

# 38 Fitzjohn's Avenue, London, NW3 5NB

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## Planning Statement

Certificate of Lawfulness (proposed) for the amalgamation of Flats 3 and 4 to form a single self-contained family dwelling.

Prepared by

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## Introduction

This statement accompanies an application for a certificate of lawfulness, for a proposed use or development, submitted to the London Borough of Camden (“the Council” hereafter) in relation to 38 Fitzjohn’s Avenue, London, NW3 5NB.

The site comprises a four-storey property, including a lower ground floor, that was converted to form five self-contained flats.

This application seeks to confirm that works involved in the amalgamation of Flats 3 and 4 (located at the 1st and 2nd floor levels respectively) to form a single self-contained flat, would not constitute development as set out in Section 55 of the Town and Country Planning Act 1990, and that planning permission is not required. This view is supported by recent precedent decisions and case law.

The Applicants currently reside in Flat 3 and have bought Flat 4 above in December 2023 to provide sufficient space for the needs of their family. After an initial period after the purchase where Flat 4 was vacant, the Applicants have started using both Flats, and they now wish to amalgamate them.

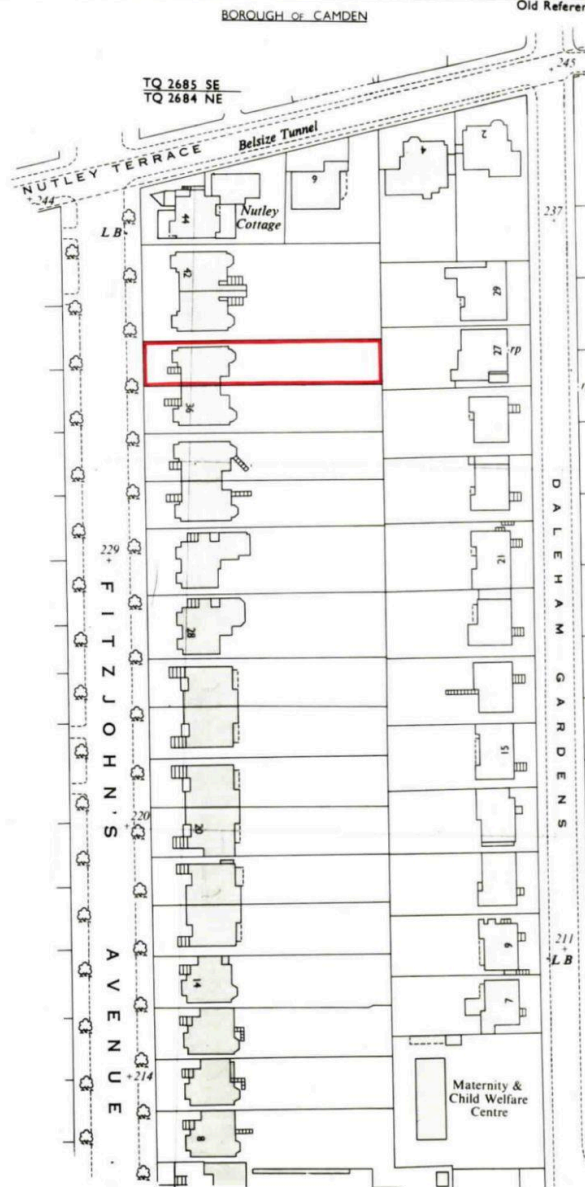
## Site description

38 Fitzjohn’s Avenue is a semi-detached, late-Victorian, red-brick, four-storey property, located on the east side of Fitzjohn’s Avenue, near the crossing with Nutley Terrace. The property is situated in the Fitzjohns and Netherhall Conservation Area.

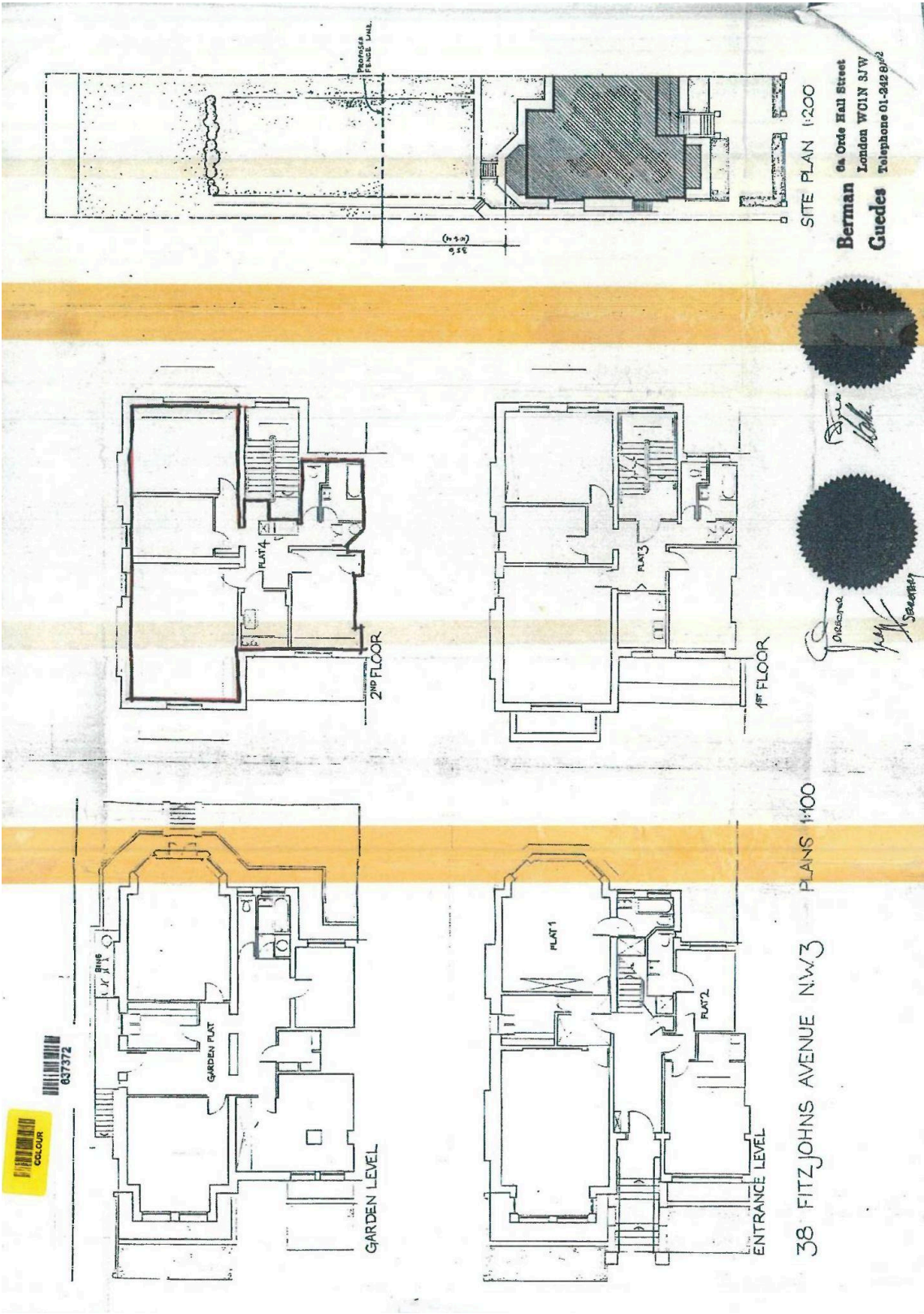
38 Fitzjohn’s Avenue, originally a single family dwelling, was later subdivided into 5 flats: the garden flat (a one bedroom flat on the lower ground floor with separate entrance), Flat 1 (a one bedroom flat spanning the ground and lower ground floors), Flat 2 (a studio flat on the ground floor), Flat 3 (a three bedroom flat on the first floor), Flat 4 (a two bedroom flat on the second floor). A communal garden at the rear provides amenity space to the residents of each of the five flats.



H.M. LAND REGISTRY		TITLE NUMBER		
		272871		
ORDNANCE SURVEY PLAN REFERENCE	COUNTY	SHEET	NATIONAL GRID	SECTION
	GREATER LONDON		TQ 2684	H
Scale: 1/1250			© Crown copyright 1971	



Original lease plan





## Planning history at the site

38 Fitzjohn's Avenue was originally built in the late 1800s as a single family dwelling, and was later converted into 5 flats, probably in the 50's. The only planning applications that can be found for the site are related to tree maintenance, and one for the erection of a temporary summer house in 1973 (the summer house is not there anymore).

Both Flat 3 and Flat 4 have undergone internal remodelling with respect to the original lease plans: for Flat 3 the renovation happened in 2013 and it didn't require any planning permission, whereas for Flat 4 the renovation must have happened much earlier, probably in the 90's.

## Proposal

The proposal is to amalgamate Flat 3 and Flat 4 into a single family dwelling which would provide the needed space for the family currently living in Flat 3 (the Applicants). The existing communal internal stairs between Flat 3 and Flat 4 would become part of the new dwelling, connecting the two flats. The building is a share of freehold, and all the shareholders have agreed to dispose of the relevant section of the stairs in favour of the Applicants, so that they could join the flats.

No changes to the external appearance of the building are proposed.

A Lawful Development Certificate for the proposed use is sought, confirming that the alterations would not constitute development and that planning permission is not required under section 55 of the Town and Country Planning Act 1990.

## Relevant Legal Framework, Policy and Assessment

Reviewing recent decisions on similar cases, the following points can be highlighted:

- No external changes are proposed to the host building, therefore there would not be change to the street scene in any way.
- The de-intensification from two flats to one would have no material impact on neighbourhood amenity or infrastructure.
- The Town & Country Planning Act 1990, Section 55, Part 3A states that "the use as two or more separate dwelling houses of any building previously used as a single dwelling house involves a material change in the use of the building and of each part of it which is so used". However, the legislation does not comment on whether combining two dwellings into one would constitute development.
- Camden's Local Plan (2017) policies seek to protect existing housing by resisting development that would involve the net loss of two or more homes. As the proposal

would only involve the loss of one residential unit, it should not materially impact the Borough's housing stock nor impact the ability of the Council to meet its increased housing targets. The site would remain in residential use following the conversion of two residential flats into a single dwelling house, with no loss of residential floorspace, thus there is no material change of use.

- With regards to judgement of whether the development is material when compared with the development plan under Camden Local Plan policies H1 and H3, the proposal would result in the net loss of no more than one residential unit and would not result in the loss of residential floorspace. The proposed development as presented would therefore comply with policy H3 of the Camden Local Plan. This is confirmed by the supporting text to policy H3, paragraph 3.75 of the current Camden Local Plan (2017), reiterated in paragraph 7.69 on the Draft New Plan: *"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."* This applies in particular to the Applicants who, before Flat 4 became available to purchase, had been searching for a larger property outside of the Council to accommodate the increasing need of space of the family arising from their two growing children, their need to frequently work from home, and the need for their elderly parents to stay for long periods of time to avoid travelling from abroad as much. Being able to satisfy such needs whilst keeping the family in the local community they have bonds with was the deciding factor when it came to purchasing Flat 4.

Therefore, the Applicants consider the proposed amalgamation does not constitute "development" requiring planning permission, and a certificate of lawful development for the proposed use is sought.

The Applicants' approach is supported by the Planning Inspector in Appeal APP/X5210/X/17/3172201 (2 and 3 Wildwood Grove; ref: 2016/5621/P), 15 January 2018, Camden, which allowed the conversion of two residential dwellings into one.

This approach has been followed in a significant number of other amalgamations of this type in Camden, the most recent ones being:

- 2024/4461/P 21 Arkwright Road London NW3 6AA Granted 01-11-2024
- 2024/3482/P 68-70 South Hill Park London NW3 2SL Granted 01-9-2024
- 2024/1625/P 28 Dartmouth Park Road London NW5 1SX Granted 14-8-2024

and older ones including:

- 2022/0716/P 12 Pilgrim's Lane London NW3 1SN Granted 04-04-2022
- 2022/0322/P 145 Leighton Road, London, NW5 2RB Granted 06-04-2022
- 2022/0140/P 6 and 6A Wedderburn Road London NW3 5QE Granted 04-03-2022
- 2021/1880/P 126 Leighton Road, London, NW5 2NG Granted 15-12-2021
- 2021/0585/P 46 Gayton Road, London, NW3 1TU Granted 31-03-2021
- 2021/1301/P 116 South Hill Park, London NW3 2SN Granted 26-03-2021
- 2021/1032/P 19 Albanley Gardens, London, NW6 1JD Granted 11-03-2021
- 2020/5030/P 7 Well Road London, NW3 1LH Granted 10-11-2020
- 2020/4444/P Chesterfield House, Flat 41B, King Henry's Road, London, NW3 3QP Granted 27-10-2020

- 2020/3286/P 9 Evangelist Road, London, NW5 1UA Granted 27-07-2020
- 2020/1755/P Flat 2 and 3, 53 Primrose Gardens, London, NW3 4UL Granted 29-05-2020
- 2020/0788/P Upfleet, Vale of Health, London, NW3 1AN Granted 30-04-2020
- 2019/3652/P 17 and 18 Well Road, London, NW3 1LH Granted 15-10-2019
- 2019/4264/P 21 Gascony Avenue, London, NW6 4NB Granted 09-09-2019
- 2019/2064/P 69 Patshull Road, London, NW5 2LE Granted 06-05-2019
- 2019/1399/P 28 Frognal Lane, London NW3 7DT Granted 03-04-2019
- 2019/0002/P 23 Hampstead Hill Gardens London NW3 2PJ Granted 19-03-2019
- 2018/1876/P Flats 4 and 5, 45 Rosslyn Hill Well Road, London NW3 5UH Granted 19-07-2018
- 2016/5621/P 2 and 3 Wildwood Grove, London NW3 Granted on appeal 15-01-2018

## Conclusions

In light of the reasons outlined within this Statement, which are also supported by recent decisions, the amalgamation of the two dwellings into one single dwelling does not constitute development and therefore can be carried out without the requirement to apply for planning permission.

As such, it is considered that this lawful development certificate should be approved and we respectfully request that the certificate is granted.

We trust the enclosed information is sufficient for you to register and validate the application. However, should you require any further information, please do not hesitate to get in contact.

Yours faithfully,

Paoloplacido Lo Presti and Francesca Pozzi