Upfleet, Vale of Health, London NW3 1AN

PLANNING STATEMENT

CERTIFICATE OF LAWFULNESS (PROPOSED) FOR THE AMALGAMATION OF TWO FLATS TO FORM A SINGLE SELF-CONTAINED UNIT

CONTACTS

Muireann Murphy
Senior Planner
mm@ntaplanning.co.uk

NICHOLAS TAYLOR + ASSOCIATES
TOWN PLANNING CONSULTANTS

LONDON (HEAD OFFICE)
46 JAMES STREET
LONDON
W1U 1EZ

T. +44 (0)20 7636 3961

(LEEDS OFFICE)
ONE BREWERY WHARF
WATERLOO STREET
LEEDS
LS10 1GX

T. +44 (0)113 220 4521

WWW.NTAPLANNING.CO.UK
INFO@NTAPLANNING.CO.UK

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APPENDICES

1.0 INTRODUCTION

1.1 This statement accompanies an application for a certificate of lawfulness, for a proposed use or development, submitted to the London Borough of Camden ("the Council" hereafter) in relation to 'Upfleet', Vale of Health, London NW3 1AN.

1.2 The site comprises a three-storey property with basement that was converted to form four self-contained flats. The lower ground/ground floor flat entitled 'Lea Steps', a one bed flat and studio flat at first floor level and a one bed flat at second floor level.

1.3 This application seeks to confirm that works involved in the amalgamation of two of the flats (Lea Steps and the one bed flat at first floor level) to form a single self-contained unit, would not constitute development as set out in Section 55 of the Town and Country Planning Act 1990, and that planning permission is not required. This view is supported by recent precedent decisions and case law.

1.4 The applicant wishes to amalgamate the flats, to provide sufficient space for their growing family. The owners currently reside in Lea Steps.

Structure of this Statement

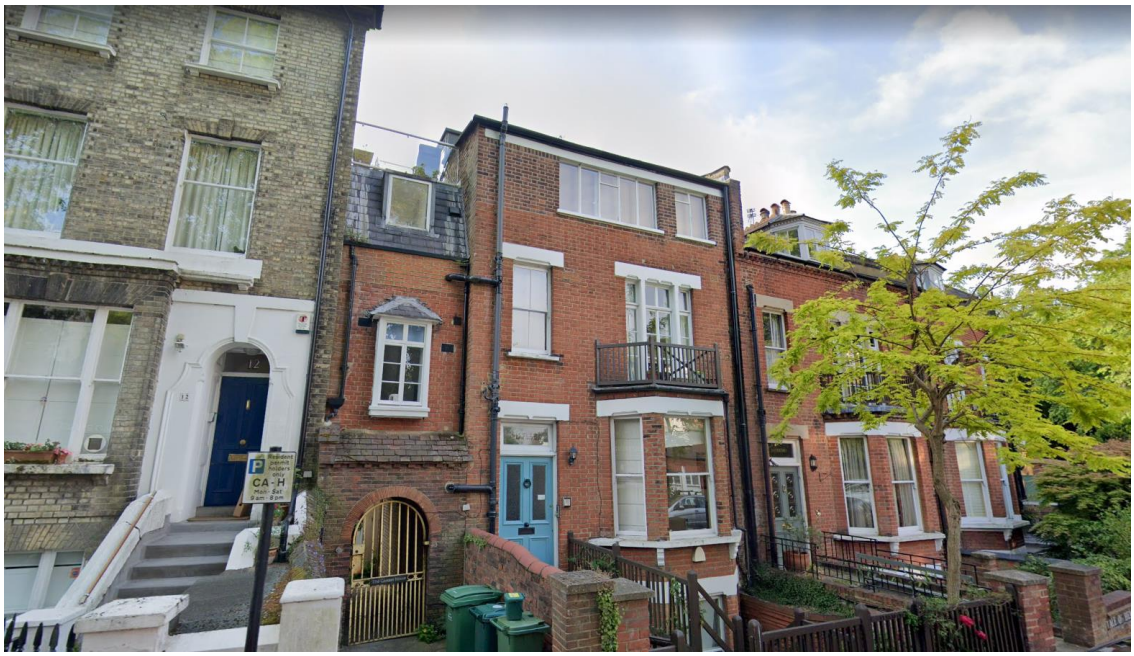
- A description of the site and surrounding area is provided in Section 2.
- Section 3 offers a summary of the site's planning history, with reference to precedent cases.
- Section 4 describes the proposed works that would be involved in the amalgamation and provides evidence as to why these works would not constitute development and could be carried out without planning permission.
- In Section 5, the legal framework relating to certificates of lawfulness is outlined in relation to this application.
- Section 6 concludes this statement.

2.0 SITE DESCRIPTION

2.1 The application site comprises a three-storey property with basement and is situated on the eastern side of Hampstead Heath. The site lies within the Hampstead Conservation Area.

SITE LOCATION PLAN

2.2 Upfleet is characterised by its brickwork and front dormer features. A garden to the rear provides amenity space to the residents of the ground/lower ground flat. The property is adjoined by 'Silverdale' to the south and No. 12 Heath Villas to the north.



LEFT: NO. 12
CENTRE: 'UPFLEET'
RIGHT: 'SILVERDALE'

3.0 PLANNING HISTORY

a. Application Site

3.1 The only applications viewable on the Council's website are;

- dated 28th September 1987 and approves a side extension at second floor level incorporating terraces at rear second floor and front roof level (PL/8702782).
- Dated 11th November 2008 and approves a single-storey rear extension at lower ground floor level and a rear wooden staircase to Lea Steps (2008/4236/P)

3.2 There is no record available on the Council's website which states when permission was given to convert the property from a single dwellinghouse to form four self-contained flats.

3.3 In any event, if permission was not granted, the use of the building as 4 flats has become lawful through the passage of time.

b. Relevant Precedent Applications

23 Hampstead Hill Gardens, London NW3 2PJ
2019/0002/P

3.4 An application for a lawful development certificate to amalgamate flats A and B within 23 Hampstead Hill Gardens, London NW3 2PJ, to form a single flat, was granted a Certificate of Lawfulness (Proposed) on 19th March 2019.

3.5 A planning statement was submitted in support of the application, which stated the following:

"While the amalgamation of 7 units to form a single residential dwellinghouse may constitute a material change of use . . the amalgamation of just two units does not constitute development."

3.6 The Certificate states:

"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."

3.7 The Council's Certificate is included within Appendix One.

Nos. 2 & 3 Wildwood Grove, London NW3 7HU
2016/5621/P

3.8 An application for a lawful development certificate to amalgamate Nos. 2 & 3 Wildwood Grove, to form a single dwellinghouse, was refused on 1st February 2017.

3.9 A planning statement was submitted in support of the application, which stated the following:

"3 Wildwood Grove was purchased on 15 September 2009 Building work to amalgamate Nos 2 and 3 commenced on 16 September 2009 and comprised knocking through from No2 to No3 Wildwood Grove. When completed the development comprised the conversion of two properties into one single dwellinghouse by means of internal works only.

Section 55 of the TCPA 1990 expressly provides that converting a single dwellinghouse to create two or more dwellinghouses will result in a material change of use requiring planning permission. ***However, the legislation is silent on whether combining dwellings (such as knocking two houses into one) would also constitute development.*** *The legislation excludes internal works from the meaning of development, however, combining residential units could still result in a material change of use. This was confirmed by 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), those considerations were relevant to determining whether or not the change was material. In that case, the conversion of seven flats to a single-family house was a material change of use.

Further decisions which have been drawn following Richmond have drawn on the same pattern of decision making. In ref 3028049 (Royal Borough of Kensington and Chelsea) the amalgamation of two self-contained flats to form one self-contained residential unit was tested. The development involved internal alterations only. The appeal site was a mid-terraced property that was originally two houses, which had been amalgamated into one dwelling in 1949 and the building was subsequently converted into flats. ***The proposal involved the amalgamation of the flat at ground floor level and the flat above it on the first floor so as to create a single residential unit.***

The principal issue in this case was whether the amalgamation of the two flats to create one residential unit would constitute a material change of use. The amalgamation of the two flats would have ***no material effect on the external appearance of the property and no harm would be caused to the character of the building or to the surrounding area****. The Council did not allege that the proposed amalgamation of the two flats would have any effect on the character of the use of land other than through the loss of one residential unit. However, they argued that the "…scale of amalgamation currently under way in this Borough is having a material effect on a matter of public interest, namely it is significantly reducing the number of dwellings in the housing stock".*

The Inspector pointed out that prior to 2000 it was commonly accepted that a reduction in the number of dwelling units on land in residential use did not represent, and could not contribute to, a material change in use of the land.

… The proposal does not amount to a material change to the exterior of the building or its layout within the street. The proposal does not therefore result in a demonstrable effect to the character and appearance of the area. In terms of occupation the proposal has not amounted to a dramatic increase in the number of occupants within the building or an impact on the amenity of adjoining occupiers in terms of noise or general disturbance.

Given the application of the Richmond tests it is submitted that the development has not resulted in a material change of use of the land and as such is lawful ***by virtue that it does not constitute 'development' as set out in S55 of the Town and Country Planning Act 1990****. It is respectfully requested that the Planning Authority grant this application for a Certificate of Lawful Development."*

3.10 In their report, officers did not address references made by the planning consultant to the Richmond case whatsoever. In refusing the application, officers considered that there was insufficient evidence to demonstrate that the amalgamated flat had been in continuous use for a period of four years and refused the application solely on this basis.

3.11 The Council's decision was appealed to the Planning Inspectorate. In allowing the appeal the Inspector accepted that a reduction in levels of occupation could constitute a material change of use; however,

"*… the changes associated with the amalgamation of 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… 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.*

… <u>Having found the amalgamation of the dwellings is not development</u> 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."

3.12 The appeal was allowed on 15th January 2018. The lawful development certificate issued by the Inspector stated the following:

*"**IT IS HEREBY CERTIFIED** that on 14 October 2016 the use described in the First Schedule hereto (Use of 2 and 3 Wildwood Grove as one single dwellinghouse) in respect of the land specified in the Second Schedule hereto (Land at 3 Wildwood Grove, London, NW3 7HU) 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."*

3.13 The Inspector's decision and the issued certificate is included within Appendix Two.

Flats 4 & 5, No. 45 Rosslyn Hill, London NW3 5UH
2018/1876/P

3.14 An application for a lawful development certificate to amalgamate two flats to form a single residential unit was approved by the Council on 15th June 2018.

3.15 In their report, officers stated the following:

"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."***

Flats 1 & 3, No. 44 Stanhope Gardens, London SW7 5QY
PP/14/07307

3.16 An application to amalgamate Flats 1 & 3 at no. 44 Stanhope Gardens was refused by the Royal Borough of Kensington and Chelsea on 15th December 2014. In their report, officers stated that adopted policies sought to increase housing supply within the borough, and that the loss of a residential unit would be contrary to the objectives of the Local Plan.

3.17 However, the application was allowed on appeal on 27th November 2015 (PINS Ref: APP/K5600/W/15/3028100). In their determination, the Inspector made the following findings:

"The main issue is whether the amalgamation of the two flats to create one residential unit constitutes a material change in the use of the land.

The amalgamation of the two flats would have no material effect on the external appearance of the property (the Council accepts, in fact, that the removal of the railings that currently block access to the original front door "…is most welcome") and no harm would be caused to the character of the building or to the surrounding area. The Council has not alleged, in fact, that the proposed amalgamation of the two flats would have any effect on the character of the use of land other than through the loss of a residential unit. They maintain that, taken from the statement of common ground, the "…scale of amalgamation currently under way in this Borough is having a material effect on a matter of public interest, namely it is significantly reducing the number of dwellings in the housing stock".

Section 55(1) of the Town and Country Planning Act 1990 (the Act) states that "development" means, amongst other things, the making of a material change in the use of land. The Council maintains that the proposed amalgamation of the two flats to create one residential unit would constitute a material change in the use of the land and that, therefore, it would constitute development for which planning permission is required.

Prior to 2000 it was commonly accepted that a reduction in the number of dwelling units on land in residential use did not represent, and could not contribute to, a material change in use of the land. In that year a judgement was made in the case of London Borough of Richmond upon Thames v The Secretary of State for the Environment, Transport and the Regions and Richmond upon Thames Churches Housing Trust CO/4083/99 (Richmond). ***The Council relies on this judgement which quashed an Inspector's decision to grant an LDC for the conversion of a property in use as seven flats to one dwelling.***

… Given that the Council accepts 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, 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.***

For the reasons given above and on the evidence now available, the Council's refusal to grant an LDC in respect of the amalgamation of two self contained flats to form one self contained residential unit involving internal alterations at Flats 1 and 3, 44 Stanhope Gardens, London ***was not well-founded and [the appeal] thus succeeds.*** *The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.*"

3.18 The Inspector's determination is included within Appendix Three.

4.0 THE PROPOSED WORKS

4.1 The lower ground floor and upper ground floor of Upfleet, entitled Lea Steps, currently comprises of 1 x 2 bed self-contained flat. The first floor comprises a 1 x 1 bed self-contained flat and studio flat.

EXISTING FLOOR PLANS

4.2 The proposed works seek to amalgamate Lea Steps and the one bed flat to form a single family-sized residential unit. The studio flat at first floor level will remain unchanged. The proposed works would

involve some minor internal re-arrangement. It is confirmed that the works do not propose any external alterations to the property.

PROPOSED FLOOR PLANS

4.3 It is considered that these works would not constitute development as per the Council's decision in relation to 23 Hampstead Hill Gardens.

4.4 Section 55 of the Town and Country Planning Act 1990. Section 55(3)(a) states the following:

"For the avoidance of doubt it is hereby declared that for the purposes of this section—

the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;"

4.5 In the Richmond case, it was demonstrated that the amalgamation of 7 units to form a single residential unit would constitute a material change of use. However, in a subsequent appeal at No. 44 Stanhope Gardens (PINS Ref: APP/K5600/W/15/3028100), it was stated explicitly that the amalgamation of just two flats to form a single residential unit would not constitute a material change of use and would therefore not constitute development as per Section 55 of the Town and Country Planning Act; the Inspector stated that consideration of whether or not an amalgamation constitutes development is "*a matter of fact and degree".*

4.6 In the determination of an appeal of Nos. 2 & 3 Wildwood Grove, the Inspector reached a similar conclusion:

"*… the changes associated with the amalgamation of 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… 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.****"*

4.7 While the amalgamation of 7 units to form a single residential dwellinghouse may constitute a material change of use as per the Richmond case, the amalgamation of just two units does not constitute development. In a recent decision in relation to the amalgamation of Flats 4 & 5 Rosslyn Hill, officers accepted the strong precedent set by the Inspector and concluded that the amalgamation of the two flats to form a single residential unit would not constitute development.

4.8 The proposed amalgamation of two flats at 'Upfleet' is directly comparable to the above precedents, especially the recent decision regarding 23 Hampstead Hill Gardens. As the occupancy levels and character of the building would remain unchanged, the proposed amalgamation would not constitute a material change of use and would therefore not constitute development as per Section 55 of the Town and Country Planning Act.

5.0 LEGAL FRAMEWORK

The Town and Country Planning Act 1990

5.1 Section 192 of the Act outlines the provisions of making applications for certificates of lawfulness of a proposed use or development.

5.2 Section 192(2) states:

"If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

Responsibility of the Applicant

5.3 There is an onus on the person applying for a Lawful Development Certificate for a proposed use or development to show the proper evidence.

5.4 This evidence has been provided as part of this application.

6.0 SUMMARY AND CONCLUSIONS

6.1 This statement supports an application for a certificate of lawfulness for a proposed use or development in relation to Upfleet, Vale of Health, London NW3 1AN.

6.2 The lower ground and upper ground floors currently house 1 x 2 bed flat. The first floor accommodates 1 x 1 bed flat. The applicant wishes to amalgamate both flats to create a single family dwelling.

6.3 This application seeks to confirm that the works involved in the amalgamation of both flats to form a single self-contained flat would not constitute development as set out in Section 55 of the Town and Country Planning Act 1990 and that planning permission is not required.

6.4 The applicant's case has been provided in this Statement, having regard to recent precedent decisions in Camden and case law.

6.5 In light of the significant findings of this report, we respectfully request that the certificate is issued.

APPENDIX ONE

CAMDEN DECISION DATED 19TH MARCH 2019 IN RELATION TO THE AMALGAMATION OF FLATS AT 23 HAMPSTEAD HILL GARDENS, LONDON NW3 2PJ

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
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk/planning

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

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.

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.

APPENDIX TWO

APPEAL DECISION IN RELATION TO THE AMALGAMATION OF NOS. 2 & 3 WILDWOOD GROVE, LONDON NW3 7HU

The Planning Inspectorate

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 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

The Planning Inspectorate

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

www.planningportal.gov.uk/planninginspectorate

IMPORTANT NOTES – SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

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.

www.planningportal.gov.uk/planninginspectorate

The Planning Inspectorate

Plan

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

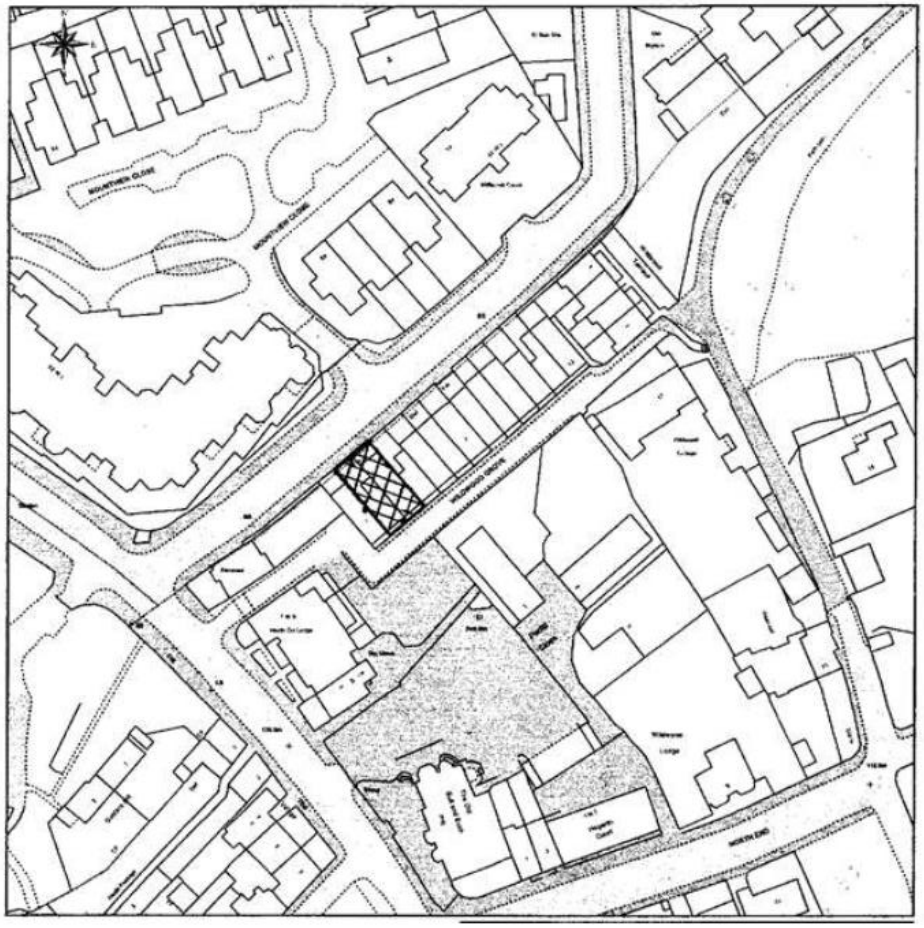
by Simon Hand MA

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

Reference: APP/X5210/X/17/3172201

Scale: not to scale

Location Plan near NW3 7HU



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APPENDIX THREE

APPEAL DECISION IN RELATION TO THE AMALGAMATION OF FLATS 1 & 3, NO. 44 STANHOPE GARDENS, LONDON SW7 5QY

The Planning Inspectorate

Appeal Decisions

Hearing held on 13 October 2015
Site visit made on 13 October 2015

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 27 November 2015

Appeal A Ref: APP/K5600/X/15/3028049
Flats 1 and 3, 44 Stanhope Gardens, London SW7 5QY

- 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 David Reis and Ms Gianna Tong against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref CL/14/07295, dated 13 October 2014, was refused by notice dated 11 December 2014.
- The application was made under section 192(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 the amalgamation of two self contained flats to form one self-contained residential unit involving internal alterations.

Appeal B Ref: APP/K5600/W/15/3028100
Flats 1 and 3, 44 Stanhope Gardens, London SW7 5QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr David Reis and Ms Gianna Tong against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref PP/14/07307, dated 16 October 2014, was refused by notice dated 15/12/2014.
- The development proposed is the amalgamation of the two flats at raised ground floor and first floor level and the insertion of a window at the rear for a new bathroom.

Appeal C Ref: APP/K5600/Y/15/3028120
Flats 1 and 3, 44 Stanhope Gardens, London SW7 5QY

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr David Reis and Ms Gianna Tong against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref LB/14/07308, dated 16 October 2014, was refused by notice dated 15 December 2014.
- The works proposed are reconfiguration and reordering of drain pipes on rear façade, removal of external railings at front of property for front door to be back in use, insertion of window for new bathroom, and opening up floor plate between flats for internal stairs to be reinserted.

Decisions

Appeal A Ref: APP/K5600/X/15/3028049

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

Appeal B Ref: APP/K5600/W/15/3028100

2. The appeal is allowed and planning permission is granted for the amalgamation of the two flats at raised ground floor and first floor level and the insertion of a window at the rear for a new bathroom at Flats 1 and 3, 44 Stanhope Gardens, London in accordance with the terms of the application, Ref PP/14/07307, dated 16 October 2014, subject to the following conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.

2. The development hereby permitted shall be carried out in accordance with approved plan nos. 44SG/030B, 44SG/031A, 44SG/032B, 44SG/034, 44SG/035, 44SG/036, 44SG/037, 44SG/038, 44SG/039, 44SG/040, 44SG/041, and 44SG/042.

3. The existing timber framed sash windows in the rear elevation of the property at ground and second floor levels shall be retained in their existing state.

4. The window in the rear elevation hereby permitted shall be of white painted timber, shall be single glazed with a bevelled putty finish, and shall have no trickle vents. The window shall be retained as installed.

Appeal C Ref: APP/K5600/Y/15/3028120

3. The appeal is allowed and listed building consent is granted for reconfiguration and reordering of drain pipes on rear façade, removal of external railings at front of property for front door to be back in use, insertion of window for new bathroom, and opening up floor plate between flats for internal stairs to be reinserted at Flats 1 and 3, 44 Stanhope Gardens, London in accordance with the terms of the application Ref LB/14/07308, dated 16 October 2014, and the plans submitted with it subject to the following conditions:

1. The works hereby authorised shall begin not later than three years from the date of this consent.

2. The works hereby authorised shall be carried out in accordance with approved plan nos. 44SG/030B, 44SG/031A, 44SG/032B, 44SG/034, 44SG/035, 44SG/036, 44SG/037, 44SG/038, 44SG/039, 44SG/040, 44SG/041, and 44SG/042. The works as carried out in accordance with the approved drawings shall thereafter be retained as carried out.

3. No works shall commence until details and materials of the new staircase and balustrade have been submitted to and approved in writing by the local planning authority. The staircase and balustrade shall be installed as approved and shall thereafter be retained as installed.

4. The existing timber framed sash windows in the rear elevation of the property at ground and second floor levels shall permanently be retained in their existing state.

5. No works shall commence until details of works to reinstate the ability to open the retained existing front door have been submitted to and approved in writing by the local planning authority. The works shall be carried out as approved and the door shall thereafter be retained as altered.

6. The window in the rear elevation hereby authorised shall be of white painted timber, shall be single glazed with a bevelled putty finish, and shall have no trickle vents. The window shall be retained as installed.

7. All new works and works of making good to retained fabric, both internal and external, shall be finished to match adjoining retained fabric with regard to colour, material, texture and profile.

8. All new rainwater goods and guttering shall be black painted cast metal and shall be retained as installed.

9. No works shall commence until a full photographic survey of the interior and exterior of the property, to detail all of its historic features to be retained, has been carried out and the resultant photographs have been submitted to and approved in writing by the local planning authority.

10. No works shall commence until the position, type and manner of installation of all new and relocated services and related fittings, and of all ducts, methods of concealment and associated building works, have been submitted to and approved in writing by the local planning authority. The works shall be carried out as approved.

11. All existing fabric including wall and ceiling plasterwork shall be retained unless otherwise noted on the approved drawings.

Application for costs

4. At the Hearing an application for costs was made by Mr David Reis and Ms Gianna Tong against The Council of The Royal Borough of Kensington & Chelsea. This application is the subject of a separate Decision.

Procedural matter

5. In all three appeals the description of the proposed development or works is taken from the Council's Decision Notice. In the planning Decision Notice the Council's description included details of works that would be carried out but these have been omitted as being too prescriptive.

Reasons

6. 44 Stanhope Gardens is a mid-terraced property that was originally two houses. The two houses were amalgamated into one dwelling in 1949 and the building was subsequently converted into flats. Flat 1 is at raised ground floor level and includes the original front door to no. 45; though this is fixed shut and railings have been installed alongside the pavement to prevent access to the short flight of steps that lead up to it. Flat 3 is at first floor level. The three appeals all relate to the amalgamation of the two flats to create one residential unit.

7. The appeal property is a Grade II listed building that is situated in the Queen's Gate Conservation Area. The main parties have submitted a Statement of Common Ground. This states that the development and works to the property would not harm the living conditions of neighbours and would preserve the character and appearance of the Conservation Area. The main parties also agree

that the details of the window to be inserted at the rear of the property could be the subject of a condition, and that the principal works to the listed building would enhance its heritage value.

Appeal A Ref: APP/K5600/X/15/3028049

8. The main issue is whether the amalgamation of the two flats to create one residential unit constitutes a material change in the use of the land.

9. The amalgamation of the two flats would have no material effect on the external appearance of the property (the Council accepts, in fact, that the removal of the railings that currently block access to the original front door "…is most welcome") and no harm would be caused to the character of the building or to the surrounding area. The Council has not alleged, in fact, that the proposed amalgamation of the two flats would have any effect on the character of the use of land other than through the loss of a residential unit. They maintain that, taken from the statement of common ground, the "…scale of amalgamation currently under way in this Borough is having a material effect on a matter of public interest, namely it is significantly reducing the number of dwellings in the housing stock".

10. Section 55(1) of the Town and Country Planning Act 1990 (the Act) states that "development" means, amongst other things, the making of a material change in the use of land. The Council maintains that the proposed amalgamation of the two flats to create one residential unit would constitute a material change in the use of the land and that, therefore, it would constitute development for which planning permission is required.

11. Prior to 2000 it was commonly accepted that a reduction in the number of dwelling units on land in residential use did not represent, and could not contribute to, a material change in use of the land. In that year a judgement was made in the case of *London Borough of Richmond upon Thames v The Secretary of State for the Environment, Transport and the Regions and Richmond upon Thames Churches Housing Trust CO/4083/99 (Richmond)*. The Council relies on this judgement which quashed an Inspector's decision to grant an LDC for the conversion of a property in use as seven flats to one dwelling.

12. The *Richmond* judgement refers to *Mitchell v Secretary of State for the Environment (Mitchell)*, in which it is stated that "It is undoubtedly the law that material considerations are not confined to strict questions of amenity or environmental impact and that the need for housing in a particular area is a material consideration…". But to be a material consideration the need for housing must be expressed in and supported by local planning policy and has thus often been referred to as the policy factor.

13. *Mitchell*, and other case law, set the scene for *Richmond*. The High Court Challenge in *Richmond* was successful because the Inspector had failed to take into account what was found to be a material consideration, the policy factor, which he considered to be "…a question of planning merit than of law". *Richmond* did not establish that the policy factor can be the sole determinative factor in an LDC case but one that must be taken into account with all other considerations. But, in this case, the Council is wholly reliant on the policy factor. Nevertheless, it is necessary to consider whether it is a material consideration of any weight.

14. Policy CH 2 'Housing Diversity' of the Council's Core Strategy (CS) states that the Council will, amongst other things, 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. The proposal does not conflict with CS policy CH 2. Saved policy H17 of the Council's Unitary Development Plan (UDP) states that the loss of existing, small, self-contained flats of one or two habitable rooms will be resisted. Both flats have more than two habitable rooms so the proposal does not conflict with UDP policy H17.

15. Policy 3.14 of the London Plan (LP) states, amongst other things, that the loss of housing should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace. The LP is a strategic plan and places an emphasis on the increase or preservation of residential floorspace rather than the number of housing units. This strategic objective is reflected in the CS but the relevant policy in this element of a local plan has been considered above. The proposed amalgamation of the two flats would not result in any loss of residential floorspace. The proposal does not conflict with LP policy 3.14.

16. The Council has referred to similar LDC cases in a neighbouring Council area but planning policy in place, or planning decisions made, in that area cannot be imported to support the Council's case. The scale of amalgamation in the Borough may be having a material effect on the number of dwellings in the housing stock but the proposed amalgamation of the two flats does not conflict with CS policy CH 2, UDP policy H17 or LP policy 3.14. The policy factor, in this case, given that there is no policy conflict, is a material consideration of no weight. Given that the Council accepts 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, 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.

17. For the reasons given above and on the evidence now available, the Council's refusal to grant an LDC in respect of the amalgamation of two self contained flats to form one self contained residential unit involving internal alterations at Flats 1 and 3, 44 Stanhope Gardens, London was not well-founded and Appeal A thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

Appeal B Ref: APP/K5600/W/15/3028100

18. Planning permission, given the conclusion in the LDC appeal, is not required for the amalgamation of the two flats at raised ground floor and first floor level and the insertion of a window at the rear for a new bathroom, but an application for planning permission was made to the Council and an appeal has been submitted against their refusal of that application. The appeal must therefore be determined.

19. The main issue is the relationship of the proposal that is the subject of the appeal with the Development Plan.

20. The Council has referred to two dismissed appeal decisions for similar applications in their Borough. In APP/K5600/W/15/3030628 the proposed amalgamation of the two flats would have resulted in the loss of a small, self-contained flat of one or two habitable rooms and was thus in conflict with saved UDP policy H17. Whilst the Inspector also found that the proposal would be contrary to the aims of CS and LP policy, the conflict with saved UDP policy H17 was clearly a determinative factor.

21. In APP/K5600/W/15/3010078 the Inspector found that the loss of a housing unit, by reference to CS text, is "…contrary to the objectives set out in CS policy CH 3", which seeks to protect residential uses. She also found that "…the cumulative effect of loss of dwellings through amalgamation of units has (the) potential to have a significant effect on the delivery of much-needed housing in the Borough". In essence this is the Council's concern. But such a possibly negative cumulative effect must be judged against the Council's projections for housing supply set out in their Annual Monitoring Report 2014 (AMR), the latest version of this document. It is not known whether this document was before the Inspectors in the two appeal decisions referred to above.

22. The AMR projects that by 2024/25 housing supply will exceed LP housing targets for the Borough by 1,342 units. However, the LP has recently been altered and the annual housing target for the Borough has been increased by 133 units for each year up to 2024/25. Housing supply for the next ten years must therefore increase by 1330 units, which absorbs the projected surplus. So the loss of housing units over that period through the amalgamation of units could jeopardise the Council's attempts to meet the LP housing targets. It is worth pointing out, though a planning decision must be made in accordance with the Development Plan in place when the decision is made, that the alterations to the LP were published on 10 March 2015, about 3 months after the planning application was determined.

23. The consequences of the loss of housing units through amalgamation is addressed in paragraph 10.23 of the AMR in which it is stated that the Council "…is now of the opinion that any amalgamation is development which does require planning permission. Any such application will be determined in accordance with the policies within the Development Plan". Whether the amalgamation of two units into one is development which requires planning permission, in this case, has been addressed in the LDC appeal. A proposal for the loss of five or more residential units is not in accordance with the Development Plan but the loss of one unit, through the amalgamation of two units, is in accordance with the Development Plan, because it is not in conflict with any policies in the Development Plan.

24. The text to CS policy CH 3 'Protection of Residential Uses' is instructive. In paragraph 35.3.34 it is stated that "To achieve the annual housing target..., which takes account of net losses of units, it is therefore important to protect residential units in most circumstances". Though the text relates to policy CH 3 it comes immediately after policy CH 2, which also seeks to protect residential units. But, currently, this policy only seeks to prevent, for any development that requires planning permission, the loss of five or more residential units. If they wish the policy to prevent any amalgamation the Council should swiftly pursue the alteration of the CS through the statutory process, which includes consultation. The Council cannot expect to change planning policy context in a paragraph in an AMR.

25. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Given the AMR projections the loss of one residential unit at this time would not have a material adverse effect on their efforts towards meeting LP housing targets. The proposal is not in conflict with any Development Plan policies and there are no material considerations to indicate that determination of the appeal cannot be made other than in accordance with the Development Plan. Planning permission has thus been granted for the amalgamation of two self-contained flats to form one self contained residential unit at Flats 1 and 3, 44 Stanhope Gardens, London.

26. The Council has suggested four conditions. They are all necessary and otherwise meet the tests set out in National Planning Policy Guidance, and they have therefore been imposed though they have been amended, where necessary, in the interests of clarity and precision. Condition 1 is the standard time limit condition, condition 2 is for the avoidance of doubt and in the interests of proper planning, and conditions 3 and 4 will safeguard the architectural and historic interest and heritage significance of the building.

Appeal C Ref: APP/K5600/Y/15/3028120

27. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be paid to the desirability of preserving the listed building and any features of architectural and historic interest that it possesses.

28. Ms Bix, at the Hearing and for the Council, did not raise any in principle objection to the proposed works to the listed building. It is clear that the Council's concern in the listed building appeal is that there is insufficient and incorrect information on the drawings submitted with the application to provide certainty that the proposed works to the property would not cause harm to the architectural and historic interest of the listed building. Their principal concerns are with regard to the incorrect subdivision of windows on the drawing of the rear elevation, the lack of detail as to how the existing front door would be returned to its former openable condition, to the internal works that would be required to install services and fittings to a modern standard, and to the lack of detail of the staircase and balustrade that would be reinstated between ground and first floor level.

29. It is a principle of planning and listed building control that if concerns can be overcome by imposition of conditions then planning permission or listed building consent should not be withheld. It became clear at the Hearing that the Council's concerns could be overcome by imposition of conditions, based on the eleven conditions suggested by the Council. Amendments to some of the conditions were discussed and agreed and they have otherwise been amended in the interests of clarity and precision. All of the conditions are required to preserve the architectural and historic interest of the listed building. The proposed works, with the imposition of the eleven conditions, would not adversely affect or otherwise harm the architectural and historic interest of the listed building. No harm, substantial or otherwise, would be caused to the listed building and paragraphs 133 and 134 of the National Planning Policy Framework are not therefore engaged.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr C Lockhart- Mummery	Queens Counsel
Mr S Gray	Principal of The Steven Gray Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Ms S Bix	Senior Conservation and Design Officer
Ms A Osbourne	Planning Officer

DOCUMENTS

1 Council's letter of notification of the Hearing and list of those notified.

2 Statement of Common Ground.

3 Judgement in London Borough of Richmond upon Thames v The Secretary of State for the Environment, Transport and the Regions and Richmond upon Thames Churches Housing Trust.

4 Appeal Decision APP/K5600/W/15/3030628.

5 Appeal Decision APP/K5600/W/15/3010078.

6 Appeal Decision APP/K5600/W/15/3008343.

7 Appeal Decision APP/K5600/W/15/3007959.

8 Housing Monitoring Report 2014.

9 Suggested planning permission conditions.

10 Suggested listed building consent conditions.

11 Appellants' claim for costs.

12 Council's response to the claim for costs.

APPENDIX TWO

APPEAL DECISION IN RELATION TO THE AMALGAMATION OF NOS. 1 & 3 44 STANHOPE GARDENS

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 13 October 2014 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use does not constitute development for which planning permission is required.

Signed

John Braithwaite

Inspector

Date: 27.11.2015

Reference: APP/K5600/X/15/3028049

First Schedule

The amalgamation of two self contained flats to form one self contained residential unit involving internal alterations

Second Schedule

Land at Flats 1 and 3, 44 Stanhope Gardens, London SW7 5QY

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IMPORTANT NOTES – SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified 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 which were relevant to the decision about lawfulness.

www.planningportal.gov.uk/planninginspectorate

The Planning Inspectorate

Plan

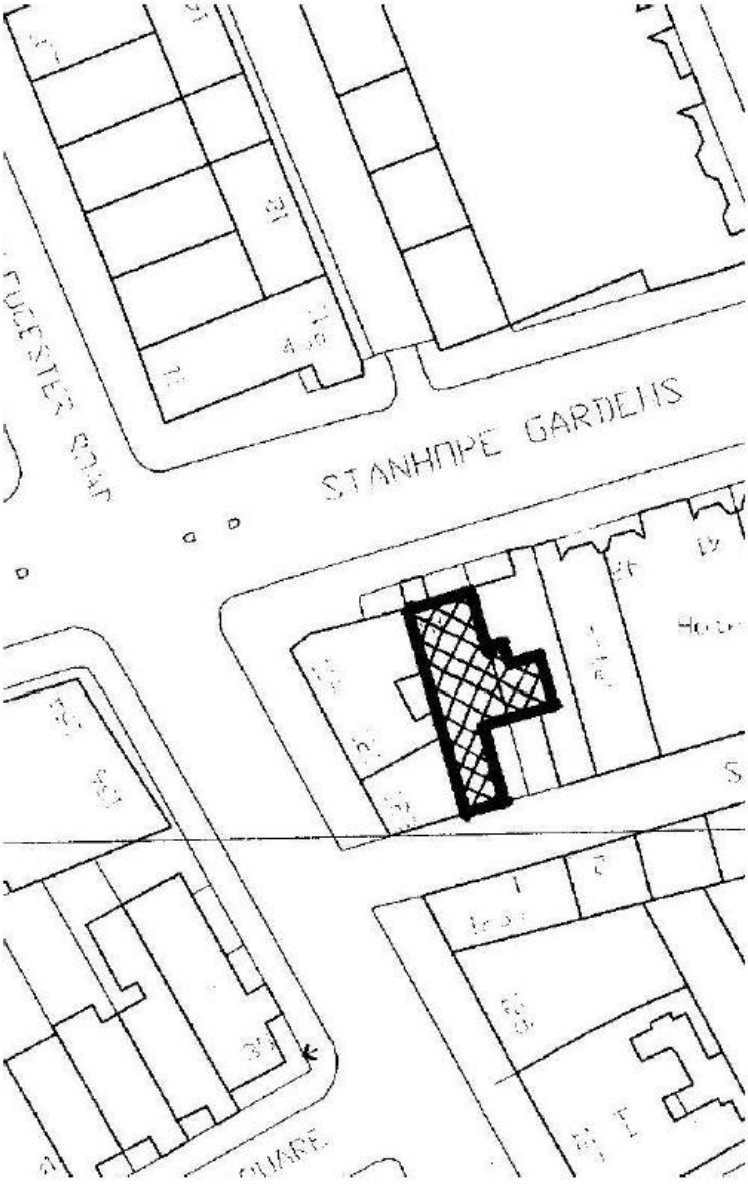
This is the plan referred to in the Lawful Development Certificate dated: 27.11.15

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at Flats 1 and 3, 44 Stanhope Gardens, London SW7 5QY

Reference: APP/K5600/X/15/3028049

Scale: not to scale



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