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Via planning portal only

Dear Sir/Madam

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

40 KING HENRY'S ROAD, PRIMROSE HILL, HAMPSTEAD, LONDON, NW3 3RP

This is an application under Section 192 (1) (a) 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 40 King Henry's Road is not development and thus lawful.

Description of Proposed Development

Amalgamation of two residential units into a single dwelling house.

The Site and Proposal

The application site is occupied by a four-storey (including basement) semi-detached building on the northern side of King Henry's Road. The building comprises a basement flat with a three-storey dwelling above. The rear garden backs onto the railway and is bounded by mature landscaping.

This part of King Henry's Road comprises dwellings of similar architectural compositions and material palettes, typically consisting of yellow-brick facades, porticos, white painted timber sash windows with decorative surrounds and hipped or mansard roofs. T

The property is not statutory or locally listed or located within a conservation area.

It is proposed to amalgamate the basement flat with the three-storey house above to create a single dwelling.

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 does not involve any operational development, 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’s 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). While paragraph 10.1 of Camden’s Planning Guidance on Housing (2021) confirms that this does not relate to applications for Lawful Development Certificates, it reflects the council’s wider housing strategy for meeting local housing need.

In this connection, the proposal would retain the existing amount of residential floor space established within the building, there have been no previous amalgamations at the site and the proposal would not result in the net loss of more than one home. Therefore, the proposal would not materially affect the council’s ability to meet the needs of existing and future households, nor its ability to meet local and strategic housing targets.

The proposal does not involve any material alterations to the external composition of the building and 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. This includes 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. It would not have a material impact on the Borough's housing stock or impact on the ability of the Council to meet its housing targets. As such, 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

Danielle Shaw
Planner
SM Planning