

Considering the similarities between these examples and the proposal at 46 Gayton Road, it is clear the proposed amalgamation should not be viewed as constituting development, as defined by Section 55 and would be lawful.

Conclusion

This application proposes the amalgamation of two three-bedroom maisonettes into one single family dwelling at 46 Gayton Road, NW3 1LG. No external alterations would be carried out as part of the proposal.

The proposed works to the property would not constitute development as defined by section 55 of the Town & Country Planning Act 1990, and therefore would not require planning permission.

It is kindly requested that a Certificate of Lawfulness is issued in respect of the supplied drawings.

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loss of only one unit and would revert the property back to its original use as a single dwellinghouse, the proposal would not be contrary to Policy H3.”

As such, we do not consider the proposal materially impacts Camden’s housing stock or the ability of LB Camden to meet its housing targets.

Appeal decision APP/X5210/X/17/3172201 against a refused Certificate of Lawfulness at 2 & 3 Wildwood Grove, NW3 7HU shows that the amalgamation of two units would not represent a material change of use in Camden and would therefore not constitute development. In determining the case, the Inspector stated: *“I do not consider the amalgamation of two dwellings into one was development in the first place”*.

Recent examples of Certificate of Lawfulness applications for the amalgamation of two units into one show that LB Camden has not considered amalgamations to constitute development, as defined by Section 55 of the TCPA 1990.

The best example is application 2020/5030/P at 7 Well Road, NW3 1LH for the amalgamation of the existing 3 bedroom lower ground floor and ground floor flat and 2 bedroom upper floors maisonette. When assessing the proposal, the officer considered: *“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 amalgamation was considered lawful by LB Camden as clearly stated on the decision notice: *“It is considered that the works does not constitute development as defined by section 55 of the Town & Country Planning Act 1990, and therefore would not require planning permission”*.

It should be noted that 7 Well Road is located 400m north east of 46 Gayton Road and also falls within the Hampstead Conservation Area. The application sought to revert this terraced property back into a single-family dwelling, similar to the proposal at 46 Gayton Road.

Other relevant examples include the case of 27 Belsize Park, NW3 4DU. A Certificate of Lawfulness was granted on 25-06-2020 for the amalgamation of 2no. flats into a single residential unit at lower ground level (Ref 2020/2804/P). Camden’s position is also illustrated by the recent planning decisions ref 2019/1399/P at 28 Frogna Lane, NW3 and 2019/0002/P 23 Hampstead Hill Gardens, NW3 which both sought confirmation from LB Camden that the amalgamation of two two-bedroom flats and two three-bedroom flats, respectively, would be lawful.

Policy Considerations

Camden Local Plan 2017

The key policy when assessing the acceptability of the proposed development is Policy H3, which is entitled 'Protecting Existing Homes' and seeks to protect all housing floorspace with a particular focus on self-contained houses and flats.

Policy H3 clearly states that Camden Council will resist a net loss of residential floorspace and a net loss of homes. However, paragraph c) also states that development involving the net loss of homes will be resisted unless they create larger homes in a part of the borough with a relatively low proportion of large dwellings.

The amalgamation of two units into one is an exception to Policy H3 as stated in paragraph 3.74, "*The Council also recognises that there are situations where the loss of individual homes may be justified*". The following paragraph (3.75) goes on to state:

"Net loss of one home is acceptable when two dwellings are being converted into a single dwelling. Such developments can help families deal with overcrowding, to grow without moving home, or to care for an elder relative. Within a block of flats or apartments, such a change may not constitute development."

Assessment

The works to facilitate the amalgamation of the two properties would be solely internal with the opening of the corridor at ground floor level, and the repurposing of the rooms within the building. These works would only affect the interior of the building and would not materially affect the external appearance of the application property. These works would therefore not amount to development as stated in para 2(a) of Section 55.

The use of the site would remain in residential use following the conversion of two residential flats into a single dwelling. The proposal would only involve the loss of one residential unit.

LB Camden has indicated their policy position in the pre-application advice received for the application property. In the pre-application response the case officer confirmed:

"The conversion of 2 existing flats to form a 5-bed dwellinghouse would result in the net loss of one residential unit. Policy H3 states that the Council will aim to ensure that existing housing continues to meet the needs of existing and future households by resisting development that would involve the net loss of two or more homes. Given that the conversion would result in the

Application ref 2003/3096/P – Installation of a rooflight to existing monopitched roof of the existing rear extension. – Granted 08/01/2004.

Legal Framework

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.

Section 55(3) of the TCPA 1990 also specifically states that a change from one dwellinghouse (which includes flats) to two or more dwellinghouses constitutes a material change of use. However, there is no guidance with regard to the reduction in the number of residential units through the merger of two or more dwellinghouses to a lesser number.

It has been established in case law that amalgamation can amount to a material change of use as detailed below.

A case involving the amalgamation of dwellings was *London Borough of Richmond v Secretary of State for the Environment, Transport and the Regions and Richmond upon Thames Churches Housing Trust QBD 28 March 2000*. In that case, the High Court held that whether planning permission is required for amalgamation of dwellings should be a matter of fact and degree as to whether the loss of an existing use represents a material change having regard to the planning merits of the area, any planning policies in place and evidence of need.

In the case of *R on the application of RB Kensington and Chelsea v (1) Secretary of State for Communities and Local Government (2) David Reis (3) Gianna Tong [2016] EWHC 1785* - where the amalgamation of two flats into one self-contained flat was proposed - the Court also considered the *Richmond* case and referred to the principles established in that case.

On the basis of the latest court case precedent set out in the above case law, the lawfulness of the amalgamation of two flats into one larger dwelling is a matter of fact and degree and has to have regard to housing supply and policy judgement in the area. As referenced below, there are recent and relevant cases whereby LB Camden has confirmed the amalgamation of two dwellings does not constitute ‘development’ as defined by Section 55 of the TCPA and would be lawful.

Introduction

A Certificate of Lawfulness is sought for the proposed amalgamation of the two 3-bed flats to form one 5-bed dwellinghouse at 46 Gayton Road, Hampstead, NW3 1LG. The works to the property would be limited to internal alterations to facilitate the merger of the two units into one self-contained dwelling.

The applicant seeks to confirm that the proposed works to the building would not constitute development and planning permission is not required under section 55 of the Town and Country Planning Act 1990.

Site and Surroundings

The site is a 5-storey mid-terraced dwellinghouse (including mansard level) located on the south-eastern side of Gayton Road. The property is currently sub-divided into two three-bedroom flats, with one flat over lower ground and upper ground floor level, and the other flat occupying the upper floors of the building.

The site is located within the administrative boundaries of the London Borough of Camden.

The site does not fall within a conservation area, nor is it a statutory listed building. However, it falls within the Hampstead Conservation Area and with the Hampstead Neighbourhood Plan area.

Planning History

Application ref *9300330* – The erection of a mansard roof extension to provide a two bedroom flat at third floor level across nos.46 & 47 the retention of the two flats at first and second floor level in no 46 and the erection of a first floor rear extension to no. 46. – Granted 23/09/1993.

Application ref *PWX0002808* – Erection of mansard roof extension to provide 2 bedroom flat at third floor level across 46 & 47, retention of flats at 1st and 2nd floor levels at no 46 and the erection of 1st floor rear extension at no 46. – Granted 29/01/2001.

Application ref *2003/2930/P* – Erection of a mansard roof extension with front roof terrace to provide additional habitable space for dwelling house. – Granted 24/12/2003.