'material operation' as set out in Part III, Section 56(4) of the Act.

The works done must reflect what was actually permitted by the planning permission, which would include complying with any pre-commencement planning conditions relevant to the works being undertaken. Otherwise, any works done to implement in accordance with section 56(4) may not be lawful and may then be subject to challenge by the local authority. There are two pre-commencement conditions attached to the planning permission that are yet to be discharged. Condition 4 requiring details of tree protection matters and condition 7 requiring the submission of a construction management plan (CMP) prior to the commencement of any work including demolition.

Condition 4 is not relevant to the removal of the planter as all the trees requiring protection are in the back garden.

It is acknowledged that the removal of the planter is only a very small part of the works to which any agreed CMP would apply and its removal on its own is unlikely to cause any significant difficulties or nuisance for neighbours. However, the removal of the planter would constitute demolition which is the trigger in Condition 7.

To overcome this issue, the applicant's agent has suggested that an application be submitted under s73 to vary the wording of both pre-commencement conditions stating that these conditions need not apply to the removal of the planter. In the event of this certificate being approved it is recommended that an informative be added to the decision notice advising the applicant of the need to comply with any relevant pre-commencement conditions attached to the original permission prior to the commencement of work to remove the planter unless, the LPA has agreed in writing to the variation of those conditions to allow the demolition of the planter to commence before they are discharged.

Community Infrastructure Levy

The original scheme is liable for CIL. The applicant will be applying for a self-build exemption. An informative will be added to any certificate granted, advising the applicant that they must have submitted their application for exemption and received a decision before beginning work.

SUMMARY AND CONCLUSION

The proposed demolition of the raised planter located in the front forecourt of the application property as indicated in the submitted drawings, would be a 'material operation' as set out in Part III, Section 56(4) of the Town and Country Planning Act 1990 and for the purposes of Section 56 (1) of the Act 1990 would constitute the initiation of the development granted planning permission under planning application reference HGY/2020/2352.

RECOMMENDATION

Grant Certificate.

In pursuance of their powers under the above Acts the London Borough of Haringey as local planning Authority hereby CERTIFY that the above proposal described by the applicant to be LAWFUL.

Informatives:

- **INFORMATIVE: Pre-Commencement Conditions**
To ensure that the works to implement planning permission reference HGY/2020/2352 are lawful, the applicant is advised to comply with any relevant pre-commencement conditions attached to the original permission prior to the commencement of work unless, the LPA has agreed in writing to the variation of those conditions to allow the works described in this certificate of lawfulness to commence before the condition(s) are discharged.
- **INFORMATIVE: Community Infrastructure Levy - Self Build Exemption**
Please note that if you wish to apply for a self-build exemption in relation to the Community Infrastructure Levy applicable to the approved development, then you must have submitted your application for exemption and received a decision before beginning work. If you fail to submit a commencement notice before starting any work, the full chargeable amount for CIL will become immediately payable.