

<b>Delegated Report</b>		<b>Analysis sheet</b>		<b>Expiry Date:</b>		03/11/2017	
		N/A / attached		<b>Consultation Expiry Date:</b>		N/A	
<b>Officer</b>				<b>Application Number(s)</b>			
Raymond Yeung				2017/5030/P and 2017/5031/P			
<b>Application Address</b>				<b>Drawing Numbers</b>			
106 & 108 Regent's Park Road LONDON NW1 8UG				Refer to decision notices			
<b>PO 3/4</b>		<b>Area Team Signature</b>		<b>C&amp;UD</b>		<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>							
2017/5030/P -106 Regent's Park Road- conversion from 2 selfcontained units to a single dwellinghouse (Class C3).							
2017/5031/P -108 Regent's Park Road- conversion from 2 selfcontained units to a single dwellinghouse (Class C3).							
<b>Recommendation(s):</b>		Refuse certificate					
<b>Application Type:</b>		Certificate of Lawfulness (Proposed)					
<b>Conditions or Reasons for Refusal:</b>		Refer to Draft Decision Notice					
<b>Informatives:</b>							
<b>Consultations</b>							
<b>Adjoining Occupiers:</b>		No. notified	00	No. of responses	00	No. of objections	00
				No. electronic	00		
<b>Summary of consultation responses:</b>		None received to date					
<b>CAAC/Local groups* comments:</b> *Please Specify		Primrose Hill Conservation Area Advisory Committee –  <i>Although we always regret the loss of smaller dwellings in the CA, we have no objection to the restoration of this house as a separate dwelling</i>					

## Site Description

The application site relates to two terraced properties, nos. 106 (south-side facing) and 108 (north-side facing), which are located within a terrace of seven buildings on the eastern side of Regents Park Road, north of the junction with Chalcot Crescent. The properties are four storeys in height plus basement accommodation.

The buildings consist of an amalgamated large maisonette on the upper ground to third floors of nos. 106-108 and two basement floor flats, one at each of the properties. The area of the site is approximately 353 square metres with a depth of approximately 28 metres from the front garden wall. The site frontage is around 11 metres wide. Each unit has access to the rear garden. The rear garden has several levels linked by steps and is approximately two thirds hardstanding. There are steps down from the ground floor.

The site falls within Primrose Hill Conservation Area and the buildings are not listed buildings.

The properties are covered by an Article 4 Direction that restricts the normal permitted development rights of the properties including the painting of the front façade of the buildings.

## Relevant History

### 106 - 108 Regent's Park Road

**2016/3091/P** – granted 12/08/2016 - *yet to be implemented*

*Conversion of the existing property from 3 x self-contained units (1 x 1Bed, 1 x 2Bed & 1 x 6bed), to 1 x 4Bed house, 1 x 4Bed maisonette and 1 x 2Bed flat.*

**2008/2687/P** – granted 07/10/2008

*A change of use from a single dwellinghouse at No. 106 to a self contained flat at basement level and the amalgamation of the upper levels of No. 106 and upper maisonette of No. 108 to form a single larger maisonette (with the retention of the existing basement flat at No. 108).*

### 106 Regents Park Road

**2003/2042/P** – granted 29/10/2003

*Certificate of lawfulness for the existing use of the property as two self contained units, namely a self contained basement flat and a self contained maisonette on the ground, first, second and third floors.*

**2008/1274/P** – withdrawn 30/05/2008

*Change of use and works of conversion to convert a single-dwelling house at No. 106 and the upper maisonette at No. 108 (Class C3) into a single-family dwelling house together.*

**2008/1644/P** – withdrawn 30/05/2008

*Erection of a first floor extension over existing garage to rear of house to provide additional living space.*

### 108 Regents Park Road

**2008/1274/P** – withdrawn 30/05/2008

*Change of use and works of conversion to convert a single-dwelling house at No. 106 and the upper maisonette at No. 108 (Class C3) into a single-family dwelling house together.*

## **Building control application**

**09/5/0059** – Completion and decision 22/12/2010 for 2008/2687/P

Convert 2 No dwellings to single dwelling, refurbishment to include windows/doors/ balcony balustrade and include basement work.

## **Relevant policies**

**The Town & Country Planning Act 1990, Section 55**

**Camden Local Plan 2017 -  
Policy H3 Protecting existing homes**

## **Background and history**

The applicant has submitted two separate applications for each No.106 and No.108 Regent's Park Road; it is considered they should be assessed concurrently to reach an shared overall conclusion.

The applicant has described the conversion of a single dwellinghouse to each property, but does not state from how many existing units.

As mentioned above, there is a separate basement unit at both No.106 and 108 and an amalgamated single unit across the upper floors of both units.

The planning statement from the applicant states correctly that the properties No.'s 106 and 108 were once lawfully arranged as:

### **No. 106**

- One 'basement' flat
- One 'ground-to-third floor' maisonette

### **No. 108**

- One 'basement' flat
- One 'ground-to-third floor' maisonette

This shows that the unit was **at one point 4 separate units** across both properties.

**The current layout (following implementation in 2010 of the 2008/2687/P permission) is :**

### **No. 106 and No. 108**

- 2 'basement' flats on each property
- 1 'ground-to-third floor' maisonette

The officer's report for permission **2008/2687/P** states-

*When the site visit was conducted, it was evident that No. 106 was laid out as a single dwelling house. However, it is evident from the history of No. 106 that a Certificate of Lawfulness was issued*

*in 2003, which confirmed that the property was laid out as two units, a lower ground floor flat and the maisonette on the upper floors. The agent has advised that the conversion of No. 106 to a single dwellinghouse occurred without the benefit of planning permission. The properties at No. 106 and No. 108 as currently laid out to provide 3 units on the site; a dwelling house at No. 106, and at No. 108 a basement flat and maisonette on the upper levels. However as discussed above, the lawful use of the two properties is 4 units on the site; a basement flat and maisonette on the upper levels.*

Planning permission **2008/2687/P** was implemented and completed on 22/12/2010 (see Building Control records) for the change of use from a single dwellinghouse at No. 106 to a self-contained flat at basement level and the amalgamation of the upper levels of No. 106 and upper maisonette of No. 108 to form a single larger maisonette (with the retention of the existing basement flat at No. 108).

The applicant has submitted two applications for each of the properties; however, the amalgamation of both No.106 and No.108 from the above permission made the upper floors of the two properties as a single unit; as such the two properties should be seen as a single planning unit.

Extant permission **2016/3091/P** listed above was intended to amalgamate both the upper maisonette and basement to form one house at No.106 and retain the basement flat and upper maisonette at No.108 with alterations. This does not lose or gain any units, so there is no net loss of housing stock on the site; in accordance with the submitted plans on this application, it appears to not have been implemented yet.

## **Assessment**

### **Proposal**

The proposal is to create a separate dwellinghouse to each No.106 and 108, which would mean subdividing the two properties. This would see amalgamation of the existing 3 units.

Unit 1 – 6 bed of 435 square metres floor area located on the ground, first, second and third floor levels of the two properties.

Unit 2 – 1 bedroom flat of 58 square metres floor area located on the ground, first, second and third floor levels of the two properties at No.108

Unit 3 – 1 bedroom flat of 68 square metres floor area located on the ground, first, second and third floor levels of the two properties at No.106

The proposed 2 units would be-

Unit 1 – 4 bed house of 280 square metres floor at No.106

Unit 2 – 4 bed house of 281 square metres floor at No.106

The proposal would not result in any material external changes.

## **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, it does not state anything with regards to the other way round, ie. Two or more

dwellinghouses to be used as one single dwellinghouse.

Planning legislation states that where development does not result in a change in the use class of the property, planning permission is not required and internal works do not require planning permission if the property is not listed or covered by a condition.

However, the cases of *The London Borough of Richmond-upon-Thames v SSETR and Richmond-upon-Thames Churches Housing Trust* [2000] 2 PLR 115 and more recently of *Royal Borough of Kensington & Chelsea (RBKC v SoSCLG and Reis/Tong* [2016] EWHC 1785) on June 15th 2016, have ruled that the "same use class" exception cannot be relied upon in residential amalgamation cases. This is because the wording of the Use Classes Order refers to "a dwellinghouse" i.e. a single dwellinghouse. When two separate dwellinghouses are amalgamated, the "same use class" exception does not apply because the original use of the two units to be amalgamated was not "use as a dwellinghouse".

Without the benefit of the "same use class" exception, the question then becomes: is the amalgamation of two dwellinghouses capable of being a material change of use for which planning permission is required? The Richmond case and the recent Royal Borough of Kensington & Chelsea appeal decision have both held that amalgamation is capable of being a material change of use in planning terms. However, this is not a blanket rule and each case requires assessment on a fact and degree basis against the background of the applicable development plan policy and any other material considerations.

***Materiality must be considered as a matter of fact and degree depending on the circumstances in assessing whether there is a material change.***

### **Relevant cases**

The applicant mentioned in their submissions the 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."*

The above application and appeals were given by the current applicant as an example to support their case; however it is considered this is not entirely relevant, in which they refer to a different use class as a HMO (Class C4) and whether it was a material to classify a change of use and result in an increase in C3 units. Furthermore, this was all within a single planning unit, whereas the current application involves a loss of 2 self-contained C3 units and separating no.106 and 108 into 2 clearly separate and independent properties.

Camden's other relevant proposed lawful development application granted **2015/7259/P** in 2016 for *Amalgamation of 2no. Flats into a single residential unit at ground floor of 107 and 109 King Henry's Road*. However, this had different circumstances to this current proposal, in that the permission only involved removal of a flat, which resulted a 10% loss of residential unit of the overall site of No.107

and 109; thus it was considered that this loss was not material in this particular case, given such a minor change from 10 units to 9. This context is unlike that of this current application property.

### **Need to look at character - “Effects on character”**

Furthermore, continuing to refer to the appeal above (re 11 Charlotte Place), it continues on 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.”*

The applicant also mentioned the Royal Borough of Kensington and Chelsea (RBKC) LDC refusal – allowed on appeal. This was for the amalgamation of 2 flats to one property which was refused in principle, despite the fact that it wasn’t contrary to policy (local saved policies or London plan).

The Inspector considered whether this was a material consideration of any weight. Richmond’s local plan policy for ‘Housing Diversity’ 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. Thus 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.

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.

The Inspector’s 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.

The scale of amalgamation in RBKC 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.

Part of the justification for reaching that conclusion was that there was no policy conflict. The court was not prepared to interfere with the planning judgment of the inspector. But the indication from the judge was also that had the inspector decided the other way, that would have been lawful – it is a simply matter of planning judgment:

*“the inspector expressed the addition conclusion that the loss of one dwelling in this case would not*

*have a "material adverse effect" on meeting London Plan housing targets. That was a judgment for the Inspector to reach and it has not been suggested by the Council that it is open to any legal ground of challenge. Other Inspectors might reach the opposite conclusion but that is a different matter."*

To conclude, the applications above either involved a HMO unit being turned into separate flats (at 11 Charlotte Place and the case of *Richmond-upon-Thames LBC v SSETR & Richmond-upon-Thames Churches Housing Trust*), or involved only a loss of 1 unit (at 107 and 109 King Henry's Road), or was not contrary to their local policy (RBKC case).

The current application results in the loss of 1 unit, but results a loss of 2 units overall compared to the original property prior to the implementation 2008/2687/P. This is contrary to local policy and represents a clear division from what is currently a single unit (upper floors) at nos 106 and 108 Regent's Park Road into two separate dwellings; the current proposal cannot be considered comparative to the examples given by the applicant above.

### **Policy H3 'Cumulative'**

Where the position is less clear, those wishing to amalgamate units will need to examine local planning policy and considerations such as the current housing situation in the local planning authority's area.

The supporting text to Policy H3 is clear that the purpose of the policy is to ensure that *"the overall supply of housing will not be compromised by developments involving a net loss" of floorspace and/or loss of 2 or more units.*

As acknowledged by the applicant, the Camden Local Plan policy H3 is clear that resisting the net loss of two or more homes is on an "individual or cumulative" basis, and the supporting text expands that "the Council will resist the incremental loss of homes through subsequent applications to combine further homes within the same building or site".

The applicant argues that the proposal *does not contravene with the above due to a 'substantial' period of time that has elapsed since the buildings became three units and that the policy's meaning of 'cumulative' does not apply in this instance.*

The Council records show that the commencement date of permission 2008/2687/P is 17/02/2009, which lawfully became 3 units only 8 years ago; this is considered not a substantial elapsed time as suggested by the applicant in their argument as a justification.

Therefore, the removal of a flat would equal to a 50% loss of residential units on the overall site of No.106 and 108 and would be considered material in this particular case. Even compared to the currently existing situation of 3 units, there would be a 33% loss which is considered material, as opposed to a 20% difference which would be generally considered as not significant. It is considered that such cumulative change from 4 units to 2 as mentioned above would be an erosion of the Borough's housing stock in terms of numbers of units and would create a material implication on the ability of the Council to meet its increased housing targets.

**It is considered that the proposed amalgamation of what was 4 flats into a 2 residential dwelling houses is a material change of use.** Therefore the works are considered to fall within the "meaning of development" requiring planning permission as defined by section 55(2)(f) of the Town and Country Planning Act 1990.

With the above taken into consideration, the proposal would not meet the criteria in part c of policy H3 in that it- involves a net loss of 2 residential units; is not in a part of the borough with a relatively low proportion of large dwellings; does not enable existing affordable homes to be adapted to provide necessary affordable dwelling-sizes; does not involve sub-standard units to be enlarged to meet residential space standards (as the units are of high quality accommodation); and does not provide for the expansion of existing health premises to meet local needs.

## **Summary and Conclusion**

The decision as to whether the conversion constitutes a material change of use is a matter of fact and degree that requires the decision maker to exercise planning judgment according to the circumstances of the case.

Loss of housing units is contrary to policy; whether there is a material change of use will depend on whether there is a change in character of the use of land. While the change in the number of units might not appear significant (in amenity or environmental terms), the very strong need for housing is a planning purpose which relates to the character of the use of land. There is a conflict with policy and a material planning consequence (arising from loss of much needed housing) which, as a matter of fact and degree, is considered to result in a material change of use. With all the above taken into consideration, it is considered that the actual and cumulative loss of the units is contrary to policy and would have a material adverse effect on the Council meeting its housing needs/targets. As such it is considered that the conversion works described amount to a change of use and constitutes development as defined by Section 55 of the TCPA 1990 and therefore require a planning application.

## **RECOMMENDATIONS –**

Refusal of lawful development certificates for proposed uses-

1. conversion into a single dwellinghouse at 106 Regent's Park Road (C3).
2. conversion into a single dwellinghouse at 108 Regent's Park Road (C3).