

26/11/2024

Via planning portal only

Dear Sir/Madam

CERTIFICATE OF LAWFUL DEVELOPMENT (PROPOSED) WITH RESPECT TO THE AMALGAMATION OF TWO DWELLINGS INTO A SINGLE DWELLING

34 ABERDARE GARDENS, CAMDEN, LONDON, NW6 3QA

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 existing flats into a single dwelling at 34 Aberdare Gardens is not development and thus lawful.

Description of Proposed Development

Amalgamation of two dwellings into one.

The Site and Proposal

The application site is occupied by a three-storey Edwardian terraced building on the southern side of Aberdare Gardens, located within South Hampstead.

The properties along this street have a uniformity in character and scale, typically consisting of a ground floor with front bay, first floor with sash windows and a mansard roof with dormer and gable feature. The rear garden of the site abuts the rear garden of properties located on Goldhurst Terrace.

The property is not listed, though it is located within the South Hampstead Conservation Area. The property is cited within the South Hampstead Conservation Area Character Appraisal and Management Strategy as a positive contributor to the area.

This application seeks to convert the property from two self-contained flats to a single dwelling. There are no proposed external alterations.

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). 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.

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] case concluded that the Planning Inspector was wrong to exclude the impact of the loss of small units of accommodation from his consideration of whether a material change of use had occurred. The Royal Borough of Kensington and Chelsea v Secretary of State for Communities and Local Government [2016] found that the Local Planning Authority was entitled to consider the impact of the amalgamation on housing supply irrespective of the fact that the adopted plan did not have a policy on such a matter.

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). Paragraph 10.1 of Camden’s Planning Guidance on Housing (2021) confirms that guidance does not relate to applications for Lawful Development Certificates.

The proposal results in the loss of a single residential unit and does not result in the loss of any residential floorspace. 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 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 and application references 2021/6239/P, 2023/4351/P and 2023/4971/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 dwellings into a single dwelling 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