



## **39 and 40 Chester Terrace, London, NW1 4ND**

Application for Lawful Development Certificate for Proposed Use –  
Amalgamation of two dwellings into a single dwelling

### **PLANNING STATEMENT**

17<sup>th</sup> March 2021

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## AZ URBAN STUDIO

### 39 and 40 Chester Terrace, London

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## 1. INTRODUCTION

- 1.1. This Planning Statement has been prepared by AZ Urban Studio on behalf of Mrs Neves in support of an application for a Lawful Development Certificate for Proposed Use, in relation to the proposed amalgamation of two single dwellings (Class C3) at 39 and 40 Chester Terrace into a single dwelling (Class C3).
- 1.2. The certificate is sought on the basis that the proposed amalgamation of the two existing dwellinghouses at 39 and 40 Chester Terrace would not constitute "development" as defined in section 55 of The Town & Country Planning Act (1990) ("the Act"), and therefore planning permission is not required under section 57 of the Act.
- 1.3. Works required to amalgamate the two dwellinghouses (i.e. openings) will be subject to a separate Listed Building Consent, but the requirement for Listed Building Consent for works to enable the amalgamation would not in any case prevent the grant of the Lawful Development Certificate under section 192 of the Act. This view is supported by precedent decisions and case law.
- 1.4. This Statement should be read in conjunction with the following accompanying submission documents:
  - Application Form; and
  - Location Plan and Block Plan (produced by Groves Natcheva Architects)

## 2. THE SITE AND SURROUNDING AREA

- 2.1. 39 and 40 Chester Terrace are two single dwellinghouses that form part of a neo-classical terrace (Grade I listed) designed by John Nash and built in the early-mid 19<sup>th</sup> century. The terrace as a whole designed by Nash comprises 37 terraced houses that boast an unbroken façade of circa 280 metres and 5 semi-detached houses. The terrace is located on the eastern side of Regents Park and is separated from the park by both private gardens and the public highway.
- 2.2. Both properties comprise four storeys above ground with a basement level below. No. 40 benefits from a small rear courtyard at basement level and a sizable private garden to its northern elevation at ground floor level. No. 39 has small rear courtyard garden area, and a garage within the rear mews building. Both No. 39 and 40 have access to a large balcony, located on the front façade.
- 2.3. The area is residential in character, and other dwellings in the same terrace have been amalgamated in the past to form larger dwellings, including 36 and 37, and 41 and 42 opposite.

### 3. PLANNING HISTORY

#### The Site

- 3.1. There are no relevant planning permissions, or Listed Building Consents relating to the loss, or gain, of residential units at either of the properties.
- 3.2. The planning history for each property confirms that they are both C3 single dwelling houses.

#### Relevant Cases

- 3.3. London Borough of Camden have recently determined directly comparable applications, with some examples noted below.

#### 17 and 18 Well Road, NW3 1LH

- 3.4. A Lawful Development Certificate was granted on the 15<sup>th</sup> October 2019 for the proposed '*Amalgamation of two properties into a single dwelling*' (Reference: 2019/3652/P).
- 3.5. In the case of 17 and 18 Well Road, both properties were also listed buildings.

#### 28 Frognal Lane, NW3 7DT

- 3.6. A Lawful Development Certificate was granted on the 3<sup>rd</sup> April 2019 for the proposed '*Amalgamation of two flats (lower ground floor and ground floor) into single dwelling*' (Reference: 2019/1399/P).
- 3.7. Paragraphs 4.2 and 4.3 of the officer delegated report provides relevant commentary, and states:

*4.2 Although not relevant in the determination of this certificate application, the Borough'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.**

*4.3 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 the 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.*

**23 Hampstead Hill Gardens, NW3 2PJ**

- 3.8. A Lawful Development Certificate was granted on the 19<sup>th</sup> March 2019 for ‘Amalgamation of two flats at basement and ground floor levels’ (Reference: 2019/0002/P).
- 3.9. LB Camden determined that the amalgamation did not constitute development as defined by Section 55 of the Act.

**2 and 3 Wildwood Grove, London, NW3 7HU**

- 3.10. An appeal was allowed (Reference: APP/X5210/X/17/3172201) on 15<sup>th</sup> January 2018 and a Lawful Development Certificate granted for the ‘Use of 2 and 3 Wildwood Grove as one single dwellinghouse’ (Reference: 2016/5621/P).
- 3.11. The Inspector opined “*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.*” The Inspector concluded that it would be highly unlikely that the level of occupation with one residential unit would be so different as to alter the character of the occupation of the building which would be to such an extent that it would be reasonable to conclude there had been a material change of use

## 4. PLANNING ASSESSMENT

### Statutory provisions

- 4.1. Section 192 of the Town and Country Planning Act 1990 provides for making applications for certificates of lawfulness of a proposed use or development. 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.”*

- 4.2. Section 55(1) of the Act sets out the definition of ‘development’, for which planning permission is required by section 57. Section 55(1) states that the definition of development includes: ‘...the making of any material change in the use of any buildings or other land’. Section 55(3)(a) confirms for the avoidance of doubt that use as two or more separate dwellinghouses of a building previously used as a single dwellinghouse involves a material change of use. The Act is silent on the opposite – the amalgamation of dwellings.
- 4.3. In *East Barnet UDC v British Transport Commission* (1962) it was held that in considering whether there is a change of use, the *character* of the use of the land must be considered, and whether the change would be material.
- 4.4. The examples cited in section 3 above, including decisions made by Inspectors at appeal, demonstrate that within the London Borough of Camden the amalgamation of two houses or flats into a single, larger dwelling would not change the character of the use of the land and would not be material.
- 4.5. Case law has established that amalgamating dwellings can *in some cases* amount to a material change of use. The case most often cited is *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). That case concerned the conversion of seven flats into a single large dwelling, and the High Court quashed the decision of an Inspector to grant a Lawful Development Certificate for the



amalgamation. Whereas the Inspector opined that as a matter of fact and degree there would be no material change in the character of the use of land, the High Court held that the Inspector had erred in not taking into consideration the loss of small units of accommodation and the impact of the loss of this particular type of accommodation. The Court held that 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. There have in recent years been a series of similar cases in RKBC, and ultimately in *R (Kensington & Chelsea RLBC) v Secretary of State for Communities and Local Government* (2016) the Richmond case was applied and followed. More recently RKBC has adopted new Local Plan policy that specifically addresses the issue of amalgamations.

### Planning policy

- 4.6. As set out above, the wider *recognised planning purpose* of a particular format of housing should be considered as a component of establishing whether a change would be material.
- 4.7. Camden Local Plan Policy H3 - *Protecting existing homes* sets out how the Council will aim to ensure that existing housing continues to meet the needs of existing and future households by:
- a) resisting development that would involve a net loss of residential floorspace;*
  - b) protecting housing from permanent conversion to short-stay accommodation...;*
  - c) resisting development that would involve the net loss of two or more homes (from individual or cumulative proposals).*
- 4.8. It follows that Policy H3 does not resist the loss of one single residential unit, and therefore it is clear that such a loss would then not conflict with a planning purpose.
- 4.9. The examples provided in section 3 above confirm that interpretation.

## Assessment

- 4.10. The proposed amalgamation of the two dwellings at 39 and 40 Chester Terrace to one dwellinghouse does not conflict with the criterion set out in Policy H3(a-c), as there would only be the loss of one home, and there has been no previous loss documented at either property. The loss of one single residential unit cannot therefore be considered material in terms of any broader planning purpose.
- 4.11. The land and buildings would remain in residential use and there would be no material change in the character of occupation.
- 4.12. It therefore follows that the proposed amalgamation cannot be considered material and would squarely fall outside of the definition of 'development' in Section 55 of the Act.
- 4.13. As a result, it follows that Section 57 of the Act is not engaged and no planning permission is required.
- 4.14. A certificate can therefore be granted under Section 192.