

LDC (Proposed) Report		Application number	2015/7259/P
Officer		Expiry date	
Raymond Yeung		18/02/2016	
Application Address		Authorised Officer Signature	
Flat 2 107 and 109 King Henry's Road London London NW3 3QX			
Conservation Area		Article 4	
Elsworthy		N/A	
Proposal			
Amalgamation of 2no. Flats into a single residential unit at ground floor of 107 and 109 King Henry's Road.			
Recommendation:		Grant certificate	

The use of the property for the purposes described above does not constitute development under the terms of Section 55 of the Town and Country Planning Act 1990 and consequently planning permission is not required.

1. Site description

The proposal sites are part of ground floor flats 2 of both 107 and 109 King Henry's Road which is a semi-detached Victorian host property comprising lower ground, ground, first and second floors providing up to 6 flats. The existing flats are fully self-contained with no element of shared facilities. It is located on the south side of King Henry's Road close to the junction with Lower Merton Rise and is located within the Elsworthy Conservation Area.

2. Site history

Relevant planning history for the property includes the following records:

10375 - The formation of six self-contained flats at No. 107 King Henry's Road, NW3
- Granted 03/03/71

3. Proposal

A certificate of lawfulness is now sought for the proposed use of the building (2 flats) as a single flat on the ground floor.

4. Assessment

4.1 The Town & Country Planning Act 1990, 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".

4.2 Materiality must be considered as a matter of fact and degree depending on the circumstances in assessing whether the material change of use has occurred.

4.3 Existing housing mix and breakdown of bedrooms.

House No.	Floor	Flat	Bedrooms
107	Lower Ground Floor	Flat 1	2 Bed
	Raised Ground Floor	Flat 2	2 Bed
	First Floor	Flat 3	Studio
		Flat 4	Studio
	Second & Third	Flat 5	1 Bed Maisonette
Flat 6		2 Bed Maisonette	
109	Lower Ground Floor	Flat 1	1 Bed (Planning for 3 Bed)
	Raised Ground Floor	Flat 2	2 Bed
	First Floor	Flat 3	1 Bed
	Second & Third	Flat 4	3 Bed

4.4 Camden's policies protect residential floorspace, but allow the loss of one unit. The removal of a flat would equal to a 10% loss of residential unit of the overall site of No.107 and 109 and would be considered not material in this particular case. It is considered that such minor change from 10 units to 9 would not be an erosion of the Borough's housing stock and would not create a material implication on the ability of the Council to meet its increased housing targets.

4.5 It is considered that the proposed amalgamation of two residential units into a single residential unit is not a material change of use. Therefore the works are not considered to fall within the "meaning of development" requiring planning permission of section 55(2)(f) as defined by the Town and Country Planning Act 1990.

5. Justification

5.1 Camden's relevant appeal case **APP/X5210/X/10/2124828** (11 Charlotte Place) - which looked at the materiality of change from HMO to self-contained units, the inspector looked at the planning consequences, considered the Richmond decision (which allows Planning policy to be a consideration in determining materiality) and the effects on the character:

*Paragraph 14 of the report “Applying these principles specifically to the case in hand, where an HMO is converted into self-contained units, with only internal works and no increase in the number of units, then if there is no change in the overall character of the use there will be no material change of use. Such a change only becomes material if the division results, as a matter of fact and degree, in the original planning unit being used in a manner so different that it has ‘planning consequences’. In this regard, it was held in **Richmond-upon-Thames LBC v SSETR & Richmond-upon-Thames Churches Housing Trust [2001] JPL 84** 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 material. The Court found that such a change could give rise to important planning considerations and could affect, for example, the residential character of the area, the strain on welfare services, the stock of private accommodation available for renting and so forth.”*

5.2 Need to look at character - “Effects on character”

Further to the above, the report continues to paragraph 16; “I find the ‘other determinants of materiality’ referred to above to be associated for the most part with the likely effects of the proposal on the character of the appeal property itself and the immediate locality. The Council perceives a significant alteration to the character of the use of the building and its surroundings by reason of the way in which the nature of occupation would change. However, I disagree.”

Paragraph 17; “.... The creation of self-contained units would therefore make little difference to day-to-day activity within the property”

Paragraph 19:”No discernible physical external changes would be associated with the proposed conversion and even the internal alterations required would be limited in extent, with use being made of some of the existing partitions and doorways.... I therefore think it most unlikely that any significant change in the character of the building or the surrounding area would result from implementation of the proposal.”

5.3 Royal Borough of Kensington and Chelsea (RBKC) LDC refusal – allowed on appeal. This as for the amalgamation which was refused on the Richmond principle of materiality of the Development Plan - despite the fact that it wasn't contrary to policy (local, saved policies or London plan).

5.4 The Inspector considered whether this was a material consideration of any weight. Richmond's local plan policy for 'Housing Diversity' and states within their Core Strategy that the Council will resist development which results in the net loss of five or more residential units. The proposed amalgamation of the two flats would result in the loss of only one residential unit. So the proposal did not conflict with their policy. Another housing policy of RBKC states that the loss of existing, small, self-contained flats of one or two habitable rooms will be resisted. Both flats had more than two habitable rooms, so the proposal did not conflict with the housing policy within their local plan.

5.5 Policy 3.14 of the London Plan states that the loss of housing should be resisted unless the housing is replaced at existing or higher densities with at least

equivalent floorspace. The proposed amalgamation of the two flats would not result in any loss of residential floorspace. The proposal did not therefore conflict with London Plan policy 3.14.

5.6 The inspector report continued that RBKC Council had referred to similar LDC cases in a neighbouring London Borough but planning policy in place or planning decisions made in that area could not be imported to support the Council’s case.

5.7 The scale of amalgamation in Kensington & Chelsea may be having a material effect on the number of dwellings in the housing stock but the proposed amalgamation of the two flats did not conflict with their or London Plan’s policies. The policy factor in this case, given that there was no policy conflict, was a material consideration of no weight. Given that the Council accepted that no harm would be caused to the character of the building or to the surrounding area, the proposed amalgamation of the two flats to create one residential unit would not, as a matter of fact and degree, be a material change of use that would constitute development as defined in Section 55 of the Act. Planning permission was not therefore required for the proposed use. The section 195 appeal thus succeeded, and the Inspector issued the requisite LDC.

5.8 Camden’s relevant housing policies;

Policy DP2 - states that the Council will seek to minimise the loss of housing in the borough by resisting developments that would involve the net loss of two or more homes.

The proposal would lose only 1 unit.

Policy DP5 – states the Council will contribute to the creation of mixed and inclusive communities by securing arrange of self-contained homes of different sizes.

Dwelling Size Priorities Table					
	1-bedroom (or studio)	2-bedrooms	3-bedrooms	4-bedrooms or more	Aim
Social rented	lower	medium	high	very high	50% large
Intermediate affordable	medium	high	high	high	10% large
Market	lower	very high	medium	medium	40% 2-bed

Proposal:

	Studio	1-bed	2-bed	3-bed	Total
Existing (107 & 109)	2	3 (and there is planning for convert of 1-b to 3-b)	4 (40%)	1	10
Proposed	2 (22%)	3 (33%)	2 (22%)	2 ((22%) new proposed is for 3 or 4 bed))	9

As shown above, the proposal appears to remain an acceptable mix following the conversion and would meet the priorities table. The amount of bedrooms would remain the same for the properties subject to the proposal.

The most prioritised mix is a 2 bedroom property, the loss of two of these would still see two remaining on this site. The addition of a 3 or 4 bedroom flat as proposed would see 2 'large homes' on the site which would overall be considered to be a good mix as shown on the table above. It would provide a family home in this area. The mix is relatively even between 1-4 bedroom flats.

If we say the raised ground floor flat from 107 is given to and amalgamated with the raised ground floor flat at 109, then there would be 17% loss to 107 and no loss to 109.

If you take both 107 and 109 into consideration, and based on flats and not areas or bedrooms, amalgamating the two raised ground floor flats would equate to 10% loss of accommodation across the two buildings.

6. Conclusion

6.1 It is considered that the works described does not constitute development as defined by Section 55 of the TCPA 1990.

RECOMMENDATION - Approve certificate.