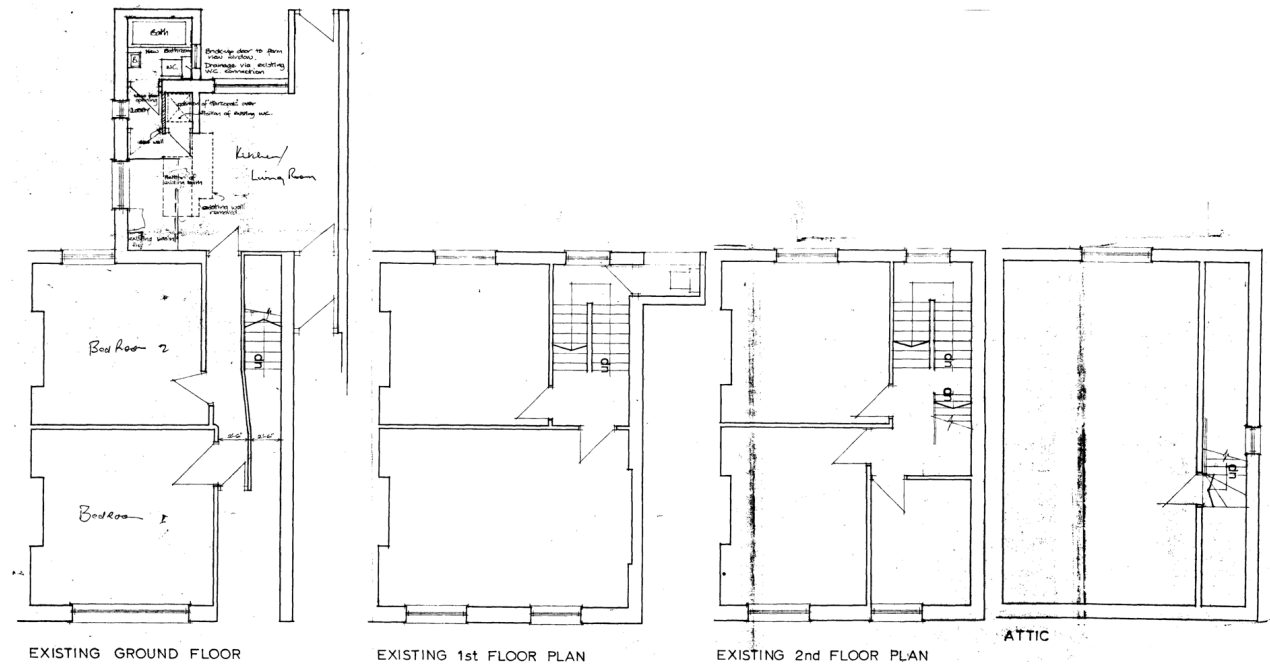


Planning Statement – 69 Patshull Road, London NW5 2LE

Site Description

1. The building was built as a single dwelling over four storeys in circa 1860. The first planning drawings that are available date from 1972. They show it to have been laid out as follows.



2. Planning permission was granted for the conversion of the building into three dwellings on 7 February 1973 (15269). After that time it comprised one flat on each of the ground and first floors (2x 1-bed; one each in red and orange), and another flat on the second and third floors (1x 2-bed; shown in yellow). The annotated extracts below are from the “existing drawings” accompanying 2018/2827/P.



3. A lawful development certificate was granted for the amalgamation of two of those dwellings (2x 1-bed) into one dwelling (1x 3-bed) on 5 June 2019 (**2019/2064/P**). The other dwelling (1x 2-bed) was unaffected. Since that time the building has consisted in one maisonette on the ground and first floors (1x 3-bed; shown in red), and another maisonette on the second and third floors (1x 2-bed; shown in yellow): there are two dwellings. The annotated extracts below are from the “proposed drawings” accompanying **2019/3223/P**.



4. The building is not listed. It lies within the Bartholomew Estate Conservation Area, designated on 4 February 1992. There is a locally listed building on the corner of Kentish Town Road and Patshull Road. The current proposal is to revert the subject building to its as-built state as a single dwelling, respecting the conservation area. The accompanying “proposed drawings” show the following.



Proposal

5. A lawful development certificate is sought for the amalgamation of the two existing dwellings (1x 3-bed, 1x 2-bed) into one dwelling (1x 6-bed), reverting the building to its as-built state as a single dwelling. In substance, the proposal involves:

- Removing the partition wall on the ground floor dividing the lower maisonette from the main staircase.
- Removing the secondary staircase.
- Extending the middle bedroom on the first floor into what is now part of the landing.

For the avoidance of doubt, no external changes are proposed; the building will appear wholly unaltered.

6. This planning statement will establish the following:

- The proposed alterations would not constitute “development” within the meaning of s.55 Town and Country Planning Act 1990 (“TCPA 1990”), so that planning permission is not required and a lawful development certificate should be granted.
- Policy H3 is irrelevant to the question whether the proposal amounts to development. In any event, this being an application under s.192 TCPA 1990 which is directed to “the time of the application”, the Council is bound to consider the circumstances currently pertaining; it may not refuse it merely because the building has been the subject of a prior amalgamation.
- There are material considerations that support the grant of the lawful development certificate sought, including the proposal generally being policy-compliant and representing an enhancement of the conservation area; the reversion of a building to its as-built state being qualitatively different to amalgamating neighbouring buildings requiring that it be treated differently; and there being no material impact on in-borough housing stock.
- In any event the circumstances of this case reveal the strongest conceivable case for affording a policy exception.

Site History

7. Prior applications in respect of the building have been made to, and approved by, Camden LBC (“**the Council**”) as follows:

7 February 1973	15269	Planning permission was granted for the conversion of the single dwelling into three dwellings.
13 March 2019	2019/1056/T	No objection was made in respect of works to two trees in the rear garden.
5 April 2019	2018/2827/P	Planning permission was granted principally in respect of side and rear extensions.
5 June 2019	2019/2064/P	It was confirmed that amalgamating two dwellings within the building would not amount to development.
15 August 2019	2019/3223/P	Non-material amendments were made to the grant of planning permission of 5 April 2019, principally relating to fenestration and to facilitating the amalgamation of the two dwellings, as above.
8 November 2019	2019/4388/P	Details were approved in discharge of condition pertaining to doors, windows, and front boundary treatment.
20 April 2020	2020/0736/P	Non-material amendments were made to the grant of planning permission dated 5 April 2019, principally relating to fenestration and other fine details.
6 October 2020	2020/3025/P	Planning permission was granted pursuant to s.73 TCPA 1990, relating principally to the roof structure.
17 September 2021	2021/3825/T	No objection was made in respect of works to two trees in the rear garden.
20 March 2023	2022/4490/P	Planning permission was granted in respect of the installation of further windows.

Does the proposal amount to development?

8. Planning permission is required for development: s.57(1) TCPA 1990. “Development” consists in the carrying out of operational development or the “making or any material change in the use of any building”: s.55(1) TCPA 1990. The Act explicitly provides that the use as two or more separate dwellings of any building previously used as a single dwelling involves a material change in the use of the building: s.55(3) TCPA 1990 (emphasis added).

9. The Act is silent as to whether amalgamating dwellings amounts to a material change in the use of a building. It follows that whether amalgamation amounts to “development” is a question of fact and degree: *Blackpool BC v Secretary of State for the Environment* (1980) 40 P&CR 104, DC at 111 (emphasis added):

“The question for determination in the context of this appeal is whether the character of the use of this dwelling-house as a private residence has been changed so substantially as to amount to a material change of use. It is a question of fact and degree.”

10. The lead case is *Richmond upon Thames LBC v Secretary of State for the Environment, Transport and the Regions* [2000] 2 PLR 115, QB in which the developer sought to convert a building containing seven dwellings into a single dwelling, its pre-existing state. The Deputy Judge quashed the Inspector’s decision that that did not amount to a material change of use on the facts, because the Inspector had focused only on whether the use of the building would still be residential in character, which was only one of the considerations to which he ought to have had regard: §§10, 39.

11. The decision in *Richmond* was considered in *R (Kensington & Chelsea RLBC) v Secretary of State for Communities and Local Government* [2016] EWHC 1785 (Admin). The latter case involved the amalgamation of two units within a larger block containing a number of flats. The Judge made it clear (at §§7(2), (4), 9; emphasis added) that:

“Whether there would be a material change in the use of land or buildings falling within the definition of ‘development’ in section 55 of TCPA 1990 depends upon whether there would be a change in the character of the use of land;

[...]

Whether the loss of an existing use would have a significant planning consequence(s) [...] is relevant to an assessment of whether a change from that use would represent a material change of use;

[...]

The ‘material change of use’ test [...] does not involve a determination of the planning merits of a proposal in those cases where planning permission needs to be obtained.”

The Judge quashed the Inspector’s decision to grant a lawful development certificate on the basis that he had decided that question merely on the basis that there was no planning policy telling against it, without considering the wider circumstances: §41.

12. In **APP/X5210/X/10/2124828** (Re: 11 Charlotte Place, W1T 1SJ; determined on 25 November 2010) the Inspector considered an appeal against the Council’s refusal to grant a lawful development certificate for the amalgamation of five bedsits (comprising a single planning unit) into three dwellings. He concluded that reducing what were effectively five dwellings to three would not give rise to a material change in use (DL16-17). That decision post-dated the existence of Policy H3, referred to below.
13. In **APP/X5210/X/17/3172201** (Re: 2-3 Wildwood Grove, NW3 7HU; determined on 15 January 2018) the Inspector considered an appeal against the Council’s refusal to grant a lawful development certificate for the amalgamation of two dwellings into one on the basis that there would be a material change of use. He concluded that (i) “planning merits play no part in the determination of an application for a lawful development certificate” (DL3), (ii) in the case of an amalgamation the changes “would have to be such that there was a material difference in the way the property was occupied, and given the nature of the use remains residential, such a change would have to be quite significant” (*ibid*; emphasis added), and (iii) that amalgamating neighbouring buildings would not reach that threshold, such that it did not amount to development and a lawful development certificate was granted (DL5, 7).

See Appendix 1.

14. The Council has consistently accepted that amalgamating two dwellings into one does not amount to development, such as to indicate a clear policy intent, as the following 51 examples show:

PEX0100513	14 Regents Park Road, NW1 7TX	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2004/2492/P	Flats 2-3, 13 Steele’s Road, NW3 4SE	The Council confirmed that amalgamating two flats within a building would not constitute development.
2005/2948/P	19 Belsize Park Gardens, NW3 4JG	The Council confirmed that amalgamating two flats within a building containing five flats would not constitute development.
2015/7259/P	Flat 2, 107 & 109 King Henry's Road, NW3 3QX	The Council confirmed that amalgamating two flats within neighbouring buildings containing between them eight flats would not constitute development.
2018/1876/P	Flats 4-5, 45 Rosslyn Hill, NW3 5UH	The Council confirmed that amalgamating two flats within a building containing five flats would not constitute development.
2019/0002/P	23 Hampstead Hill Gardens, NW3 2PJ	The Council confirmed that amalgamating two flats within a building containing five flats would not constitute development.
2019/1399/P	28 Frognal Lane, NW3 7DT	The Council confirmed that amalgamating two flats within a building would not constitute development. The decision notice is incorrectly labelled “existing”; the delegated report makes it clear that this application was “proposed”.

2019/2064/P	69 Patshull Road, NW5 2LE	The Council confirmed that amalgamating two flats within a building containing three flats would not constitute development.
2019/3652/P	17-18 Well Road, NW3 1LH	The Council confirmed that amalgamating neighbouring buildings into a single dwelling would not constitute development.
2019/4264/P	21 Gascony Avenue, NW6 4NB	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2020/0788/P	Upfleet, Vale of Health, NW3 1AN	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2020/1441/P	13 Steele's Road, NW3 4SE	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development. In its delegated report the Council explicitly noted that the subject building had <u>previously</u> been converted from three dwellings to two.
2020/1755/P	Flats 2-3, 53 Primrose Gardens, NW3 4UL	The Council confirmed that amalgamating two flats within a building containing five flats would not constitute development.
2020/2804/P	27 Belsize Park, NW3 4DU	The Council confirmed that amalgamating two flats within a building would not constitute development.
2020/3190/P	38 Crediton Hill, NW6 1HR	The Council confirmed that amalgamating two flats within a building containing three flats would not constitute development.
2020/3286/P	8 Evangelist Road, NW5 1UA	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development. The decision notice is incorrectly labelled "existing"; the delegated report makes it clear that this application was "proposed".
2020/4444/P	Flat 4 Chesterfield House, 1B King Henry's Road, NW3 3QP	The Council confirmed that amalgamating two flats within a building would not constitute development.
2020/5030/P	7 Well Road, NW3 1LH	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2021/0430/P	96B-C Fortess Road, NW5 2HJ	The Council confirmed that amalgamating two flats within a building would not constitute development.
2021/0585/P	46 Gayton Road, NW3 1TU	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.

2021/1032/P	19 Alvanley Gardens, NW6 1JD	The Council confirmed that amalgamating two flats within a building containing three flats would not constitute development.
2021/1098/P	Flat 24, 1 Rochester Place, NW1 9DZ & Flat 27, 80 St Pancras Way, NW1 9DN	The Council confirmed that amalgamating two flats within a development containing 164 flats would not constitute development.
2021/1301/P	116 South Hill Park, NW3 2SN	The Council confirmed that amalgamating two flats within a building containing five flats would not constitute development.
2021/1880/P	126 Leighton Road, NW5 2RG	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2021/2085/P	39-40 Chester Terrace, NW1 4ND	The Council confirmed that amalgamating neighbouring (John Nash) buildings to create a single dwelling would not constitute development.
2021/2844/P	91&93 Hillway, N6 6AB	The Council confirmed that amalgamating neighbouring buildings to create a single dwelling would not constitute development.
2021/2884/P	17B-C Langland Gardens, NW3 6QE	The Council confirmed that amalgamating two flats within a building containing four flats would not constitute development.
2021/3118/P	1 South Hill Park Gardens, NW3 2TD	The Council confirmed that amalgamating the two (unlawful) flats within a building into a single dwelling would not constitute development.
2021/4046/P	2 Bisham Gardens, N6 6DD	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2021/4186/P	25-25A Camden Park Road, NW1 9AX	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2021/4409/P	17 Hampstead Hill Gardens, NW3 2PH	The Council confirmed that amalgamating two flats within a building would not constitute development.
2021/5171/P	9A-9B Downside Crescent, NW3 2AN	The Council apparently confirmed that amalgamating two flats within a building would not constitute development. The decision letter is not available on the Council's website.
2021/5276/P	5 Adamson Road, NW3 3HX	The Council confirmed that amalgamating two flats within a building containing nine flats would not constitute development.
2021/5301/P	7 Adamson Road, NW3 3HX	The Council confirmed that amalgamating two flats within a building containing ten flats would not constitute development.

2021/6028/P	58 Eton Road, NW3 3HN	The Council confirmed that amalgamating two flats within a building containing eight flats would not constitute development.
2021/6239/P	3-4 Elsworthy Rise, NW3 3SH	The Council confirmed that amalgamating neighbouring buildings to create a single dwelling would not constitute development.
2021/6264/P	Flats 28-29 Paramount Court, University Street, WC1E 6JP	The Council confirmed that amalgamating two flats within a building containing 120 flats would not constitute development. In its delegated report the Council explicitly noted that this was the <u>second</u> application to amalgamate two flats within the building.
2022/0140/P	6-6A Wedderburn Road, NW3 5QE	The Council confirmed that amalgamating two flats within a building containing three flats would not constitute development.
2022/0322/P	145-145A Leighton Road, NW5 2RB	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2022/0716/P	12 Pilgrim's Lane, NW3 1SN	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2022/0982/P	76C-D South Hill Park, NW3 2SN	The Council confirmed that amalgamating two flats within a building containing four flats would not constitute development. The decision notice is incorrectly labelled “existing”; the delegated report makes it clear that this application was “proposed”.
2022/1369/P	20 Inglewood Road, NW6 1QZ	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2022/1424/P	15 Lady Margaret Road, NW5 2NG	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2022/1828/P	13 Upper Park Road, NW3 2UN	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2022/2115/P	Flats 23-24, 55-57 Holmes Road, NW5 3AN	The Council confirmed that amalgamating two flats within a building containing 17 flats would not constitute development.
2022/4108/P	9 Thurlow Road, NW3 5PJ	The Council confirmed that amalgamating two flats within a building containing three flats would not constitute development.
2023/0430/P	10 Thanet Street, WC1H 9QL	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.

2023/0536/P	134A-B Belsize Road, NW6 4BG	The Council confirmed that amalgamating the two flats within a building into a single dwelling would not constitute development.
2023/0899/P	142 Fellows Road, NW3 3JH	The Council confirmed that amalgamating two flats within a building containing four flats would not constitute development.
2023/2781/P	8 Greencroft Gardens, NW6 3LS	The Council confirmed that amalgamating two flats within a building containing four flats would not constitute development.
2023/4351/P	5 Belsize Square, NW3 4HT	The Council confirmed that amalgamating two flats within a building containing five flats would not constitute development.

See Appendix 2.

15. Amalgamating two dwellings within a building that previously comprised a single dwelling would not be so “substantial” (*Blackpool* at 111) or “significant” (*Kensington* at §7) a change that it would be material and as such it would not amount to development. It follows that the lawful development certificate sought should be granted, in which case the remainder of this statement need not be considered.

Net Loss: Policy

16. The only conceivable basis on which the Council might consider refusing the lawful development certificate hereby sought arises from Policy H3 of the [Camden Local Plan](#) (2017) (“**the Local Plan**”), which provides that the Council will (emphasis added):

“Resist development that would involve the net loss of two or more homes (from individual or cumulative proposals), unless they:

- create large homes in a part of the borough with a relatively low proportion of large dwellings;
- enable existing affordable homes to be adapted to provide the affordable dwelling-sizes that are most needed; or
- enable sub-standard units to be enlarged to meet residential space standards.”

17. Paragraph 3.75 of the Local Plan provides:

“Net loss of one home is acceptable when two dwellings are being combined into a single dwelling. Such developments can help families to deal with overcrowding, to grow without moving home, or to care for an elderly relative. Within a block of flats or apartments, such a change may not constitute development. However, the Council will resist the incremental loss of homes through subsequent applications to combine further homes within the same building or site.”

There is no definition of what amounts to “cumulative” or “incremental” loss such as to trigger the policy.

18. Paragraph 3.78 of the Local Plan provides:

“We may permit proposals to combine three or more dwellings where the existing dwellings are 20% or more below residential space standards, provided the loss of dwellings is no greater than needed to meet the standards. Residential space standards are set out in the nationally described space standard and in Table 3.3 of the Minor Alterations to the London Plan 2015.”

19. The [Technical Housing Standards – Nationally Described Space Standard](#) (March 2015) provides that a 1b2p dwelling must have a minimum gross internal area (“**GIA**”) of 50sqm with a minimum floor-to-ceiling height of 2.3m over at least 75% of the GIA.
20. The Local Plan is supplemented by [Camden Planning Guidance: Housing](#) (January 2021) (“**the SPG**”). It provides that it does not relate to applications, such as this application, for lawful development certificates (para.10.1). That is no doubt because the SPG (and the relevant policy in the Local Plan) is only concerned with the Council’s response when it has been established that the proposal amounts to “development”; it is instead of no use in determining whether a proposal amounts to development in the first place.
21. The [Bartholomew Estate Conservation Area Statement](#) (2000) (“**the Conservation Area Statement**”) notes that (p.22):

“The most significant change to the built townscape has been the subdivision of properties to maisonettes and flats, which was most prolific in the 1960s and 1970s. [...] The conversion of former houses to flats and maisonettes has led to a number of associated development pressures”.

Net Loss: Application

22. Properly construed, Policy H3 does not detract from the grant of a lawful development certificate in the circumstances of this application for the following principal reasons.
23. **First**, the fact that the Local Plan provides that “development” will be resisted where it would involve the net loss of two or more dwellings is nothing to the point. This is not an application for planning permission for the carrying out of development. The question on this application is whether amalgamating the extant dwellings amounts to “development” at all. It is not possible to answer the question whether the proposal amounts to development by reference to a policy that only applies where the proposal does amount to development. That is plainly circular.

Put another way, the Council first has to answer the question whether the proposal gives rise to a material change of use – which, for all the reasons above it does not – and only if it does should it have regard to Policy H3. That is, as above, consistent with the SPG.

24. **Second**, even were Policy H3 relevant – which as above it is not – the Local Plan is not determinative: s.70(2) TCPA 1990; s.38(6) Planning and Compulsory Purchase Act 2004. The Council must in any event have regard to other material considerations. In *R (Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government* [2011] JPL 1458, CA at §6 it was held that (emphasis added):

“It requires to be emphasised, however, that the matter is nevertheless still one of judgement [...]. The development plan does not, even with the benefit of section [38(6)] have absolute authority. The planning authority is not obliged [...] ‘slavishly to adhere to it’. It is at liberty to depart from the development plan if material considerations indicate otherwise.”

And in *Tesco Stores Ltd v Dundee CC* [2012] PTSR 983, SC it was emphasised at §18 that planning decision-making must “allow a measure of flexibility to be retained.” That requires both that possible exceptions to the plan are properly considered and that attention is paid to compliance “with the development plan looked at as a whole, rather than with every policy in the plan”: *Stratford upon Avon DC v Secretary of State for Communities and Local Government* [2014] JPL 104, QB at §5 (emphasis added). Indeed, in *R v Rochdale MBC ex p Milne (No 2)* [2001] Env LR 22, QB it was held at §49 that:

“I regard as untenable the proposition that if there is a breach of any one policy in a development plan a proposed development cannot be said to be ‘in accordance with the plan’. Given the numerous conflicting interests that development plans seek to reconcile [...] it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan.”

There are numerous material considerations that must be considered, noting that the key is ensuring flexibility rather than “slavish” adherence to the Local Plan. They include the following.

- 24.1. There is no other conceivable non-compliance with the Local Plan, such that even if Policy H3 is contravened, looked at as a whole the proposal is policy compliant.
- 24.2. The building being within a conservation area, the Council must pay “special attention [...] to the desirability of preserving or enhancing the character or appearance of that area”: s.72(1) Planning (Listing Buildings and Conservation Areas) Act 1990. In *R (Historic England) v Milton Keynes Council* [2019] JPL 28, QB it was held at §63 (emphasis added) that that test was not restricted to visual matters, and “plainly incorporates within the test matters such as historic uses and the contributions which they make to the character of the area”. The Conservation Area Statement plainly considers that the sub-divided use of buildings built as single dwellings detracts from the “character or appearance” of the conservation area. This proposal would enhance it. “Special attention” must be paid to that fact.
- 24.3. The proposal is to amalgamate flats within a building that was built as one dwelling. It is therefore of a totally different character to applications that seek to amalgamate neighbouring buildings and/or purpose-built flats. It would be irrational to apply the policy so inflexibly that it did not recognise that fact: it is plain that the amalgamation of neighbouring buildings that were built as separate dwellings should be treated differently to the amalgamation of flats within a building that was built as a single dwelling, and which only contains flats by reason of some historical quirk. Indeed, all the proposal involves is cutting doorways into a single wall on each of the ground and first floors, thereby reverting the building to its as-built state.
- 24.4. Far from resulting in the net loss of dwellings, the applicant’s occupation of the building has brought dwellings back into residential use. Prior to that time the (then) three units had been vacant since 7 July 2017, 1 April 2009, and 21 May 1998. Use of the building as a single dwelling is a considerable improvement on the prior long-standing position.

See Appendix 3.

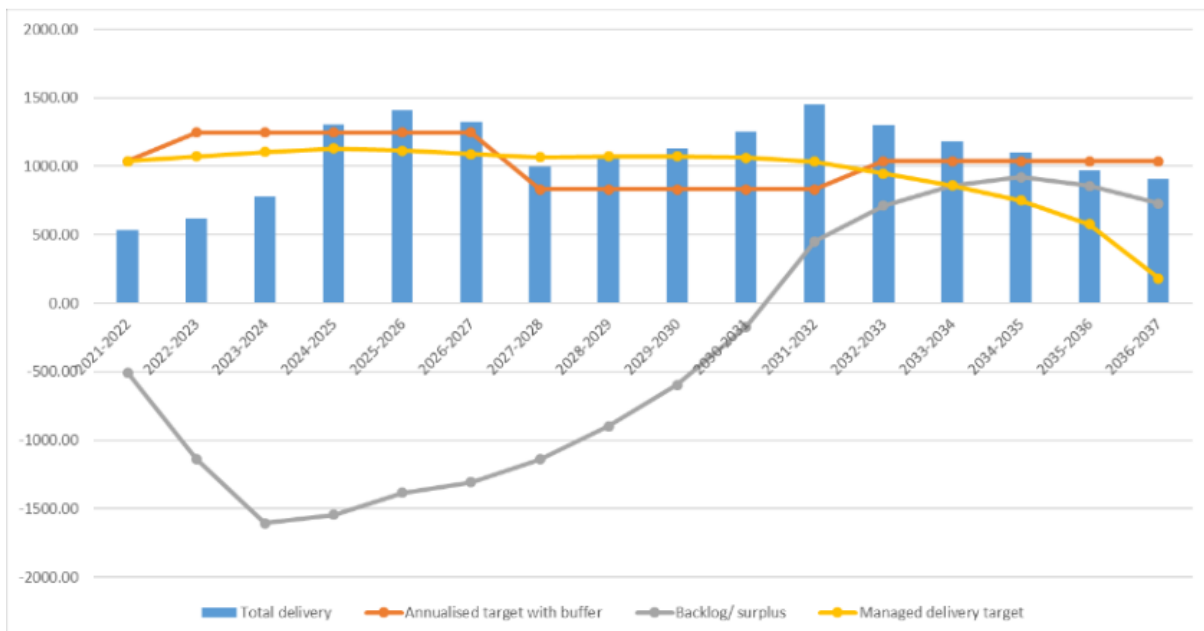
- 24.5. It is clear that the impetus behind Policy H3 is the need for 16,800 additional homes in Camden in the 15 years between 2016 and 2031 (1,120 per year) (see Policy H1). It is difficult to paint an accurate picture of the actual need; different sources point in different directions. The [London Plan](#) (March 2021) identifies Camden’s ten-year housing target between 2019/20 and 2028/29 to be 10,380 (1,038 per year) (see Table 4.1), and identifies Kentish Town as having “high” residential growth potential (Table A1.1). The [Camden Strategic Housing Market Assessment](#) (5 February 2016, being the most recent available SHMA) noted that “most reliable and appropriate demographic projection” accounting for those who would not otherwise be captured meant that there would be a need for 14,299 new homes over the 15-year period 2016-31 (953 per year) (para.13-14).

That need (or “demand”) must then be compared to the supply of housing. The [Draft Camden Site Allocations Local Plan](#) (February 2020) identifies land for over 10,000 new homes (as explained in the [Housing Delivery Test – Action Plan](#) (August 2022)). The [Kentish Town Planning Framework](#) (July 2020) estimates that in the region of 2,000 new homes will be built in the earmarked Murphy

site and Regis Road area alone (para.3.2.1). The estimates in neighbouring in-borough areas are also substantial:

- The [Camden Goods Yard Planning Framework](#) (July 2017) provided for 600 new homes (as explained in the Gospel Oak & Haverstock Community Vision, below).
- The [West End Lane to Finchley Road Supplementary Planning Document](#) (“SPD”) (September 2021) referred to 710 new homes (under “Changing site context”).
- The [Canalside to Camley Street SPD](#) (November 2021) referred explicitly to 653 new homes (under “Development Context”) and, in listing no fewer than ten potential sites, plainly indicated that a greater number more was likely to emerge.
- The [Gospel Oak & Haverstock Community Vision](#) (4 November 2022) expected 2,126 new homes (under “Overall housing expected”).
- The [Draft Euston Area Plan](#) (January 2023) refers to 1,700 new homes having been delivered in King’s Cross Central (para.2.2). It also notes the potential for up to 2,190 new homes at Euston Station, Camden Cutting, the Regent’s Park Estate, and Mornington Crescent Station.

In the [Camden Monitoring Report 2018/19, 2019/20, and 2020/21](#) (2023) the Council has made it clear that projected completions will exceed 17,300 additional homes as against a cumulative target of 16,600 homes by 2036/37 (para.4.20). That can best be understood by reference to a table, extracted from that report.



It is estimated that 5,429.1 net additional dwellings will be delivered between 2022/23 and 2026/27, against an annualised target of 5,190 (para.4.28). That is to say that, again, the Council has a five-year housing land supply (“5YHLS”) (5.2 years), and is projected to exceed targets. When the 20% buffer is applied, that is reduced to 4.4 years (para.4.29).

That is the context against which this application is made. The Council has a large supply of future homes, meeting or exceeding demand, and a 5YHLS.

24.6. In any event, the proposal will not materially impact the in-borough housing stock, nor impact the Council's ability to meet its housing targets. By way of example, the VOA records that there are 89 buildings on Patshull Road, numbered 4 to 86 (even) and 5 to 97 (odd); 61 (68.5%) comprise one dwelling and 28 (31.5%) comprise more than one dwelling¹. Upon the building reverting to a single dwelling those figures become 69.7% and 30.3% respectively, hardly a material difference (1.2%).

24.7. The [2021 Census](#) data are also revealing; extracts of the Council's summary of the data arising from the same are reproduced below.

TS044 shows that flats are by far the biggest property type, at 56.2%. It also shows that the borough has a lower proportion of semi-detached dwellings (3.6%) than the average across England and Wales (31.5%, being +27.9%) and across Greater London (18.6%, being +15%), and a higher proportion of flats (56.2%) than the average across England and Wales (16.7%, being -39.5%) and across Greater London (40.3%, being -15.9%).

Area Type	Area Code	Area Name	Total households	Detached	Semi-detached	Terraced	In a purpose-built block of flats or tenement	Part of a converted or shared house, including bedsits	Part of another converted building, e.g. former school, church or warehouse	In a commercial building, e.g. in an office building, hotel or over a shop	A caravan or other mobile or temporary structure
Country	K04000001	England and Wales	100.0%	23.2%	31.5%	23.2%	16.7%	3.4%	0.8%	0.8%	0.4%
Region	E12000007	Greater London	100.0%	6.1%	18.6%	21.3%	40.3%	11.1%	1.2%	1.4%	0.1%
LA	E09000007	Camden	100.0%	1.7%	3.6%	8.1%	56.2%	26.2%	1.8%	2.4%	0.1%

TS050 shows that Camden has a higher proportion of 1-bed properties (33.9%) than the average across England and Wales (11.4%, being -22.5%) and across Greater London (21.2%, being -12.7%), a higher proportion of 2-bed properties (33.9%) than the average across England and Wales (27.1%, being -6.8%) and across Greater London (31.4%, being -2.5%), a lower proportion of 3-bed properties (20.2%) than the average across England and Wales (40.4%, being +20.2%) and across Greater London (29.5%, being +9.3%), and a lower proportion of 4+-bed properties (12%) than the average across England and Wales (21.1%, being +9.1%) and across Greater London (17.9%, being +5.9%).

Area Type	Area Code	Area Name	Total					Total				
			Households	1 bedroom	2 bedrooms	3 bedrooms	4+ bedrooms	Households	1 bedroom	2 bedrooms	3 bedrooms	4+ bedrooms
Country	K04000001	England and Wales	24,783,199	2,826,033	6,715,736	10,019,713	5,221,717	100.0%	11.4%	27.1%	40.4%	21.1%
Region	E12000007	Greater London	3,423,890	727,298	1,073,451	1,010,212	612,929	100.0%	21.2%	31.4%	29.5%	17.9%
LA	E09000007	Camden	92,759	31,478	31,459	18,708	11,114	100.0%	33.9%	33.9%	20.2%	12.0%

¹ Those dwellings are divided as follows:

One-dwelling buildings (61 (68.5%)), numbered 5-9, 12-13, 15, 17-19, 21, 23-30, 32-34, 38-39, 41-43, 47-51, 54-58, 60, 63-68, 70-72, 74-76, 78, 80-82, 86-87, 91, 93, 95, 97.

Two-dwelling buildings (15 (16.9%)), numbered 10-11, 14, 16, 22, 31, 35, 45, 52, 62, **69**, 77, 83-85.

Three-dwelling buildings (11 (12.4%)), numbered 4, 20, 36, 44, 46, 53, 59, 61, 73, 79, 89.

Four-dwelling buildings (2 (2.2%)), numbered 37, 40.

The equivalent data from the [2011 Census](#) shows that the proportion of semi-detached dwellings has decreased from 4.1% to 3.6% (being -0.5%) and that the proportion of flats has increased from 52.3% to 56.2% (being +2.9%).

Household spaces Table KS401	Total Household Spaces	
	Total Household Spaces	102,703 100.0%
	With at least one usual resident	97,534 95.0%
	With no usual residents	5,169 5.0%
	Whole house or bungalow	15,180 14.8%
	Detached	1,961 1.9%
	Semi-detached	4,179 4.1%
	Terraced (including end-terrace)	9,040 8.8%
	Flat, maisonette or apartment	87,470 85.2%
	Purpose-built block of flats or tenement	53,696 52.3%
	Converted/shared house (inc bed-sits)	30,640 29.8%
	In a commercial building	3,134 3.1%
	Caravan, mobile or other temporary structure	53 0.1%

24.8. Personal circumstances are capable of being material: *Westminster CC v Great Portland Estates Plc* [1985] AC 661, HL at 670. At the time of the prior amalgamation application (**2019/2064/P**) the applicant’s household consisted in two people. It now consists in four people (including two children). It may yet consist in more people. Amalgamating the households will allow for overnight guests – not least to help with childcare – whom it is currently difficult to accommodate. And it will enable the household to expand into the space it needs without the need to move home, as envisaged in para.3.75 of the Local Plan.

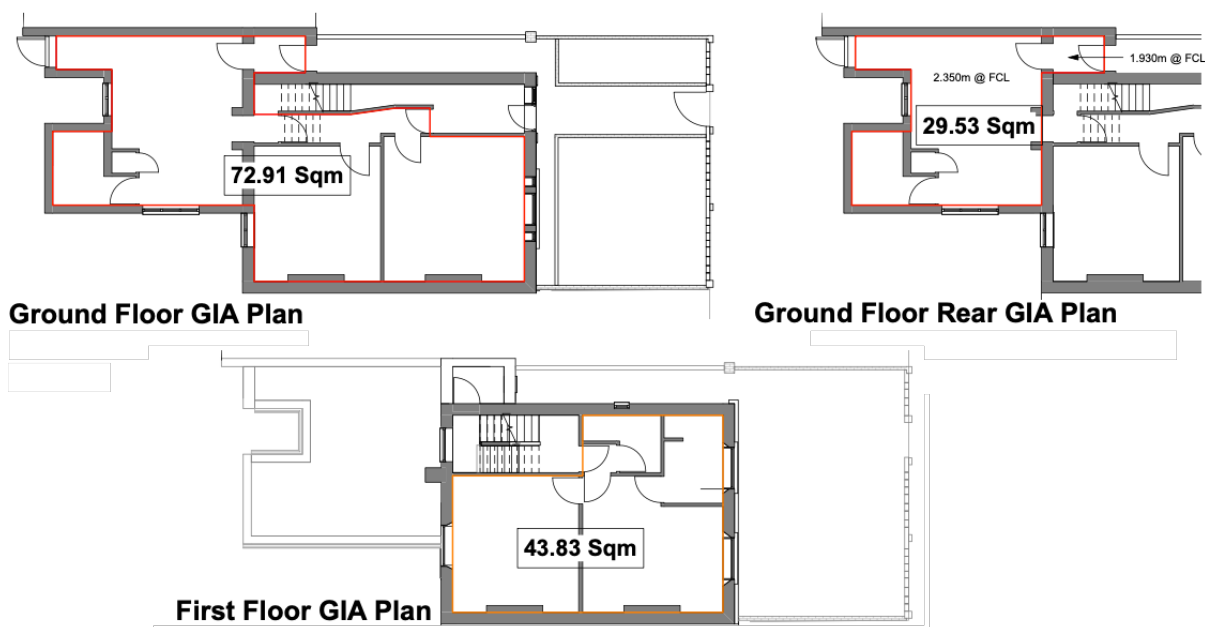
24.9. Without the lawful development certificate sought, the applicant – being the owner of both – could in any event reside in the two dwellings; the difference this application makes is in whether the household must step outside in order to do so.

25. **Third**, of paramount importance is the fact that this application relates to the loss of one dwelling only. It should not be treated as a “cumulative” proposal. The previous amalgamation occurred more than four years ago. It is artificial to tarnish the current application by association with a prior application that was determined in its own circumstances. The question is whether the current circumstances give rise to a material change of use. That is clear from the statutory language, which refers to the question whether the change of use applied for would be lawful “if instituted or begun at the time of the application”, rather than by reference to some other moment in time: s.192(2) TCPA 1990.

26. It is also important that while this application follows a prior one, it was neither contrived nor has the applicant sought to take advantage of the Council’s policy of not opposing the net loss of one dwelling, which must be what the “cumulative” provision is directed to. This is far from a situation in which a developer has amalgamated two dwellings and shortly thereafter sought to amalgamate a further two dwellings. Here there has been a substantial passage of time during which the applicant’s circumstances have changed such that – having provided two dwellings for a number of years – the natural growth of the household has resulted in the existing dwelling being out-grown.

27. In any event, the prior amalgamation application (**2019/2064/P**) fell within the bounds of the policy exception relating to enabling “sub-standard units to be enlarged to meet residential space standards”. As

above, the building previously comprised a flat on each of the ground and first floors. The ground floor flat (“GFF”) had a GIA of 72.91sqm, with 29.53sqm (40.5%) having a floor-to-ceiling height of up to 2.35m. The first floor flat (“FFF”) had a GIA of 43.81sqm. That is to say that only 59.5% (43.38sqm) of the GFF had a floor-to-ceiling height exceeding 2.35m, as against a test of 75% having a floor-to-ceiling height exceeding 2.3m; and that the FFF was considerably (12.38%) below the nationally described space standard.



It follows that the Council was bound to allow the prior application, and that the fact of the previous amalgamation should neither count towards the cumulative assessment nor otherwise hinder this application.

See Appendix 4.

28. **Fourth**, evidently recognising the need for flexibility in the application of policy the Council has previously granted sequential amalgamation applications that do not come within a clear policy exception, including in the following six instances:

21 Thurlow Road, NW3 5PP	PW9802218	The Council granted planning permission for the amalgamation of “two existing self-contained flats at upper ground floor level”.	2004/1543/P	The Council granted planning permission for the amalgamation of “two existing flats on raised ground and first floors”.
64 Belsize Park Gardens	PWX0202056	The Council granted planning permission for the amalgamation of four existing units.	2006/5422/P	The Council granted planning permission for the amalgamation of two existing units.

13 Steele's Road, NW3 4SE	2004/2492/P	The Council confirmed that amalgamating two flats would not constitute development.	2020/1441/P	The Council confirmed that amalgamating the remaining two flats would not constitute development.
5 Albert Terrace, NW1 7SU	2004/3405/P	The Council granted planning permission for the amalgamation of "existing ground floor flat and upper maisonette".	2021/2750/P	The Council granted planning permission for the amalgamation of "existing <u>lower</u> ground floor flat and ground to third floor level flat".
27 Belsize Park, NW3 4DU	2010/3841/P	The Council granted planning permission for the amalgamation of one of the lower ground floor flats with a ground floor flat.	2020/2804/P	The Council confirmed that amalgamating the two lower ground floor flats would not constitute development.
Paramount Court, University Street, WC1E 6JP	2012/0716/P	The Council granted planning permission for the amalgamation of Flats 114-115.	2021/6264/P	The Council confirmed that amalgamating Flats 28-29 would not constitute development.

See Appendix 5.

29. **Fifth**, the Planning Inspectorate has shown in other boroughs with a policy matching Policy H3 that it is appropriate to grant planning permission notwithstanding the net loss of more than one dwelling within a single application.

In **APP/L5810/W/22/3293976** (Re: 18 Twickenham Road, TW11 8AG; determined on 27 September 2022) the Inspector considered an appeal against Richmond upon Thames LBC's refusal to grant planning permission for the amalgamation of three flats into a single dwelling. He noted that reverting the building to its as-built condition would "enhance [its] character and appearance" (DL10), would have "other positive benefits" including removing the "uncharacteristic" flatted use (DL11-12), and that the loss of two units "would be minor" (DL22), so that planning permission was granted.

In **APP/N5660/X/22/3302513** (Re: 26-27 Peninsula Heights, 93 Albert Embankment, SE1 7TY; determined on 13 October 2023) the Inspector considered appeals against Lambeth LBC's refusal to grant a lawful development certificate and/or planning permission in respect of the amalgamation of two flats into a single dwelling, where the relevant policy was to object to the net loss of any number of dwellings (DL15). He considered the in-borough delivery of housing, including where there had been a failure to meet targets, and concluded that the proposal did not amount to a material change of use such that a lawful development certificate was granted; he then went on to conclude that "it cannot be right that [...] policies

unequivocally prevent the loss of homes”, so that planning permission was also granted (DL26-45, 50-57).

See Appendix 6.

Conclusion

30. The proposed amalgamation of the two dwellings in the subject building into one – reverting it to its as-built state – does not constitute development, and a lawful development certificate within the meaning of s.192 TCPA 1990 should be granted, confirming the same.
31. In particular, there would be no external changes as a result of the proposal, which affects only the interior of the building: s.55(2)(a) TCPA 1990. The building will remain in residential use. The proposed de-intensification in its use will not have any impact on the local amenity or infrastructure. The Council has shown that it does not consider that amalgamating two dwellings into one amounts to development. That must apply equally in this case because:
- a. The proposed change of use is not “substantial” (*Blackpool* at 111) or “significant” (*Kensington* at §7); it is not material.
 - b. This is an application for a lawful development certificate. The question is whether the proposal amounts to development. Policy H3 is entirely irrelevant to that question.
 - c. Policy H3 is in any event not determinative. There are myriad material considerations that support the grant of the lawful development certificate sought. In particular, the proposal is otherwise policy-compliant; special attention must be paid to its enhancement of the conservation area; the Council ought properly to treat the reversion of a building to its as-built state differently to the amalgamation of neighbouring buildings or purpose-built flats; use of the building as a single dwelling is an improvement on its prior long-term vacancy; comparing the need for housing against the Council’s own public statements as to the in-borough demand for housing reveals that there is considerable local residential development earmarked, that the Council expects to exceed its 15-year target, and that the Council has a 5YHLS, so that the proposal will not make a material impact on housing stock, whether in the immediate area or more broadly within the borough; the applicant’s personal circumstances favour the amalgamation; and the refusal of the lawful development certificate sought would be pyrrhic, given the applicant’s entitlement in any event to occupy both dwellings.
 - d. It is artificial in an application that is explicitly directed to the current circumstances to purport to take account of circumstances previously pertaining. In any event, the proper application of policy ought not to result in this application being contested and, properly considered, the prior circumstances support the grant of a lawful development certificate, given the substandard nature of the historic units in the building.
 - e. The Council has previously consented to sequential amalgamations that do not fall within an explicit policy exception notwithstanding their resulting in the net loss of more than one dwelling. That flexibility is key. To the extent that Policy H3 applies, which as above is not admitted, the circumstances underlying this case provide the strongest conceivable case for permitting a policy exception. Applying it otherwise would give rise to the unlawful fettering of discretion.

f. The Planning Inspectorate, evidently recognising that need for flexibility, has recently granted consent for amalgamations notwithstanding a single policy within the authorities' local plans telling against it.

32. Indeed, noting in particular that the building was built as a single dwelling, refusing this application would amount to elevating a historical quirk – that it was (poorly) converted into three dwellings in the 1970s – to a level it can't properly bear, and would not be a rational outcome on the facts.

2 January 2024

Appendices

1. The 2x appeal decisions whereby the Planning Inspectorate has previously approved the amalgamation of dwellings in-borough.
2. The 51x lawful development certificates whereby the Council has previously approved the amalgamation of dwellings.
3. Letters from the Council dated 14 May 2019 and 18 June 2019 confirming the prior vacancy of the units within the building.
4. Floorplans showing the GIA of the units within the building prior to the previous amalgamation.
5. The 6x grants of permission / lawful development certificates whereby the Council has previously approved the sequential amalgamation of dwellings.
6. The 2x appeal decisions whereby the Planning Inspectorate has previously approved the amalgamation of dwellings out-of-borough.