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The Planning Inspectorate
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Dear Jeremy Richards,

**Town and Country Planning Act 1990 (as amended)
Planning Appeal Statement (Local Planning Authority)**

Site: 50 South Hill Park, London, NW 2SJ
Appeal by: Mr Sonu Shamdasani

I write in connection with the above appeal against a refusal of application for Certificate of Lawfulness (Proposed) (our reference: 2024/2580/P) submitted on 25th June 2024 for:

- *'Amalgamation of two flats into a single dwelling house (Class C3).'*

The Council's main case is set out in the delegated officer's report which has already been provided to the Inspectorate with the questionnaire. The report should be read in full and are relied on as the Council's principal statement of case.

In addition, the Council would be grateful if the Inspector would consider the contents of this letter which sets out the Council's response to the Appellant's grounds of appeal and additional matters which the Council considers relevant to the determination of the appeal.

1. Summary of appeal and reasons for refusal

- 1.1 The site consists of a four storey semi-detached Victorian townhouse, including a lower ground floor and a mansard storey. The host property is in use as flats. The property has been divided into two flats with the lower and upper ground floors forming one maisonette with an entrance at lower ground floor, and with the first and second floors forming the other one with the entrance at upper ground floor level. The site is in South Hill Park Conservation Area and makes a positive contribution to the Conservation Area.
- 1.2 The proposal is assessed under section 55 of the Town and Country Planning Act 1990. The applicant argues that the amalgamation of two dwellings into one wouldn't be a material change of use and therefore would not constitute development and would not require planning permission.
- 1.3 On 21st August 2024, a Certificate of Lawfulness (Proposed) was refused for 'Amalgamation of two flats into a single dwelling house (Class C3).' (reference: 2024/2580/P). The reason for refusal for the Certificate was as follows:
- *The change of use from two homes to one home constitutes development as defined by section 55 of the Town & Country Planning Act 1990, and therefore would require planning permission.*
- 1.4 The lower ground floor currently contains a kitchen and a bedroom and the upper ground floor a living/working room and a study. The first floor contains a kitchen/living room, a bathroom and a working room. The second floor contains a shower room, a store room and two bedrooms.

2. Relevant planning history

2.1 The relevant planning history is below:

- 9101105 - Change of use and works of conversion to provide 2 two-bedroom flats including the installation of new steps in the front garden to give access to the lower ground floor - **Granted 12/11/1991**
- 8500784 - The erection of a bay window extension as an amendment to the planning permissions dated 14th February 1985 (Regd.No.8402083(R1)) and 20th May 1985 (Regd.No.8500453(R1)) - **Granted 03/07/1985**
- 8500713 - Alterations including the addition of a bay window at lower ground floor level - **Withdrawn 08/05/2003**
- 8500453 - Amendment to planning permission dated 14th February 1985 including alterations to mansard roof deletion of part of the ground floor rear extension and formation of balcony at ground floor level - **Granted 14/05/1985**
- 8500183 - Extension of existing first floor bedroom - **Withdrawn 08/05/2003**

- 8402083 - Alterations to the second floor replacing existing pitched roof with mansard roof; erection of a rear extension at basement and ground floor levels and the formation of a balcony at first floor level - **Granted 06/02/1985**

The council tax records indicate the property has been in use as two flats (Nos. 50 and 50A South Hill Park) for more than four years.

2.2 There is no relevant enforcement history

3. Grounds of appeal

- 3.1 The appellant has appealed against the refusal of a Certificate of Lawfulness (Proposed). The appellant's agent, Chiara Amato, submitted a Statement of Case ('SoC') dated 10th October 2024.
- 3.2 In order to respond to the appellant's grounds of appeal, I will seek to summarise and break down the issues raised by the appellant's agent in the same order they have been raised.

4. Matters agreed and matters in dispute

- 4.1 The Town & Country Planning Act 1990, Section 55 states that 'the use as two or more separate dwelling houses of any building previously used as a single dwelling house involve 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. In this case the proposal is to merge two residential units in the building. This would mean it goes from two units to one unit in this property, resulting in a net loss of one unit.
- 4.2 There would be no loss of residential floorspace, and only loss of a single unit. There has been no other net loss of residential unit numbers in the building in the last 10 years.
- 4.3 There would be no material alteration to the external appearance of the building as proposed. The de-intensification of the units from two to one would have no material impact of neighbour amenity, environment, or infrastructure.
- 4.4 The following matter is in dispute:

The amalgamation of two to one dwelling would have a material planning impact on housing provision. This is more acute given the borough's housing needs and recent housing delivery.

- 4.5 The Camden Local Plan 2017 includes a number of policies to maximise the supply of housing in the borough and to protect existing homes. The plan also seeks to support the delivery of a range of housing types suitable for households and individuals with different needs.

The below table shows Camden's performance is below the required 1038 completed home most years (1038 being the London plan target). This demonstrates the extreme pressures the Borough is under in terms of its housing stock and that amalgamations contribute to losses of such stocks.

Table extract from the Authority Monitoring Report (AMR) 2021/22 and 2022/23

Table 5 – Affordable housing completions

Monitoring Year	Total number of completed self-contained homes including affordable housing		Affordable housing completed (number of homes)		Financial contribution in lieu of affordable housing secured
	Gross	Net	Gross	Net	
2016/17	1,395	1,263	151 (11%)	140 (11%)	£11.7m
2017/18	1,102	945	308 (28%)	252 (27%)	£2.9m
2018/19	941	827	266 (28%)	266 (32%)	£1.04m
2019/20	1,121	985	157 (14%)	148 (15%)	£4.40m
2020/21	525*	509*	119 (23%)*	117 (23%)*	£1.62m
2021/22	464	536	120 (20%)	120 (22%)	£9.0m
2022/23	386	358	1 (0%)	1 (0%)	£2.0m

London Development Database / * Planning London Datahub / Housing Flow Reconciliation: calculated using a new GLA / DLUHC protocol – losses are counted when development starts, not completion.

The proposal is therefore contrary to policies H1 (meeting housing needs), H3 (protecting existing homes).

- 4.6 The site is also in the Hampstead Neighbourhood Plan area and the development plan for this area includes the need to retain smaller homes and prevent amalgamation. The proposal is contrary to policy HC1 of the adopted Hampstead Neighbourhood Area Plan (HNP) 2018-2033 which requires protection of small units.

- 4.7 Policy HC1 states that:

‘1. In order to promote the mix of housing needed within the Neighbourhood Plan area, particularly for social affordable and smaller dwellings, the following proposals will be supported:

- a) Development that increases the provision of social affordable, intermediate and community-led housing in line with the Local Plan (Policy H4) and national planning policy;*
- b) The development of larger, 3 and 4 bedroom units, for social affordable dwellings;*
- c) The inclusion of small self-contained dwellings, either studio or 1 or 2 bedrooms, in all new non-social housing development.*
- d) Provision of small units as intermediate affordable housing.*

2. Except in exceptional circumstances, housing proposals will not be supported which would result in the loss of small self-contained dwellings, either studio or 1 or 2 bedrooms, in conversions.’

- 4.8 As demonstrated above, there is a clear conflict with policy HC1 of the HNP. No exceptional circumstances have been put forward by the appellant.
- 4.9 In the appeal decision for 114 Fitzjohn's Avenue (3244112) dated 3rd August 2020, the inspector found that HC1 did seek to resist amalgamations of two units into one. The appeal was allowed in this case because the inspector considered that the appellant has shown exceptional circumstances due to the particular 'specific health requirements' of one of the members of the family. It was only because of those particular health requirements that the inspector felt that the exceptional circumstances existed. Indeed, the inspector mentioned in paragraph 9 that *'the HNP was made after the adoption of the LP and as such the policies within it are of great importance to the appeal scheme. Policy HC1 sets out that except in exceptional circumstances housing proposals which would result in the loss of small self-contained dwellings (which includes 2 bedroomed units) will not be supported. However, there is little guidance of what would constitute such exceptional circumstances.'* He carried on by stating *'Taking these Development Plan policies together, and the objectives which they seek to achieve, it is clear that there is a very great need to retain two bedroom properties in the HNP area to the extent that without any exceptional circumstances there is a clear edict to resist the loss of such accommodation to support the overarching aim of providing a balanced mix of housing sizes. In coming to that view, I acknowledge that Policy H7 does not explicitly prevent the amalgamation of the two flats subject of this appeal. It could be reasonably said that the appeal building (as a whole) does, and would, provide a mix of dwelling sizes even if the appeal was allowed. That said, I find that the requirements of Policy HC1 to be the most important to the determination of the appeal. [...] To my mind, the specific health circumstances of the Appellants family are clearly a material planning consideration and, in this case, one which I attach great weight to.'* (Paragraphs 10., 11., 15.). This appeal decision demonstrated a clear conflict with HC1.
- 4.10 The appeal decision for 15 Cheyne Place (3165766) dated 10th April 2017 is also relevant to this case. The inspector stated in paragraph 5. that *'the supporting text to the policy acknowledges that the loss of housing through deconversion can reduce the overall provision of housing stock and in order to achieve the annual housing target it is therefore important to protect residential units in most circumstances.'* He went on further by saying that *'the proposal would conflict with Policy CH3 of the CLP and 3.14 of the LP, which seek to ensure that there is a sufficient supply and choice of housing.'* (Paragraph 15.).
- 4.11 The appeal decision for No. 6 and No. 9 Cheyne Gardens (3141220) dated 3rd August 2016 also supports the approach that the Council has taken in this case. The inspector said in paragraph 22 that *'as a matter of fact and degree the existing use as two flats fulfils a legitimate and recognised planning purpose in contributing to the housing stock of the Borough, and that the change to a single dwelling may have significant consequences in reducing that stock.'*
- 4.12 Similarly, in the appeal decision for 3 Egerton Gardens (3149451) dated 23rd November 2016, the inspector concluded that *'the effects of dwelling amalgamations have become more noticeably significant and the planning consequences have become more material.'* (paragraph 9.).
- 4.13 In addition to the above, the below case law is very much relevant to this appeal too: in R (Royal Borough of Kensington and Chelsea) v. Secretary of State for Communities and Local Government [2016] EWHC 1785 (Admin) the Court held that despite RBKC

not having a specific planning policy in place to restrict the amalgamation of two flats into one, the impact of the loss of a single unit through amalgamation of two units could constitute 'a significant planning consequence' and it accepted that on the basis of the pressures on RBKC's housing stock the amalgamation of two units into one was a material change of use that would require planning permission.

4.14 More recently, there was a case concerning Lambeth: LB Lambeth v SSLUHC [2024] EWHC 1391 (Admin), where the court held against Lambeth, agreeing with the inspector that the development plan policy for the Lambeth site did not seek to prevent amalgamations and that the loss of one unit would not have a significant planning consequence for Lambeth, given the overall housing delivery picture in Lambeth, where the Council was exceeding housing targets and the number of amalgamations was comparatively small (according to the inspector). That was clearly a different position from the one in this case, where policy HC1 does seek to prevent the loss of small units and where the Council's housing pressures are much worse than in Lambeth. And the judge emphasised that each appeal needed to be considered individually on its own merits, with regard to the relevant planning policies that apply to the site and the particular circumstances of the case (including the particular pressures on housing and the need to resist loss of existing units).

4.15 In this appeal, there is a clear policy conflict with policy HC1 (the most up-to-date and relevant development plan policy) and there would be a 'significant planning consequence' arising from the impact of the loss of a single unit through amalgamation of two units. No exceptional circumstances have been demonstrated by the appellant to provide an exception to policy HC1. Furthermore, the severe housing pressures in the Borough of Camden have become even more extreme since the above appeal decisions were decided (2016-2020) and since the Local Plan was adopted (2017). The table as shown in 4.5 above sets it out clearly. The position has clearly changed since then and the pressure to provide more housing units (and not to lose existing units) has increased.

5. Conclusion

5.1 For the reasons detailed above, the amalgamation in this area would have a material impact on the provision of housing in conflict with the development plan. Therefore, as a matter of fact and degree, the change of use from two small dwellings into one larger dwelling would be material in this part of the borough.

5.2 The council case is set out in the delegated officer's report (reference: 2024/2580/P) which is attached.

Please see:

- Appendix 1. Copy of delegated report,
- Appendix 2. Copy of the Authority Monitoring Report (AMR) 2021/22 and 2022/23,
- Appendix 3. Copy of appeal decision for 114 Fitzjohn's Avenue (3244112),
- Appendix 4. Copy of appeal decision for 15 Cheyne Place (3165766),

- Appendix 5. Copy of appeal decision No. 6 and No. 9 Cheyne Gardens (3141220),
- Appendix 6. Copy of appeal decision for 3 Egerton Gardens (3149451).

Regards,

Geri Gohin