

Hedley Clark

Town Planning  
Consultants

Development Management  
Camden Town Hall Extension  
Argyle Street  
London  
WC1H 8EQ

24<sup>th</sup> June 2015

Dear Sir/Madam

**Town and Country Planning Act 1990 Section 191**  
**Application for Lawful Development for Existing Use or Development**  
**39 Chester Close North, London, NW1 4JE**

We are instructed to act on behalf of the owners of the site, Kola Aluko, and hereby submit an application for a Certificate of Existing Lawful Use and Development in relation to the conversion of the garage to habitable accommodation with associated works including the replacement door on the rear elevation. These works have been completed.

The application site forms part of a Mews that was granted planning permission in 1961 under consent 83037, a copy of which is attached for ease of reference. We are aware that condition 5 of permission 83037 restricts the use of the garage to purposes incidental to the enjoyment of the occupiers of the dwelling and that it specifically precludes commercial uses.

The conversion of the garage to habitable accommodation is for purposes wholly incidental to the enjoyment of the occupiers of the dwelling, as shown on the submitted plans. The conversion to habitable accommodation is not precluded by Condition 5 of planning permission 83037, a view confirmed by the Council in granting certificates of lawful use for the conversion of the garages at no.33 Chester Close North (2010/1975) and at no.41 (2013/6451).

The lawfulness of the works thus rest with whether they comprise 'development' and if so whether they comply with Class A of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development)(England) Order 2015.

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Section 55 (2) of the Town and Country Planning Act 1990 provides exemptions to the definition of development and includes under sub section ii) those works carried out for the maintenance, improvement or other alteration of any building of work which “*do not materially affect the external appearance of the building.*”

The external changes associated with the conversion of the garage included replacing the timber garage door with a new timber door, as shown on plan and in the photograph. No change to the size of the original opening was made and no additional windows or brickwork were formed.

Reference is made to ***Burroughs Day v Bristol City Council (1996)*** where the occupiers of a building proposed an alteration to the roof of the building and replacement windows on the front elevation to accommodate the installation of a lift in the building. The question of whether the work fell within the definition of development arose. The Court held that in interpreting the provisions of s55 the following points should be taken into account;

- What had to be affected was the ‘external appearance of the building’, not the exterior of the building.
- The external appearance of the building had to be “materially” affected, the impact must be more than *de minimus*;
- Whether the effect of the alteration was material must depend in part of the degree of visibility; and
- The effect on the external appearance must be judged for its materiality in relation to the building as a whole and not by reference to a part of a building taken in isolation.

The replacement door on the rear elevation does not materially affect the external appearance of the property or indeed the larger building of which it forms part of. The works undertaken as part of the conversion of the garage to habitable accommodation do not therefore fall within the definition of ‘development’.

Notwithstanding the above, we would also advise that in the unlikely event the Council conclude differently, the works fall within the scope of Class A of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development)(England) Order 2015 which provides for the improvement or other alteration of a dwelling house.

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For the reasons set out above, we trust the Council will support this applicant and grant a certificate confirming the conversion of the garage and associated works are lawful.

If you wish to discuss any of the above further please don't hesitate to contact us.

Yours faithfully

Karen Clark  
BSc(Hons), Dip TP, MRTPI  
Planning Consultant

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