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| LDC (Proposed) Report | | Application number | 2019/0002/P |
| Officer | | Expiry date | |
| Rachel English | | 27/02/2019 | |
| Application Address | | Authorised Officer Signature | |
| 23 Hampstead Hill Gardens London NW3 2PJ | | | |
| Conservation Area | | Article 4 | |
| Hampstead | | Yes Basement development | |
| Proposal | | | |
| Amalgamation of two flats at basement and ground floor levels | | | |
| Recommendation: | Grant certificate | | |

1.0 Site:

1.1 The application site comprises a 2-storey, semi-detached property with rooms in the roof and basement. The applicant states that the building is divided into five flats and has been so since the 1970's. The building is not listed and located in the Hampstead Conservation Area.

2.0 Proposal:

2.1 The applicant seeks to amalgamate the two flats in the basement and ground floor (Flats A and B) into one flat. The applicant seeks to confirm that the change of use would not constitute development and planning permission is not required under section 55 of the TCPA 1990. There would be no external changes as a result of the proposal.

2.2 In support of the application, the applicant has submitted Land Registry documents for Flat B 23 Hampstead Hill Gardens dated 23rd November 1982 and appeal decisions for similar schemes.

3.0 History:

3.1 None relevant

4.0 Assessment:

4.1 Planning permission is required if the work being carried out meets the statutory definition of 'development' which is set out in section 55 of the Town and Country Planning Act 1990. Development includes:

- building operations (eg structural alterations, construction, rebuilding, most demolition);
- [material changes of use of land and buildings](#);

- engineering operations (eg groundworks);
- mining operations;
- other operations normally undertaken by a person carrying on a business as a builder.
- subdivision of a building (including any part it) used as a dwellinghouse for use as 2 or more separate dwelling houses

4.2 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 does not include whether combining dwellings would also constitute development.

4.3 Policy H3 of Camden’s Local Plan seeks to protect existing housing by resisting development that would involve the net loss of two or more homes, but allows the loss of one unit. As the proposal would only involve the loss of one residential unit, it is considered to comply with policy however the applicant seeks to determine whether the application requires planning permission at all. Paragraph 3.75 of the Local Plan 2017 states that:

“Net loss of one home is acceptable when two dwellings are being combined into a single dwelling. Such developments can help families to deal with overcrowding, to grow without moving home, or to care for an elderly relative. Within a block of flats or apartments, such a change may not constitute development. However, the Council will resist the incremental loss of homes through subsequent applications to combine further homes within the same building or site”

4.4 The applicant has submitted details of Camden appeal decisions to assist their case:

Site – 2 and 3 Wildwood Grove

2016/5621/P – application for a certificate of lawful development for Use of 2 and 3 Wildwood Grove as one single dwellinghouse. Building work commenced in 2009 and knocked through from number 2 to number 3 to create one dwellinghouse with internal works only.

Refused on 11 February 2017 on the grounds of: *“Insufficient evidence has been submitted to demonstrate that on the balance of probability the two houses have been used as a single dwellinghouse for a continuous period of 4 or more years.”*

Informative(s):

An application for a Certificate of Lawfulness of Existing Use is not considered to be the appropriate mechanism to consider the submitted material which focuses on the whether a proposed use is development; however the local planning authority has assessed the materiality of the proposed change and concluded that planning permission is required.

This decision was appealed to the Planning Inspectorate and allowed on 15th January 2018 (ref APP/X5210/X/17/3172201). The Inspector concluded that “In my view the amalgamation of Nos 2 and 3 Wildwood Grove has not led to a material change of use. As such it is not development.” The Inspector concluded that it would be highly unlikely that the level of occupation with one residential unit would be so different as to alter the character of the occupation of the building which would be to such an extent that it would be reasonable to conclude there had been a material change of use.

Site – Flats 4 and 5, 45 Rosslyn Hill

2018/1876/P – application for amalgamation of 2 x residential units into single residential unit granted on 19 July 2018

The application concluded that the works to amalgamate two flats on the second and third floors does not constitute development as defined by Section 55 of the Town & Country Planning Act 1990.

4.5 The applicant has submitted a relevant case from Royal Borough of Kensington and Chelsea:

Site - Flats 1 and 3, 44 Stanhope Gardens

The applicant sought to amalgamate two flats at the site under permitted development. The Royal Borough of Kensington and Chelsea (RBKC) refused **the application in December 2014 and it was** allowed on appeal in November 2015 (ref APP/K5600/W/15/3028100). The Inspector concluded *“the proposed amalgamation of the two flats to create one residential unit, as a matter of fact and degree, is not a change of use that is material and that constitutes development as defined in Section 55 of the Act. Planning permission is not required for the proposed use.”*

5.0 Consultation response

5.1 There is no statutory requirement to consult on certificates of lawful however one consultation response has been received from a neighbouring property. Concerns are raised about the amalgamation and the loss of a dwelling being contrary to policies in Camden's Local Plan. This has been discussed above.

6.0 Recommendation

6.1 The proposed amalgamation of two flats within an existing block would not be a material change and no external alterations are proposed. This is consistent with the appeal decisions discussed above. As a result, it is considered that the works described does not constitute development as defined by Section 55 of the Town & Country Planning Act 1990. It is recommended that the certificate is granted.