

T: 07900 413080
DDI: 0207 692 0643

E: info@smplanning.com
W: www.smplanning.com

80-83 Long Lane
London, EC1A 9ET

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Via Planning Portal Only

17 November 2023

Dear Sir/Madam

CERTIFICATE OF LAWFUL DEVELOPMENT (PROPOSED) WITH RESPECT TO THE AMALGAMATION OF 2 SELF CONTAINED FLATS INTO A SINGLE DWELLING HOUSE AT 45 ELSWORTHY ROAD, LONDON, NW3 3BS.

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 two flats within the building to a single-family dwelling house is not development and thus lawful.

Description of Proposed Development

Amalgamation of two dwellings into one.

The Site

The application site is occupied by a large two storey building with accommodation in the roof space and a basement. The building would have originally been constructed in the late 20th century as part of the wider development of the area, as a single-family dwelling house.

Following a planning consent in 1959 (see planning history), the building appears to have been converted into two properties with the second-floor roof accommodation converted into a two-bedroom flat, via a staircase that is accessed via a separate external entrance located to the rear of the garage. The first, ground and basement floors remained in use as a single unit.

The building still reads as large, detached dwelling. The site is within the Elsworth Conservation Area, and directly abuts Primrose Hill to the rear, which is a designated Metropolitan Open Land (MOL). The building is not listed.

This application seeks to return the building to a single dwelling house, by removing the staircase (the main internal staircase will remain) and converting the kitchen into a playroom. No external changes are proposed.

Planning History

Application site:

In March 1959 planning permission was granted for 'Alterations and additions in connection with conversion of No. 45 Elsworthy Road, Hampstead, into a self-contained maisonette on the ground and first floors and a self-contained flat on the second floor'.

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 H3 states that the Council will resist development that would involve a net loss of residential floorspace and that would involve 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 one unit, which has a difficult access. There have been no previous losses of residential units within the building. Camden's Planning Guidance on Housing (2021) provides useful guidance on how the Council interpret Local Plan Policy H3. Of particular note is paragraph 10.1, which confirms that guidance does not relate to applications for Lawful Development Certificates.

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.

There are numerous examples in the Borough whereby the amalgamation of two dwellings into one have been considered to not constitute a material change of use, both under delegated authority and at appeal. This includes appeal reference APP/X5210/X/17/3172201 (Council reference: 2016/5621/P) and application references 2019/1399/P, 2019/3652/P, 2019/4264/P and 2021/6239/P.

The proposal results in the loss of a single dwelling and does not result in the loss of any residential floorspace. There would be no conflict with Local Plan Policy H3. The proposal would not have a material impact on the Borough's housing stock or impact on the ability of the Council to meet its housing target. 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 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
Senior Planner
SM Planning