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80-83 Long Lane  
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**Via Planning Portal Only**

09/10/2023

Dear Sir/Madam

**CERTIFICATE OF LAWFUL DEVELOPMENT (PROPOSED) WITH RESPECT TO THE AMALGAMATION OF LOWER GROUND FLOOR FLAT AND STUDIO INTO ONE FLAT AT 5A BELSIZE SQUARE, LONDON, NW3 4HT**

This is an application under Section 192 (1) (b) of the Town and Country Planning Act 1990 to obtain a Lawful Development Certificate to confirm that the proposed amalgamation of one residential flat and one residential studio into a single residential flat at 5a Belsize Square is not development and thus lawful. This application concerns the proposed use of the lower ground floor only and does not require any external works.

**Description of Proposed Development**

Amalgamation of one flat and one studio into one flat.

**The Site**

The site is located on the south side of Belsize Square, within the Belsize Park Conservation Area.

The application building is a four-storey semi-detached property. The property has been subdivided into 5 residential flats, two of which are located within the lower ground floor and are subject to this application. The building is not listed but is identified as a positive contributor to the Conservation Area.

**Planning History**

**Application site:**

On the 2<sup>nd</sup> of August 2010, planning permission was approved (ref: 2010/3130/P) for the erection of a single storey rear extension (the existing rear extension would be demolished), the enlargement of an existing window on the side elevation, and the creation of a new window to an existing lower ground floor flat (Class C3). This permission was not implemented.

## **The Lawfulness of The Proposed Development**

As set out at Section 55(1) of the Town and Country Planning Act 1990, planning permission is only required for proposals which constitute “development”, which includes operational development and making a material change of the use of land. The proposed amalgamation of two units is a non-operational development. Therefore, the main issue is whether or not the proposed amalgamation constitutes a material change of use. The Town and Country Planning Act 1990 is silent on this matter, and it is therefore a matter which falls to planning case law.

The *East Barnet UDC v British Transport Commission* [1962] case established that the character of the use of the land is an important consideration in the assessment as to whether a change of use of land is material. In this case, the existing and proposed use would continue to be residential (C3 use class). Therefore, there would be no material change in the character of the use of the land associated with the proposed amalgamation. The proposal (which forms part of this lawful development certificate) does not propose any external alterations and the proposal would have no impact on the residential character of the area.

However, more recent case law added a further matter of consideration when it comes to the amalgamation of residential units. The *London Borough of Richmond v Secretary of State for the Environment, Transport and the Regions and Richmond upon Thames Churches Housing Trust QBD* [2000] held that whether planning permission is required for amalgamation should be a matter of fact and degree as to whether the loss of an existing use represents a material change of use having regard to the planning merits of the area, any planning policies in place and evidence of need.

Camden Local Plan policy H1 seeks to maximise housing supply, however policy H3 resists the loss of residential floorspace, and the net loss of two or more homes (from individual or cumulative proposals). In this instance, there is no loss of residential floor space and only the loss of single unit, which is in itself a studio that doesn't meet modern space standards. There have been no previous losses of residential units within the building. It is therefore considered, that in this context, the proposal would not materially impact the Borough's housing stock, nor the ability of the Council to meet its housing targets. The building would remain in residential use.

There are no material alterations proposed to the external appearance of the building. The de-intensification of the units from two to one would have no material impact on neighbouring amenity, environment, character or infrastructure. The existing residential units within the building have agreed to the proposal. It is also noted that the lower ground floor was previously a single flat, prior to its conversion sometime in the 1980's, and the local area is characterised by single flats at lower ground floor level (rather than two flats within the lower ground floor area).

Furthermore, attention is drawn to appeal decision APP/X5210/X/17/3172201 (Council ref: 2016/5621/P), the Inspector found that the amalgamation of two dwellings is not development, and as such did not result in a material change of use.

The proposal does not constitute a material change of use and therefore is not development, as defined by Section 55 of the Town and Country Planning Act 1990 (as amended).

## **Summary & Conclusion**

The proposed amalgamation of two lower ground floor residential flats into a single residential flat is not development, as defined by section 55 of the Town and Country Planning Act 1990, since the proposal does not constitute a material change of use and no building operations are proposed. It is therefore respectfully requested that a certificate is issued.

I trust the commentary above is clear but please do not hesitate to contact me if you have any queries or if I can offer any further points of clarification.

Yours faithfully

**Lauren Westley**  
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**SM Planning**