

29th September 2020

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Dear Sir/Madam

Re: Chesterfield House, King Henry's Road, Camden, London, NW3 3QP

Lawful Development Certificate in Respect of Proposed Amalgamation of Two Existing First Floor Apartments into a Single Residential Unit

On behalf of our client, please find enclosed an application for a Lawful Development Certificate relating to Flats 4 and 5, Chesterfield House, King Henry's Road, Camden. The application has been submitted online via the Planning Portal.

Specifically, for the avoidance of doubt, the application seeks confirmation that planning permission is not required for the proposed amalgamation of two existing (Use Class C3) residential apartments, into one residential apartment (Use Class C3).

In accordance with the Council's Local Area Requirements for Planning Applications, the application is accompanied by the following documents:

- Completed Lawful Development Proposed Use Planning Application Form;
- Site location plan;
- Existing and proposed and floorplans.

The application fee of £231.00 will be paid via the Planning Portal.

The Site

Chesterfield house is a four-storey property which is located northwest of Primrose Hill, at the junction of King Henry's Road and Regent's Park Road. The upper floors of the property are used as private residential accommodation, containing separate apartments. The building further contains two class E uses on the ground floor, these comprise an estate agents and a restaurant. This application relates to the amalgamation of Flats No's 4 and 5 on the 1st floor. The site is situated within the Primrose Hill Conservation Area, although the building itself is not statutory or locally listed.



Proposed Amalgamation

A Certificate of Lawfulness is sought for the proposed amalgamation, at the first floor level, of apartments 4 and 5 into a single dwelling. In order to achieve this, an opening would be provided within the party wall between the two apartments. No external changes are proposed to the building in regard to this certificate of lawfulness application.

The applicant seeks to confirm through this application that the amalgamation does not constitute development and accordingly planning permission is not required, under Section 55 of the Town and Country Planning Act (TCPA) 1990.

Section 55(1) of the TCPA 1990 stipulates that planning permission is required for 'development', which includes "*the making of any material change in the use of any buildings*".

Part 3(a) of Section 55 of the TCPA 1990 expands further to state that "*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*". However, the legislation does not provide comment on whether combining two dwellings into one constitutes 'development'.

It is therefore prudent to assess whether the proposed amalgamation would constitute such a material change of use. Case law has established that in considering whether there is a change of use, the character of the use of the land is to be considered, and whether the change to this use is material (East Barnet UDC v British Transport Commission [1962]).

In this case, it can be seen that there would not be any material change in the character of the use of the land brought about by the amalgamation of the two dwellings. The use of the building would remain as private residential accommodation (Use Class C3). Any change would be imperceptible.

This conclusion is supported by the decision of the Inspector in an Appeal for 2-3 Wildwood Grove, Camden, NW3 7HU (Ref. APP/X5210/X/17/3172201). The Inspector considered the amalgamation of two houses into a single unit and concluded that the nature of the use remained the same, and that there would have to be a significant difference proposed in order to be considered a change of use.

Furthermore, Part 2 of Section 55 of the TCPA also sets out operations or uses of the land which should not be taken to involve development. Sub-sections (a) and (f) are relevant for this application. Sub-section (a) states that:

"(a) The carrying out for the maintenance, improvement or other alteration of any building of works which:

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building"

As noted above, the proposed alterations, in regard to this certificate of lawfulness application, would only affect the interior of the building, and would not impact on the external appearance of the building, therefore satisfying sub-section (a).

Sub-section (f) notes:

“In the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class”. (Our emphasis).

As demonstrated throughout this covering letter and supporting documentation, both the existing apartments and the subsequent proposed single unit fall within Use Class C3: Dwellinghouses of the Town and Country Planning (Use Classes) Order 1987 (as amended). The proposal therefore satisfies sub-section (f).

Following the amalgamation into the single dwelling, the floorspace and use of the site will remain in a residential use, and therefore cannot be considered to be a material change of use. On this basis, the works which comprise this Certificate of Lawfulness do not fall within the meaning of ‘development’, which would require planning permission as defined in Section 55(1) of the Town and Country Planning Act (1990).

There are also a number of other recent certificate of lawfulness applications within the London Borough of Camden relating to similar amalgamations where Officers have confirmed that the proposals do not require planning permission, thus setting a precedent for this application. These are summarised in the table below:

Application Ref.	Address	Description of Development	Decision
2019/3652/P	17 and 18 Well Road London NW3 1LH	Amalgamation of two properties into a single dwelling.	Granted 15-10-2019
2019/1399/P	28 Frognal Lane London NW3 7DT	Amalgamation of two flats (lower ground floor) into single dwelling.	Granted 03-04-2019
2019/0002/P	23 Hampstead Hill Gardens London NW3 2PJ	Amalgamation of two flats at basement and ground floor levels.	Granted 19-03-2019
2019/2064/P	69 Patshull Road London NW5 2LE	Amalgamation of two flats at ground floor and first floor levels.	Granted 05-06-2019
2019/4264/P	21 Gascony Avenue London NW6 4NB	Amalgamation of two flats into single dwelling house	Granted 09-09-2019
2020/2804/P	27 Belsize Park London NW3 4DU	Amalgamation of 2 flats into a single residential unit at lower ground level (Use class C3).	Granted 25-06-2020
2020/0788/P	Upfleet Vale of Health London NW3 1AN	Amalgamation of 2 bed flat over lower ground and ground floor with 1 bed flat over first floor to create a 3 bed residential unit (Class C3).	Granted 17-02-2020

2020/3190/P	38 Crediton Hill London NW6 1HR	Amalgamation from 3 flats to 2 flats and infilling ground floor window opening (Use Class C3).	Granted 21-07-2020
2020/2970/P	Flat A 78 Belsize Park Gardens London NW3 4NG	Continued use of the property as a single residential unit following the amalgamation of 3 flats (Use Class C3)	Granted 23-07-2020
2020/1755/P	Flat 2 and Flat 3 53 Primrose Gardens London NW3 4UL	Amalgamation of flat 2 and flat 3 to create one single residential unit (Class C3).	Granted 29-05-2020
2020/1441/P	13 Steele's Road London NW3 4SE	Amalgamation of a 3 bed flat on ground and first floors with a 2 bed flat on second and third floors to form one 5 bedroom self-contained residential flat (Class C3)	Granted 21-04-2020

Summary

A Lawful Development Certificate is sought to confirm that the amalgamation of the two residential apartments does not require planning permission. As part of this application, only internal alterations in the form of the creation of an opening up of an internal party wall are proposed.

This covering letter has sought to demonstrate how it is well evidenced within case law and other applications that the proposal which is the subject of this Lawful Development Certificate does not comprise a material of change of use, and therefore no 'development' in accordance with Section 55 of the TCPA 1990 would take place. In this instance, it can clearly be demonstrated that on these grounds planning permission is not required.

We look forward to receiving your formal acknowledgement of this application. Should you require any further information or wish to discuss it before the Certificate is issued, please do not hesitate to contact me.

Yours sincerely,

Billy Pattison

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