

69 Patshull Rd – Comparable Precedent in Camden

| | | |
|------------------------|--------------------------------------|----------|
| 2004/2492/P | Decision Letter | pp.1-2 |
| 2005/2948/P | Decision Letter | pp.3-4 |
| 2015/7259/P | Decision Letter and Delegated Report | pp.5-11 |
| 2018/1876/P | Decision Letter and Delegated Report | pp.12-15 |
| 2019/0002/P | Decision Letter and Delegated Report | pp.16-20 |
| 2019/1399/P | Decision Letter and Delegated Report | pp.21-24 |
| APP/X5210/X/17/3172201 | Appeal Decision | pp.25-29 |

S.02.

RECEIVED 28 JUL 2004



Development Control
Planning Services
London Borough of Camden
Town Hall
Argyle Street
London WC1H 8ND

Tel 020 7278 4444
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env.devcon@camden.gov.uk
www.camden.gov.uk/planning

Mr G Blaker
Flat 2
13 Steele's Road
London
NW3 4SE

Application Ref: 2004/2492/P
Please ask for: **Hugh Miller**
Telephone: 020 7974 2624

21 July 2004

2492/P04

Dear Sir/Madam

DECISION

Town and Country Planning Acts 1990, Section 191 and 192 (as amended by Section 10 of the Planning and Compensation Act 1991)
Town and Country Planning (General Development Procedure) Order 1995

Certificate of Lawfulness (Proposed) Granted

The Council hereby certifies that the development described in the First Schedule below, on the land specified in the Second Schedule below, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Application for Certificate of Lawfulness for a proposed development for conversion of flats 2 & 3 into one dwelling unit.
Drawing Nos: C-01, C-02

Second Schedule:

Flat 2
13 Steele's Road
London
NW3 4SE

Reason for the Decision:

- 1 The works are not considered to fall within the "meaning of development" requiring planning permission as defined by the Town and Country Planning Act 1990.



INVESTOR IN PEOPLE

Your attention is drawn to the notes attached to this notice which tell you about your Rights of Appeal and other information.

Yours faithfully



Environment Department
(Duly authorised by the Council to sign this document)

Notes

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful on the specified date and thus, was not*/would not have been* liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use*/operations*/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.



RECEIVED 29 SEP 2005

Development Control
 Planning Services
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Greenaway & Lee Architects
 Branch Hill Mews
 London
 NW3 7LT

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 Fax 020 7974 1975
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env.devcon@camden.gov.uk
 www.camden.gov.uk/planning

Application Ref: 2005/2948/P
 Please ask for: Elaine McEntee
 Telephone: 020 7974 2248

27 September 2005

Dear Sir/Madam

DECISION

Town and Country Planning Acts 1990, Section 191 and 192 (as amended by Section 10 of the Planning and Compensation Act 1991)
 Town and Country Planning (General Development Procedure) Order 1995

Certificate of Lawfulness (Proposed) Granted

The Council hereby certifies that the development described in the First Schedule below, on the land specified in the Second Schedule below, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Conversion of 2 self-contained flats, one on each of the upper and lower ground floors, into one maisonette.

Drawing Nos: Site Location Plan 1785/OS-001; 1785-CL-AP-001; 1785-EP-001; 3 unnumbered floorplans.

Second Schedule:

19 Belsize Park Gardens
 London
 NW3 4JG

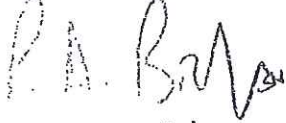
Reason for the Decision:

- 1 The works are not considered to fall within the "meaning of development" requiring planning permission as defined by the Town and Country Planning Act 1990.



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Yours faithfully



Environment Department
(Duly authorised by the Council to sign this document)

Notes

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2. It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful on the specified date and thus, was not*/would not have been* liable to enforcement action under Section 172 of the 1990 Act on that date.
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4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.



**Regeneration and Planning
Development Management**
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Pennington Phillips
16 Spectrum House
32-34 Gordon House Road
London
NW5 1LP

Application Ref: **2015/7259/P**
Please ask for: **Raymond Yeung**
Telephone: 020 7974 **4546**

8 March 2016

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Proposed) Granted

The Council hereby certifies that the development described in the First Schedule below, on the land specified in the Second Schedule below, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Amalgamation of 2no. Flats (C3) into a single family residential unit (C3) at ground floor of 107 and 109 King Henry's Road.

Drawing Nos:

Application form submitted 24/12/15, 5865/10, Planning statement.

Second Schedule:

**Flat 2
107 and 109
King Henry's Road
London
NW3 3QX**

Reason for the Decision:

- 1 The works are not considered to constitute "development" requiring planning permission of section 55(2)(f) as defined by the Town and Country Planning Act 1990.

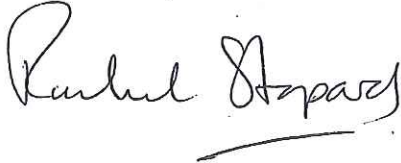


INVESTOR IN PEOPLE

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully



Rachel Stopard
Director of Culture & Environment

Notes

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful on the specified date and thus, was not*/would not have been* liable to enforcement action under Section 172 of the 1990 Act on that date.
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4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

| | | | |
|---|--|-------------------------------------|-------------|
| 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.

Mr Christian Buxton
FLAT 5,
45 Rosslyn Hill
London
NW3 5UH

Application Ref: **2018/1876/P**
Please ask for: **Oluwaseyi Enirayetan**
Telephone: 020 7974 **3229**

19 July 2018

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Proposed) Granted

The Council hereby certifies that the development described in the First Schedule below, on the land specified in the Second Schedule below, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 as amended.

First Schedule: Amalgamation of 2 x residential units into single residential unit.

Drawing Nos: Site location plan; ROSS/18/PD/01; Planning Statement.

Second Schedule:

Flat 4 & 5

45 Rosslyn Hill

London

NW3 5UH

Reason for the Decision:

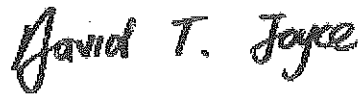
- 1 The works are not considered to constitute "development" requiring planning permission of section 55(2)(f) as defined by the Town and Country Planning Act 1990.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>



Yours faithfully



David Joyce
Director of Regeneration and Planning

Notes

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the matter specified in the First Schedule taking place on the land described in the Second Schedule was lawful on the specified date and thus, was not liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

| | | | |
|--|--|-------------------------------------|-------------|
| LDC (Proposed) Report | | Application number | 2018/1876/P |
| Officer | | Expiry date | |
| Oluwaseyi Enirayetan | | 15/06/2018 | |
| Application Address | | Authorised Officer Signature | |
| Flat 4 & 5, 45 Rossllyn Hill London NW3 5UH | | | |
| Conservation Area | | Article 4 | |
| Fitzjohns Netherhall | | N/A | |
| Proposal | | | |
| Amalgamation of 2x flats into a single residential unit. | | | |
| Recommendation: | | Grant certificate | |

1. Site description

1.1 The application site is located on the south side of Rossllyn Hill south of Hampstead underground station. It relates to flats at second and third floor. The site is located in the Fitzjohns Netherhall Conservation are but the building is not listed.

2. Proposal

2.1 A certificate of lawfulness is sought for the proposed change from two flats into one is not material and therefore not development.

3. Assessment & Justification

3.1 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". However, the legislation is silent on whether combining two dwellings into one would also constitute development.

3.2 Although not relevant in the determination of this certificate application, Camden's Local Plan policies seek to protect existing housing by resisting development that would involve the net loss of two or more homes. As the proposal would only involve the loss of one residential unit, it is not considered to materially impact the Borough's housing stock nor impact the ability of the Council to meet its increased housing targets. The use of the site would remain in residential use following the conversion of two residential flats into a single dwelling, and is not considered to be 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.

3.3 Relevant to this determination is the appeal case reference **APP/X5210/X/17/3172201** (2 & 3 Wildwood Grove, ref: 2016/5621/P) in Camden, which was allowed on 15/01/2018 for the conversion of two residential dwellings into one. In his assessment, the inspector considered that the amalgamation of two dwellings into one would not be a material change of use and therefore would not constitute development.

4. Conclusion

4.1 It is considered that the works described does not constitute development as defined by Section 55 of the Town & Country Planning Act 1990, and would therefore not require planning consent.

Application ref: 2019/0002/P
Contact: Rachel English
Tel: 020 7974 2726
Date: 19 March 2019

Development Management
Regeneration and Planning
London Borough of Camden
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Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
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Nicholas Taylor + Associates
46 James Street
London
W1U 1EZ
England

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Proposed) Granted

The Council hereby certifies that the development described in the First Schedule below, on the land specified in the Second Schedule below, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Amalgamation of two flats at basement and ground floor levels

Drawing Nos: Site location plan, 101revPL1, 102revPL1, 301revPL1, 302revPL1,
Planning Statement Ref 879

Second Schedule:

23 Hampstead Hill Gardens
London
NW3 2PJ

Informative(s):

- 1 The amalgamation of flats A and B does not constitute "development" and therefore planning permission is not required under section 55 of the Town and Country Planning Act 1990.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully



Daniel Pope
Chief Planning Officer

Notes

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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.



Application ref: 2019/1399/P
Contact: Samir Benmbarek
Tel: 020 7974 2534
Date: 3 April 2019

Development Management
Regeneration and Planning
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Town Hall
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Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Existing) Granted

The Council hereby certifies that on the 29 March 2019 the use described in the First Schedule below in respect of the land specified in the Second Schedule below, was lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 as amended.

First Schedule: Amalgamation of two flats (lower ground floor and ground floor) into single dwelling

Drawing Nos: FL01; FL02; FL03; FL04; FL05; FL06.

Second Schedule:
28 Frognal Lane
London
NW3 7DT

Reason for the Decision:

- 1 The amalgamation of the ground floor and lower ground floor flat does not fall within the "meaning of development" requiring planning permission as defined by the Town and Country Planning Act 1990.

Informative(s):

- 1 If a revision to the postal address becomes necessary as a result of this development, application under Part 2 of the London Building Acts

(Amendment) Act 1939 should be made to the Camden Contact Centre on Tel: 020 7974 4444 or Environment Department (Street Naming & Numbering) Camden Town Hall, Argyle Street, WC1H 8EQ.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully



Daniel Pope
Chief Planning Officer

Notes

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful on the specified date and thus, was not*/would not have been* liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use*/operations*/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

| | | | |
|--|--|--|-------------|
| LDC (Proposed) Report | | Application number | 2019/1399/P |
| Officer | | Expiry date | |
| Samir Benmbarek | | 09/05/2019 | |
| Application Address | | Authorised Officer Signature | |
| 28 Frognal Lane London NW3 7DT | | | |
| Conservation Area | | Article 4 | |
| Redington Frognal | | Basement | |
| Proposal | | | |
| Amalgamation of two flats (lower ground floor and ground floor) into single dwelling | | | |
| Recommendation: | | Grant certificate of lawfulness (proposed). | |

1.0- Site Description

1.1 The application building is a three-storey (and basement) detached building located on the southern side of Frognal Lane. The building is located within the Redington Frognal conservation area. It is not a listed building.

2.0- Proposal

2.1 A certificate of lawfulness is sought for the proposed amalgamation of the basement level and ground floor level flat into one dwelling. 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 Town and Country Planning Act 1990. There would be no external changes as a result of the development.

3.0- History

3.1 No relevant planning application history.

4.0- 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 a single dwelling house involve a material change in the use of the building and of each part of it which is so used". However, the legislation does not comment on whether combining two dwellings into one would constitute development.

4.2 Although not relevant in the determination of this certificate application, the Borough's Local Plan policies seek to protect existing housing by resisting development that would involve the net loss of two or more homes. As the proposal would only involve the loss of one residential unit, it is not considered to materially

impact the Borough's housing stock nor impact the ability of the Council to meet its increased housing targets. The use of the site would remain in residential use following the conversion of two residential flats into a single dwelling, and is not considered to be 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.

4.3 Relevant to this determination is the appeal case reference APP/X5210/X/17/3172201 (2 & 3 Wildwood Grove; ref: 2016/5621/P) in Camden, which was allowed on 15/01/2018 for the conversion of two residential dwellings into one. In the assessment, the Inspector considered that the amalgamation of two dwellings into one would not be a material change of use and therefore would not constitute development.

5.0- Conclusion

5.1 It is considered that the works would not constitute development as defined by section 55 of the Town & Country Planning Act 1990, and therefore would not require planning permission.

5.2 Grant certificate of lawful development (proposed).

Appeal Decision

Site visit made on 9 January 2018

by **Simon Hand MA**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 January 2018

Appeal Ref: APP/X5210/X/17/3172201
3 Wildwood Grove, London, NW3 7HU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Warren Evans against the decision of the Council of the London Borough of Camden.
 - The application Ref 2016/5621/P, dated 14 October 2016, was refused by notice dated 11 February 2017.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of 2 and 3 Wildwood Grove as one single dwellinghouse.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Reasons

2. The appellant states that in 2009 works were completed to amalgamate Nos 2 and 3 Wildwood Grove into a single dwelling. The agent's application was concerned solely with the legal question of whether the amalgamation of 2 dwellings into 1 was development or not. I do not need to rehearse most of the arguments here as the Council accept that in this case there is no policy impediment to the amalgamation. However they say it would still be a material change of use due to the under occupation of the dwelling which would materially alter the character of the way it is occupied. Regardless of the outcome of this argument the actual reason for the refusal of the application was that there was no evidence the use had been undertaken continuously for 4 years or more.
3. I accept the Council's argument that a reduction in levels of occupation could lead to the finding that there had been a material change of use, regardless of whether such a change was harmful or not, as planning merits play no part in the determination of an application for a lawful development certificate. However the changes associated with the amalgamation of the two dwellings into one would have to be such that there was a material difference in the way the property was occupied, and given that the nature of the use remains residential, such a change would have to be quite significant.

4. The Council argue that in 2001, 47% of households occupying a house with 5 or more bedrooms were one or two person households. This percentage rose to 54% if the households were owner occupiers. They say it is likely therefore the house would have been occupied by a household of one or two persons and so was under occupied. This would be perceptible and significant enough to alter the character of the way in which it was occupied.
5. I have a number of problems with this approach. Rather than being "likely", the statistics suggest it is almost 50/50 whether or not the house was or would be occupied by a one or two person family. Even if it were, without figures for the likely occupation of smaller dwellings it is difficult to make any meaningful comparisons with the before amalgamation situation. Two one-person households in the original two dwellings would be the same as one two-person household in the amalgamated dwelling. In any event, I find it highly unlikely that the level of occupation would be so different as to alter the character of occupation to such an extent that it would be reasonable to conclude there had been a material change of use. The Council have not explained what significant changes are likely to be perceptible due to under-occupation and there is no evidence such changes have come about. 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.
6. On my site visit it was evident there had been a further change, as the downstairs of No 2 was being used by the appellant's mother and the downstairs interconnecting doorway had been blocked up. The upstairs was still open between the two houses and clearly used as a single dwelling; it was from here that access to the mother's downstairs bedroom was made. However, as I do not consider the amalgamation of two into one was development in the first place, and these changes seemed to have taken place after the date of the application, I can ignore them. At the date of the application there had been no material change of use.
7. Having found the amalgamation of the dwellings is not development there is no need to consider whether or not the resultant single dwelling has been occupied continuously for 4 years or more. I shall allow the appeal and issue a certificate explaining that the use of the property as a single dwellinghouse was lawful at the date of the application.

Simon Hand

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 October 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: the amalgamation of Nos 2 and 3 Wildwood Grove into a single dwellinghouse did not amount to a material change of use and so was not development that required planning permission.

Signed

Simon Hand

Inspector

Date: 15 January 2018

Reference: APP/X5210/X/17/3172201

First Schedule

Use of 2 and 3 Wildwood Grove as one single dwellinghouse

Second Schedule

Land at 3 Wildwood Grove, London, NW3 7HU

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 January 2018

by **Simon Hand MA**

Land at: **3 Wildwood Grove, London, NW3 7HU**

Reference: **APP/X5210/X/17/3172201**

Scale: not to scale

Location Plan near NW3 7HU

