

PLANNING STATEMENT IN SUPPORT OF S192 APPLICATION FOR LAWFUL DEVELOPMENT CERTIFICATE IN RESPECT OF PROPOSED AMALGAMATION OF THE EXISTING GROUND FLOOR FLATS AT 107 AND 109 KING HENRYS ROAD NW3 3QX INTO A SINGLE RESIDENTIAL UNIT



APPLICANT: Juliette Jestin-Knapp

ADDRESS: FLAT 2, 107 AND FLAT 2, 109 KING HENRYS ROAD NW3 3QX

DESCRIPTION:

Amalgamation of existing ground floor flats into a single residential unit. Internal alterations only.

Drawing Nos. - Drawing No 5865/10 - Existing and Proposed Floorplans and Location Plan

THE SITE AND SURROUNDING AREA

Nos. 107 and 109 King Henry's Road are situated on the southern side of King Henry's Road near its corner with Lower Merton Rise.

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They are a pair of four storey semi-detached villas which due to site topography are three storey at street level plus lower ground floor. The buildings are comprised of four flats in each property.

Built in the mid-late 19th century they are constructed of yellow London stock brick and slate roofing, with key features including front porches, bay windows, sash windows with detailed stone and brick lintels and quoins.

The rear of the buildings also include bay windows and back on to large gardens, which include a number of trees. The buildings are located within the Elsworthy Conservation Area.

King Henry's Road, a residential street of varied character, forms the northern boundary of the Conservation Area. There are no listed buildings or other designations on the site.

On the southern side of the road there are traditional 19th century semi-detached villas, similar to those on the subject site.

EVIDENCE IN SUPPORT OF THE GRANT OF A LAWFUL DEVELOPMENT CERTIFICATE

The provisions of section 55(1) of the 1990 Act state that, for the purposes of the Act, 'development' means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

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, no mention is made of whether conversion of two flats to a single unit requires permission.

The question whether there would be a material change in the use of a building or other land involves comparative consideration of the character of the existing lawful use of the premises and the proposed use. It is a matter of fact and degree, to be determined in the particular circumstances of each case.

Section 55(2) of the Act sets out operations or uses of land that shall not be taken to involve development. Only sub-sections (a) and (f) are relevant in this case. The proposed alterations to effect the change of use would only affect the interior of the buildings and would not affect

the external appearance of the buildings. The development therefore satisfies sub-section (a). Both current dwellings and the proposed composite dwelling fall within Class C3 of The Town and Country Planning (Use Classes) Order 1987 as amended. The development therefore satisfies sub-section (f).

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In our submission, it is essential to examine the character of the use of the properties under consideration, before and after the proposed change of use in order properly to assess whether it would be material for the purposes of section 55(1) of the 1990 Act.

The character of the residential occupation of the composite dwelling would not be materially different to residential occupation of the separate dwellings.

It is clear from the provisions of section 54A and section 70(2) of the 1990 Act that, in making determinations under the Planning Acts, the duty to have regard to the development plan does not apply unless there is a specific requirement to that effect in the relevant statutory provisions.

As there is no such requirement in section 192 of the 1990 Act, it is considered that Development Plan Policies are not directly relevant to the determination of this case.

The reasoning in the Richmond upon Thames LBC judgement supports the proposition that the extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether a change from that use is a material change of use.

That formulation avoids implying that the Development Plan is a material consideration in determining a LDC application (for which there is no statutory authority in sections 191 or 192 of the 1990 Act).

The application properties are seen by passers-by in King Henry's Road very much as part of the pair of the semidetached villas of which they form part.

There is no external evidence, save for the discreet entry phone, at the front of the buildings that they have been sub-divided into self-contained units.

The main evidence of sub-division is internal with stairs leading to the upper floors where other self-contained units have been created. The external appearance of the properties will not change.

As the other operations involved in the proposed change of use would affect only the interior of the appeal building we conclude these works are within the scope of the provisions in section 55(2)(a) of the 1990 Act and do not therefore involve development, as defined in section 55(1).

As to the materiality of the proposed change of use, the applicant's intention is to use the building as a larger residential unit. The extent of available accommodation, could provide an acceptable standard for a family.

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It is reasonable to conclude that the level of residential occupancy of the appeal building as two self-contained units would differ very little from occupancy as a single flat.

The facts of the current proposal differ substantially from the circumstances reported in the Richmond upon Thames LBC judgement, where seven self-contained flats were to be converted to a single family dwelling house.

We do not therefore consider that the reasoning in this judgement (that a change of use from self-contained flats to a dwelling house is necessarily material for planning purposes) is of relevance to the present case.

Turning to any residual concern that the proposed change of use would result in a net loss of residential units in the Borough it is accepted that this factor may be relevant as to whether a material change of use would occur.

We note however that policy **DP2** (Development Management Policies) – **Making full use of Camden's capacity for housing** states inter alia that the Council will resist developments that would involve the net loss of two or more homes, unless certain criteria are met.

In the present case there will be only a net loss of one unit and no loss of residential floorspace. Accordingly and in so far as Policy DP2 has any bearing on this application the proposal will comply with its requirements.

However, in our submission, the net loss of one small flat can properly and reasonably be regarded as 'de minimis' for planning control purposes and on the basis of the wording of policy DP2 referred to above, it is reasonable to assume that the Council is of a similar view.

Furthermore there would be no actual loss of residential floor space and as mentioned above in occupancy terms the present situation would either be neutral or there could be an increase.

As a matter of fact and degree the proposed use of two dwellings as one dwelling, in this case, is not a change of use that is material and that constitutes development as defined in Section 55 of the Act. Planning permission, in our submission, is not required for the proposed change of use.

SJP/23/12/2015