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Via Planning Portal Only

23rd April 2024

Dear Sir/Madam

CERTIFICATE OF LAWFUL DEVELOPMENT (PROPOSED) WITH RESPECT TO THE AMALGAMATION OF A DWELLING AND OUTBUILDING INTO A SINGLE RESIDENTIAL UNIT

34 QUEENS GROVE, LONDON, NW8 6HN

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 a dwelling and outbuilding into a single residential unit at 34 Queens Grove is not development and thus lawful.

Description of Proposed Development

Amalgamation of a dwelling and outbuilding into one residential unit.

The Site and Proposal

No.34 Queens Grove is a substantial semi-detached mid-19th century villa on the southeast side of Queen's Grove, at its junction with Woronzow Road. It comprises lower and upper ground floors, first and second floors with a 3-storey side extension on the south side and other modern additions. Together with its neighbouring properties (nos. 35-37), it is grade II listed. To the rear of the main dwelling, within the property curtilage, is a two-storey building, basement and ground floor, constructed in c2007 under a planning consent for a new dwelling house (see Planning History). The building sits within the garden area of the main dwelling, and there is no physical separation, in terms of boundary treatments, between the main building and the outbuilding. There is a pedestrian access to the outbuilding, via Woronzow Road. Although there are no restrictions on the outbuilding's use as a separate dwelling, it has been and is currently used as an annex to the main dwelling.

The site is located within the St John's Wood Conservation Area. There are several grade II listed buildings immediately southeast of the site along Norfolk Road, including nos. 2 and 3.

The applicant seeks confirmation from the Council that the use of the outbuilding as an annex to the main dwelling, is not tantamount to development requiring planning permission.

Planning History

LWX0202756 & PWX020755 – The demolition of a garage at the rear of the site and the construction of a two storey residential dwelling comprising two double bedrooms. As shown on drawing numbers: 02/01, 02, 03, 04, 05, 06, 07, 08, 09, 010. **Planning Permission and Listed Building Consent refused on 22/10/2002.**

2003/3233/P – Demolition of existing garage in rear garden and erection of two storey residential building to be used ancillary to 34 Queens Grove plus replacement of entrance gate by new brick wall and entrance door facing Woronzow Road. **Planning Permission refused 06/08/2004. Dismissed on appeal on 03/05/2005.**

2005/0591/P – Demolition of existing garage at rear end of garden; erection of a single-storey building with mansard roof with 2 x dormer windows to provide a residential accommodation ancillary to the main house, with pedestrian access gate to Woronzow Road. **Planning Permission refused on 05/05/2005.**

2006/5273/L & 2006/5268/P - Demolition of existing garage and erection of a basement and ground floor dwellinghouse with bicycle store at the end of the garden, plus boundary wall and gate alterations to Woronzow Road. **Listed Building Consent granted on 09/02/2007 and Full Planning Permission granted subject to S106 on 08/10/2007.**

It is assumed that the above planning permission, along with the associated conditions and S106 were implemented and complied with and that the outbuilding was built and completed as a detached dwelling in the garden of No. 34 Queens Grove. However, due to changes in the land ownership, it is not known if the building was ever occupied separately to the main dwelling house or if once built it continued to be used as guest accommodation or ancillary accommodation to the main residential dwelling. The current owners purchased the whole site (both No 34 and the outbuilding) as a single planning unit, in 2020, by which time it was being used as a residential outbuilding, ancillary to the main building. The owners have continued to use the building in this manner, and it is currently used as an annex to the main dwelling.

The Lawfulness of The Proposed Development

On the assumption that the outbuilding has a lawful use as a separate residential dwelling, this application seeks to confirm that the change of use of the building to an annex of the main dwelling at No.34, is not a material change of use that would require planning permission. Section 55(1) of the Town and Country Planning Act 1990 sets out that planning permission is required for “development”, which includes operational development and making a material change of use of land. Therefore, the main issue arising is whether or not the amalgamation of two dwellings to one would constitute a material change of use. The Town and Country Planning Act 1990 is silent on this matter, and therefore it is 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). There would be no material change in the character of the use of the land associated with the proposed amalgamation. To be clear, no operational development or works are proposed or required in order for the building to be used as an annex to the main dwelling, and no works are proposed in this application. The rear annex building does not have the typical frontage of an independent dwelling as per the other dwellings in the area, from Woronzow Road, there is a small pedestrian access, however there is no vehicular access or cross over and the building has little street presence. From the street it presents as a small outbuilding associated with the main dwelling, with very little visibility. Within the site, there is no physical separation between the rear

building and the main building, a garden path connects the two buildings, and the site landscaping has been designed to incorporate the rear building into the garden of the main dwelling. The rear building includes a large wall of glazing that looks out into the main garden area, with views into and out of the ground floor of the building possible from within the garden area. As such, from both within the site and outside, the building presents as a small, supplementary annex building, used as ancillary accommodation to the main dwelling.

However, more recent case law added a further matter of consideration which it comes to the amalgamation of residential units. The London Borough of Richmond upon Thames v The Secretary of State for the Environment, Transport and the Regions and Richmond upon Thames Churches Housing Trust [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). 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 for a net loss of less than 2 houses.

Notwithstanding the above, in assessing the impact of the proposed amalgamation upon the local housing stock, the LPA's housing policies and Housing CPG provide useful direction. Policy H3 seeks to ensure that existing housing continues to meet the needs of existing and future households. In doing so, the council resist proposals which result in the net loss of two or more homes. The Housing CPG confirms that when considering planning applications, the LPA will consider the cumulative loss of units created by past changes and the potential for further losses from planning consents that have not expired. The council will particularly focus on changes that have been made since 26 June 2006, which is the date on which the council first adopted a policy to resist development that would involve the net loss of two or more homes.

Whilst the proposal results in the loss of a single dwelling, it does not result in the loss of any residential floorspace. There have been no previous amalgamations at the site and there is no potential for further losses for extant planning permissions. It is therefore argued that the loss of one dwelling would not materially impact the council's ability to meet the needs of existing and future households. It is also worth mentioning that the quality of residential accommodation that would be provided in the outbuilding (as a single dwelling house) is poor. The two bedrooms are located in the basement, single aspect with limited light. The space standards fall short of current policy and the building has no private amenity space, bin or bike store. It is therefore considered that the loss of the building as a single dwelling house, would not be considered significant or material, given that it does not meet current housing standards. In any event, the building is not currently used as a separate dwelling house, nor is it clear if it ever has been.

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).

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 and application references 2023/4351/P and 2023/4971/P.

Summary & Conclusion

The proposed amalgamation of the main dwelling and the outbuilding into a single residential unit 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
Principal Planner
SM Planning