

LDC Report	01/02/2017
Officer	Application Number
Hugh Miller	2016/5621/P
Application Address	Recommendation
2 and 3 Wildwood Grove London NW3 7HU	
1st Signature	2nd Signature (if refusal)
Proposal	
Use of 2 and 3 Wildwood Grove as one single dwellinghouse (Class C3)	
Recommendation: Refer to Draft Decision Notice	
Assessment	
1.0 Site description	
<p>1.1 The two 2-storey properties are located on the north-west side of Wildwood Grove and abut Hampstead Way to the rear. The properties are located within the Hampstead Conservation Area and are identified as buildings that make a positive contribution to the conservation area.</p>	
2.0 Planning History	
<u>2 and 3 Wildwood Grove</u>	
September 2016 - Withdrawn Application - Amalgamation of 2 residential dwellinghouses into a single family dwellinghouse; ref.2016/3629/INVALID	
<u>2 Wildwood Grove</u>	
October 1989 – PP Granted - Erection of a single storey rear extension; ref. 8905529.	
<u>3 Wildwood Grove</u>	
November 2003 – PP Granted - The erection of a single storey rear extension; ref. 2003/0976/P.	
August 2004 – PP Granted - Variation to planning permission ref: 2003/0976/P dated 17.11.2003 (the erection of a single storey rear extension), involving replacement of window and door at rear with new sliding door; ref. 2004/2258/P.	
April 2006 – PP Granted - Retention of 1.1m high metal railings on the roof of the existing single storey rear extension of dwellinghouse, in connection with its use as a roof terrace; ref. 2006/0354/P	
August 2006 – PP Granted - Removal of condition 2 (relating to the erection of privacy screens) attached to the planning permission dated 12/04/06 (2006/0354/P) for retention of 1.1m high	

metal railings on the roof of the existing single storey rear extension of dwellinghouse, in connection with its use as a roof terrace; ref. 2006/2353/P.

3.0 Background

3.1 As noted above, the applicant previously submitted a Certificate of lawfulness for existing use on grounds that the use of the two houses as a single dwelling had been used continuously for 4 years and was immune from enforcement action. However, due to lack of tangible precise and unambiguous supporting evidence the application was withdrawn by the applicant to avoid refusal by the Council.

4.0 Proposal

- Use of 2 and 3 Wildwood Grove as one single dwellinghouse (Class C3).

5.0 Assessment

Current proposal

5.1 The applicant submissions are:

1. a proposition that the change from two dwellings into one is not material and therefore not development and
2. there is no requirement for the provision of supporting evidence demonstrating 4 years or continuous use.

5.2 The applicant has not submitted any details to substantiate the existing use. Officers note however, that the applicant pays two Council tax bills for the properties. From August 2004 to present the applicant has paid Council Tax for 2 Wildwood Grove and since September 2009 the applicant has paid separate Council Tax for 3 Wildwood Grove. Both houses also retain their separate main entrance rather than a single entrance.

Conclusion

5.3 The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

5.4 The Council's evidence regarding Council Tax payment above contradicts and undermines the applicant's version of events. It is therefore considered that the application fails to provide precise and unambiguous evidence that the properties have been used as a single family dwelling for more than 4 years.

5.5 In order to satisfactorily demonstrate that the existing unit arrangement has been in continuous use for a period of four or more years, the applicant would need to provide supporting precise and unambiguous evidence which demonstrate the continuous four year period of use as a single dwellinghouse. The application is therefore **refused** on that basis.

Recommendation: Refuse

Aside: Materiality of use

6.1 The applicant argues that the amalgamation of two single family dwellings into one does not constitute development.

6.2 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"*. However the legislation is silent on whether combining dwellings (such as knocking two houses into one) would also constitute development.

6.3 The applicant asserts that that this issue has been clarified in case law: specifically the High Court case of Richmond-Upon-Thames London Borough Council v Secretary of State for Transport [2000] 2 P.L.R. 115, which held that where a change of use gave rise to planning considerations (such as the loss of residential accommodation). The decision concluded that the amalgamation of two dwellings will not automatically be a material change of use.

6.4 More recently the appeal decision on 11 Charlotte Place (Camden Ref 2009/5195/P) looked at the materiality of change from HMO to self-contained units. Citing Richmond the inspector advised (para 14) *"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'"* and *"in this regard, it was held in Richmond ... 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."*

6.5 The inspector followed by considering the key matters of materiality as follows:

- (a) Whether there would be a change in the character of the use of land;
- (b) Whether the change would have significant planning consequence(s),

Character

6.6 The amalgamation of two dwellings into one equates to a 50% loss of residential units.

6.7 The Charlotte Place appeal decision cited above considered that the change from bedsits to flats within a single building would not result in *"a significant alteration to the character of the use of the building ...by reason of the way in which the nature of occupation would change"*. The inspector reasoned (para 17) that *"Numbers of people occupying the residential accommodation, and the comings and goings thus generated, would therefore be unlikely to alter discernibly"*, furthermore *"any changes in the profile of occupiers and type of tenure would, to all intents and purposes, be imperceptible to those living and working nearby"* and *"The lengths of time for which occupiers might remain in situ would not be noticed by most observers and, even if they were, would not be a significant determinant of whether the character of either property or locality had altered materially"*.

6.8 CPG2 paragraph 6.3 identifies that evidence confirms that larger units are unlikely to be occupied by large households. In 2001, 47% of the households occupying a home with 5-or-more rooms were one- or two-person households. The proportion of one- or two-person households was 54% for owner-occupied homes with 5-or-more rooms. It is therefore likely that the amalgamation of the two dwellings would lead to a relative under-occupation of the houses, which would be perceptible and significant enough to alter the character of the way in which the dwellings are occupied.

Policy considerations

6.9 Camden planning policy highlights the need for more housing in the borough. This is firmly embedded in the Core Strategy and Development plan policies, and specifically CS6 (providing quality homes).

6.10 Related to the need to provide new housing is the resistance of the loss of existing, Policy DP2 (*Making full use of Camden's capacity for housing*) resists the loss of two or more homes. The proposals would not contravene that policy and so as a general principles the amalgamation of two single family dwellings into one would be acceptable.

Furthermore the amalgamation would be unlikely to give rise to significant concerns about its impact on the amenity of residents arising from an intensity of use.

6.11 In conclusion, while the amalgamation would not be contrary to policy, it would result in a material change to the character of occupation of the houses and therefore constitutes a material change of use.

It is likely that a planning application for the change of use from two dwellings into one would be acceptable.