

29th January 2021
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Planning Department
London Borough of Camden
2nd Floor,
5 Pancras Square
c/o Town Hall,
Judd Street
London
WC1H 9JE

Dear Sir/Madam,

Re: 96 Fortress Road, NW5 2HJ

Lawful Development Certificate in Respect of Proposed Amalgamation of the Flat 96 B and 96 C into a Single Residential Unit

On behalf of our client, please find enclosed an application for a Lawful Development Certificate relating to 96 Fortress Road, Camden, NW5 2HJ. The application has been submitted online via the Planning Portal (ref: PP -09467501).

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). This application does not seek consent for any works to the fabric of the building and these will be dealt with under a separate application.

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 £117 will be paid via the Planning Portal.

The Site

96 Fortress Road is a four storey (plus basement) property which comprises a number of residential flats. The property is Grade II* listed and the list entry appraises the external features of the application site and neighbouring number 98. The property has been split into flats with accommodation on all 5 storeys of the building.

The application site is located within Tufnell Park and comprises a terraced property along Fortress Road. The area surrounding the site is mixed with a number of residential properties and town centre amenities being present in the immediate surrounding areas. The



site has a PTAL rating of 6b (best) and is located approximately 700m south of Tufnell Park underground station.

Proposed Amalgamation

A Certificate of Lawfulness is sought for the proposed amalgamation, at ground, first and second floor level of 96 Fortress Road. The proposed amalgamation would combine number 96B and 96C to create a single dwelling house situated across three floors. The attached plans detail the proposed works to accommodate the amalgamation. The application for amalgamation will be supported by the necessary planning and listed building consent applications for any material works to the building.

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 certificate of lawfulness applications within the London Borough of Camden. In these instances, which present similar amalgamations, 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 and 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

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. These will be supported by a listed building consent application.

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

Rachel White

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