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7 Well Road, Hampstead, NW3 1LH

## Legal Opinion

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### 1. Scope of Instructions

- 1.1. I have been asked to provide a legal opinion in respect of the amalgamation of two flats at 7 Well Road (the "**Property**"). The advice sought is whether amalgamation of the properties requires planning permission. My client is considering in the future amalgamating the two self-contained flats, one of which is a two bedroom flat, and the other a three bedroom flat.

### 2. Legal principles

- 2.1. Under section 55(1) of the Town and Country Planning Act 1990, planning permission is required for "development", which includes the making of a material change in the use of land. The main issue is whether the amalgamation of two dwellings to create a single property would constitute such a material change in the use of the Property. It has been established in case law that amalgamation can amount to a material change of use. On the facts as I understand them, it is my view that in this circumstance it will not, and that planning permission is not required for the amalgamation.
- 2.2. 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 is material (East Barnet UDC v British Transport Commission [1962]). In the case of this Property, there would not appear to be any material change in the character of the use of the land brought about by the amalgamation of the dwellings. The use of the building for private residential accommodation will not change. No effect on the residential character of the area has been identified to me and any change would be imperceptible. This conclusion is supported by the decision of the Inspector in an appeal in Camden (APP/X5210/X/17/3172201: 2-3 Wildwood Grove, NW3 7HU). The appeal considered the amalgamation of two houses into a single unit and the Inspector concluded that the nature of the use remained the same and would have to be **significantly different** to be considered a change of use (emphasis added).
- 2.3. A key case often quoted in this context is that 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 [2000]. In that case, the High Court quashed an Inspector's decision to grant a lawful development certificate for the conversion of a property in use as seven flats to one dwelling. The Inspector had concluded that, as a matter of fact and degree, there would be no material change. The issue was whether the Inspector was right to exclude the factor of the loss of small units of

accommodation from his consideration and the judge concluded that he was not. The judge noted that, if a change of use gives rise to planning considerations such as to the loss of a particular type of residential accommodation, that factor is a relevant factor to be taken into account in considering whether a change of use is material. Further, 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 a material change of use. The decision in the Richmond case was recently followed in R (Kensington & Chelsea RLBC) v Secretary of State for Communities and Local Government [2016].

### **3. Planning Policy**

- 3.1. In view of the case law, I have also considered the planning policy position to establish the planning considerations arising from the potential amalgamation. The relevant adopted Council policy is Policy H3 – Protecting existing homes of the Camden Local Plan 2017:
  - o a. – “resisting development that would involve a net loss of residential floorspace...”.
  - o c. – “resisting development that would involve the net loss of two or more homes (from individual or cumulative proposals) unless...”
- 3.2. Section 5 of the Council’s Interim Housing CPG 2019 provides supporting guidance to the above policy. Paragraph IH5.1 of the CPG makes clear that the guidance ...“does not relate to applications for Lawful Development Certificates”.
- 3.3. In the circumstances, there is therefore no conflict with the Council’s adopted policy to suggest that the amalgamation would be a material change of use. Nor has any conflict with emerging policy been identified to me.

### **4. Recent precedent**

- 4.1. The above conclusions align to the Council’s own recent conclusions on amalgamations, whereby a number of lawful development certificates have been granted confirming that proposals to amalgamate units would not constitute ‘development’. These include:
  - 4.1.1. Application 2019/4264/P – 21 Gascony Avenue – the amalgamation of two flats into single dwelling house (Class C3). The officer’s delegated report states that “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...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...”.

- 4.1.2. Application 2019/3652/P – 17 and 18 Well Road – amalgamation of two properties into a single dwelling.
  - 4.1.3. Application 2019/1399/P – 28 Frognal Lane – the amalgamation of two flats (lower ground floor and ground floor) into a single dwelling was granted a lawful development certificate.
  - 4.1.4. Application 2019/0002/P – 23 Hampstead Hill Gardens – the amalgamation of two flats at basement and ground floor levels was granted a certificate of lawfulness (proposed).
- 4.2. There are a number of other recent examples of the Council issuing lawful development certificates by way of delegated officer report. It is an important plank of public law that authorities should behave consistently in considering applications and I am not aware of any reason as to why the Council should deviate from its other decisions in this case.

## **5. Conclusion**

- 5.1. Amalgamation of the two flats at 7 Well Road does not constitute “development” and will not require planning permission.

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