

Our Ref: 21058/TW/cs
Your Ref: PP-09852798
Email: twilliams@firstplan.co.uk
Date: 14 June 2021

Planning Department
London Borough of Camden
Camden Town Hall Extension
Argyle Street
London
WC1H 8EQ

Dear Sir/Madam,

**LAWFUL DEVELOPMENT CERTIFICATE FOR PROPOSED AMALGAMATION OF TWO DWELLINGS
INTO ONE DWELLING
17B AND 17C LANGLAND GARDENS, HAMPSTEAD, LONDON, NW3 6QE**

We have been instructed by our client, Mr Charles Harris, to submit the enclosed Lawful Development Certificate Application concerning the proposed amalgamation of two dwellings into a single family home at Nos. 17b and 17c Langland Gardens. No external alterations form part of the proposals.

Having regard to Section 55 of the Town and Country Planning Act 1990, the proposal does not constitute development and there is no material change of use. As such, planning permission is not required. This view is consistent with a number of recent lawful development certificates granted by the London Borough of Camden Council as well as a number of appeal decisions.

The amalgamation of the two flats will facilitate the creation of a high-quality four-bedroom family dwelling which would retain the current provision of residential floorspace onsite.

The application has been submitted online via the Planning Portal (Ref: PP-09852798) and the requisite fee of £203.50 plus the £28 admin fee has been paid online. The proposals are supported by the ensuing documentation:

- Completed Lawful Development Certificate (Proposed Use) Form;
- Completed CIL Form;
- Planning Statement (included within this letter);
- Appendices 1-4
- Architectural drawings, prepared by Brod Wight Architects:
 - Site Location Plan
 - Existing Floor Plans (drawing no. 1116-AP02A);
 - Proposed Floor Plans (drawing no. 1116-AP03A).
 - Proposed Section A-A (drawing no. 1116-AP04).

Site Location and Description

The application site comprises the ground and first floors of no. 17 Langland Gardens: a 4-storey semi-detached Victorian era property located on the western side of Langland Gardens close to the junction with Lindfield Gardens within in the London Borough of Camden. The host building currently comprises 4 self-contained flats and 1 no. off street parking space. To the rear is a terrace and the property also has use of the communal gardens.

The ground floor flat, no. 17B, benefits from direct private access from the main front door. No. 17b currently comprises three bedrooms, two bathrooms, a kitchen/dining area, a reception room, a study and store area.

The first floor flat, no. 17C, is accessed via an external staircase along the northern elevation. This unit includes two bedrooms, 1 no. en-suite, a kitchen/dining area, a reception room and a bathroom along with a rear terrace.

In terms of designations, the property is situated within Redington Froggnal Conservation Area. Nos. 3-31 [odd] are identified as making a positive contribution to the character and appearance of the Conservation Area. However, No. 17 Langland Gardens is not statutorily listed. The site falls within Flood Zone 1, and therefore is not at risk of flooding.

Planning History

The property was subdivided into flats in the 1960s; outline planning permission was granted in April 1962 for the conversion of the ground, first and second floors into three self-contained flats (Ref: **TPD684/28219**). Full planning permission was subsequently obtained four months later via application **TPD790/361**.

A later application granted in March 1963 allowed for the conversion of the lower ground floor into a self-contained flat (ref: **TPD1012/648**).

The only other permissions revealed on the online planning register relate to the enclosing of the front porch in timber frames and glass, granted in March 1964 (ref: **TP/103509/2029**), and more recently, work to the balustrade and fenestration of the rear first floor terrace, granted in October 2011 (Ref: **2011/4221/P**).

Description of the Proposal

The proposal relates to the amalgamation of two residential dwellings (Class C3) into one single dwelling (Class C3). There are no alterations proposed to the exterior of the property. The proposed internal works are limited to the insertion of an internal staircase at ground floor level to provide access to the first floor unit.

These works will create a single residential unit at the site, creating a house with five bedrooms, two reception rooms, a kitchen, a study, three bathrooms and an en-suite. The existing main entrance door into the building from outside will remain unaltered and indeed, no external alterations are proposed. The enclosed plans detail the internal works in full.

Legislative Background

Section 55 of the Town and Country Planning Act 1990 as amended ('the Act') defines the meaning of 'development' as the "carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land". All 'development' requires planning permission.

As such, the sole matter for consideration in determining this lawful development certificate is whether the amalgamation of two dwellings into one dwelling constitutes development.

The application should be determined on the basis of planning law and material matters of fact. Planning policy is not a relevant consideration for this application.

Assessment of Lawfulness

Section 55 of Town and Country Planning Act 1990 states that:

The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(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....

The proposals involve internal works only, with no alterations proposed to the exterior of the property. Accordingly, there would be no harm, or indeed any change, to the character of the building, the Redington Froggnal Conservation Area or the surrounding residential area.

Section 55, Part 3A states goes onto state that:

“the use as two or more separate dwelling houses of any building previously used as a single dwelling house involves a material change in the use of the building and of each part of it which is so used.”

However, it does not state anything with regards to the other way around, i.e. two or more dwelling houses to be used as a single dwelling house.

The amalgamation of two dwellings into a single dwelling does not result in a material change of use given that the Class C3 use will be retained and no loss of floorspace will occur. The proposal is therefore lawful on this basis.

This assessment is consistent with Camden Council’s determination of a number of recent Certificates of Lawfulness as detailed below.

Relevant decisions in Camden

In April 2020, Camden Council granted a Lawful Development Certificate for ‘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)’ at Upfleet, Vale of Health, London NW3 1AN (Ref: **2020/0788/P**). The Decision Notice and Officer’s Report are attached at Appendix 1.

The accompanying Officer Report establishes that:

“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".

More recently, Camden Council granted a Lawful Development Certificate in November 2020 for 'Amalgamation of 2 no flats and to use as a single residential unit (Use Class C3)' at 7 Well Road, London NW3 1LH (Ref: **2020/5030/P**). The Decision Notice and Officer's Report are enclosed at Appendix 2.

The case officer similarly set out that:

"No external changes are proposed to the dwelling, therefore there would not be a material change to the streetscene in any way. The use of the site would remain in residential use following the conversion of two residential flats into a single flat, 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".

The Report further goes on to state that:

"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".

To this end, it is thus apparent that the London Borough of Camden are of the view that the amalgamation two residential units into a single, family dwelling house does not constitute development.

Relevant Appeal Decisions

As highlighted above, in January 2018 an Inspector allowed an appeal for a Lawful Development Certificate at 2-3 Wildford Grove for the conversion of two residential dwellings into one (Appeal Ref: APP/X5210/X/17/3172201). In allowing the appeal, the Inspector stated that '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 Appeal Decision is attached at Appendix 3.

In February 2016, an Inspector allowed an appeal at 15 Ifield Road, Royal Borough of Kensington and Chelsea Council (RBKC) for a lawful development certificate for the amalgamation of 3 apartments into one dwelling house (appeal ref: APP/K5600/X/15/3132022). In allowing the appeal, the Inspector concluded at paragraph 18: '...the proposed use would not result in a material change in the character of property or the residential area and on this basis would not amount to a material change of use'. The appeal decision is enclosed at Appendix 4.

Other Matters

Although the assessment of planning policy is not considered relevant to the determination of this application, it must be noted that the scheme would retain all the existing Class C3 residential floorspace and make a small, yet valuable contribution to Camden's family housing stock.

It is relevant to note that Policy H3 of Camden's Local Plan 2017 seeks to resist development that would involve the net loss of two or more homes (from individual or cumulative proposals). In this instance, the proposal would only result in the net loss of one residential unit and is therefore not considered to materially impact on the Borough's housing stock or the Council's ability to meet housing targets.

Paragraph 3.75 of the Local Plan states:

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

This five-bedroom, family-sized dwelling would be dual-aspect, provide a high standard of accommodation and benefit from a rear terrace and substantial communal gardens. The living accommodation will meet London Plan standards for new dwellings in terms of space standards. Furthermore, the internal works will have no impact on the surrounding Redington Frogna Conservation Area.

Conclusions

In light of the reasons set out within this Statement, which are sufficiently evidenced and supported by recent decisions, the amalgamation of the two dwellings into one single dwelling does not constitute development and therefore can be carried out without the requirement to apply for planning permission.

As such, it is considered that the lawful development certificate should be supported and we respectfully request that the certificate is granted at the earliest convenience.

We therefore trust the enclosed information is sufficient for you to register and validate the application. However, please do not hesitate to get in contact should you require any further information.

Yours faithfully,



TIM WILLIAMS
Director

Enc.

Appendix 1

Application ref: 2020/0788/P
Contact: Josh Lawlor
Tel: 020 7974 2337
Date: 30 April 2020

Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk/planning

Nicholas Taylor & Associates
46 James Street
London
w1u 1ez
UK

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Proposed) Granted

The Council hereby certifies that the development described in the First Schedule below, on the land specified in the Second Schedule below, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 as amended.

First Schedule: 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).

Drawing Nos: Statement for Certificate of Lawfulness ref. 934 dated February 2020, 195-000, 195-001, 195-002, 195-003, 195-004, 195-011, 195-012, 195-013, 195-014

Second Schedule:

Upfleet
Vale Of Health
London
NW3 1AN

Reason for the Decision:

- 1 The amalgamation of the two flats into one does not fall within the "meaning of development" requiring planning permission as defined by the Town and Country Planning Act 1990.

Informative(s):

- 1 If a revision to the postal address becomes necessary as a result of this development, application under Part 2 of the London Building Acts (Amendment) Act 1939 should be made to the Camden Contact Centre on Tel: 020 7974 4444 or Environment Department (Street Naming & Numbering) Camden Town Hall, Argyle Street, WC1H 8EQ.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully



Daniel Pope
Chief Planning Officer

Notes

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use*/operations*/matter* specified in the First Schedule taking place on the land described in the Second Schedule was*/would have been* lawful on the specified date and thus, was not*/would not have been* liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use*/operations*/matter* described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use*/operations*/matter* which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

LDC (Proposed) Report		Application number	2020/0788/P
Officer		Expiry date	
Josh Lawlor		13/04/2020	
Application Address		Authorised Officer Signature	
Upfleet Vale Of Health London NW3 1AN			
Conservation Area		Article 4	
N/A		Basement	
Proposal			
The conversion 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).			
Recommendation:	Grant Certificate of Lawfulness		

1. Site Description

- 1.1. The site is a three-storey property with basement and is situated on the eastern side of Hampstead Heath. The site lies within the Hampstead Conservation Area.

2. Proposal

- 2.1. A Certificate of Lawfulness is sought for the proposed amalgamation of two flats, one at ground floor and first floor level and the second at second and third level flat, into one dwelling. The applicant seeks to confirm that the change of use would not constitute development and planning permission is not required under section 55 of the Town and Country Planning Act 1990. There would be no external changes as a result of the development.

3. History

8702782 Erection of a side extension at second floor level incorporating terraces at rear second floor and front roof level **Granted 17/09/1987**

2008/4236/P Erection of a single-storey rear extension at lower ground floor level and a rear wooden staircase. **Granted 11/11/2008**

4. Assessment

- 4.1. The Town & Country Planning Act 1990, Section 55, Part 3A states that “the use as two or more separate dwelling houses of any building previously used as a single dwelling house 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 comment on whether combining two dwellings into one would constitute development.
- 4.2. 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.

5. Conclusion

- 5.1. It is considered that the works do not constitute development as defined by section 55 of the Town & Country Planning Act 1990, and therefore would not require planning permission.
- 5.2. Grant certificate of lawful development (proposed).

Appendix 2

Application ref: 2020/5030/P
Contact: Raymond Yeung
Tel: 020 7974 4546
Email: Raymond.Yeung@camden.gov.uk
Date: 10 November 2020

Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

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www.camden.gov.uk/planning

4orm
1-5 Offord Street
London
N1 1DH
United Kingdom

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Proposed) Granted

The Council hereby certifies that the development described in the First Schedule below, on the land specified in the Second Schedule below, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 as amended.

First Schedule:

Amalgamation of 2no flats into a single residential unit (Use Class C3).
Drawing Nos: 415-X.01, Legal opinion letter dated October 2020, 415-7NW31LH-X.02, 415-7NW31LH-X.03.

Second Schedule:

7 Well Road
London
NW3 1LH

Reason for the Decision:

- 1 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.

Informative(s):

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

A handwritten signature in black ink, appearing to read 'DPope', is written over a light blue rectangular background.

Daniel Pope
Director of Economy, Regeneration and Investment

Notes

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the matter specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful on the specified date and thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

LDC (Proposed) Report		Application number	2020/5030/P
Officer		Expiry date	
Raymond Yeung		25/12/2020	
Application Address		Authorised Officer Signature	
7 Well Road London NW3 1LH			
Conservation Area		Article 4	
Hampstead		Basements Heritage and Conservation-External alterations and structures concerning classes A, B, C & F	
Proposal			
Amalgamation of 2no flats and to use as a single residential unit (Use Class C3).			
Recommendation:		Grant certificate	

1.0 Site Description

1.1 The above property is a three-storey house which is located to the south side of Well Road. There are currently two flats within this property. The site is situated within the Hampstead Conservation Area, although the building itself is not statutory or locally listed.

2.0 Proposal

2.1 A Certificate of Lawfulness is sought for the proposed amalgamation of 2 flats into 1, Flat 1 is located on the lower ground and ground level and flat 2 is located on first and second floor level.

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

3.0 History

3.1 Related planning history (other sites in Camden)

2020/2804/P – 27 Belsize Park Amalgamation of 2no. flats into a single residential unit at lower ground level (Use class C3). **Certificate of Lawfulness -Granted 25-06-2020**

2019/3652/P - 17 and 18 Well Road London NW3 1LH Amalgamation of two properties into a single dwelling. **Certificate of lawfulness- Granted 15-10-2019**

2019/1399/P 28 Frogna 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. **Certificate of lawfulness- 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 (Class C3). **Granted 09-09-2019**

2019/3652/P 7 and 18 Well Road London NW3 1LH Amalgamation of two properties into a single dwelling. **Granted 15-10-2019**

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). - Certificate of lawfulness - Certificate of lawfulness - **Granted 21-07-2020**

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**

2020/1755/P Flat 2 and Flat 3 53 Primrose Gardens London NW3 4UL 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**

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**

2020/4444/P - Chesterfield House - Flat 4 1B King Henry's Road - Amalgamation of 2no. flats into a single residential unit at first floor level (Use class C3). **Granted 27-10-2020**

2929/3286/P – 9 Evangelist Road NW3 1UA- Amalgamation of 2no. flats into a single residential unit at lower ground level (Class C3). **Granted 25-06-2020**

4.0- Assessment

4.1 The Town & Country Planning Act 1990, Section 55, Part 3A states that “the use as two or more separate dwelling houses of any building previously used as a single dwelling house involve a material change in the use of the building and of each part of it which is so used”. However, the legislation does not comment on whether combining

two dwellings into one would constitute development. In this case it is 2 units into 1 in this property.

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. No external changes are proposed to the dwelling, therefore there would not be a material change to the streetscene in any way. The use of the site would remain in residential use following the conversion of two residential flats into a single flat, 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 With regards to judgement of whether the development is material when compared with the development plan under Camden Local Plan policies H1 & H3, the proposal would result in the net loss of no more than one residential unit and would not result in the loss of residential floorspace. The proposed development as presented would therefore comply with policy H3 of the Camden Local Plan." This is confirmed by the supporting text to policy H3 (paragraph 3.75).

4.4 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.

4.5 The infilling of the window opening at the ground floor side elevation with materials to match the existing house is considered to not be material development to require planning permission.

5.0- Conclusion

5.1 It is considered that the works for this application would not constitute development as defined by section 55 of the Town & Country Planning Act 1990, and therefore would not require planning permission.

5.2 Grant certificate of lawful development (proposed).

Appendix 3

Appeal Decision

Site visit made on 9 January 2018

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 January 2018

Appeal Ref: APP/X5210/X/17/3172201
3 Wildwood Grove, London, NW3 7HU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Warren Evans against the decision of the Council of the London Borough of Camden.
 - The application Ref 2016/5621/P, dated 14 October 2016, was refused by notice dated 11 February 2017.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use of 2 and 3 Wildwood Grove as one single dwellinghouse.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Reasons

2. The appellant states that in 2009 works were completed to amalgamate Nos 2 and 3 Wildwood Grove into a single dwelling. The agent's application was concerned solely with the legal question of whether the amalgamation of 2 dwellings into 1 was development or not. I do not need to rehearse most of the arguments here as the Council accept that in this case there is no policy impediment to the amalgamation. However they say it would still be a material change of use due to the under occupation of the dwelling which would materially alter the character of the way it is occupied. Regardless of the outcome of this argument the actual reason for the refusal of the application was that there was no evidence the use had been undertaken continuously for 4 years or more.
3. I accept the Council's argument that a reduction in levels of occupation could lead to the finding that there had been a material change of use, regardless of whether such a change was harmful or not, as planning merits play no part in the determination of an application for a lawful development certificate. However the changes associated with the amalgamation of the two dwellings into one would have to be such that there was a material difference in the way the property was occupied, and given that the nature of the use remains residential, such a change would have to be quite significant.

4. The Council argue that in 2001, 47% of households occupying a house with 5 or more bedrooms were one or two person households. This percentage rose to 54% if the households were owner occupiers. They say it is likely therefore the house would have been occupied by a household of one or two persons and so was under occupied. This would be perceptible and significant enough to alter the character of the way in which it was occupied.
5. I have a number of problems with this approach. Rather than being "likely", the statistics suggest it is almost 50/50 whether or not the house was or would be occupied by a one or two person family. Even if it were, without figures for the likely occupation of smaller dwellings it is difficult to make any meaningful comparisons with the before amalgamation situation. Two one-person households in the original two dwellings would be the same as one two-person household in the amalgamated dwelling. In any event, I find it highly unlikely that the level of occupation would be so different as to alter the character of occupation to such an extent that it would be reasonable to conclude there had been a material change of use. The Council have not explained what significant changes are likely to be perceptible due to under-occupation and there is no evidence such changes have come about. 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.
6. On my site visit it was evident there had been a further change, as the downstairs of No 2 was being used by the appellant's mother and the downstairs interconnecting doorway had been blocked up. The upstairs was still open between the two houses and clearly used as a single dwelling; it was from here that access to the mother's downstairs bedroom was made. However, as I do not consider the amalgamation of two into one was development in the first place, and these changes seemed to have taken place after the date of the application, I can ignore them. At the date of the application there had been no material change of use.
7. Having found the amalgamation of the dwellings is not development there is no need to consider whether or not the resultant single dwelling has been occupied continuously for 4 years or more. I shall allow the appeal and issue a certificate explaining that the use of the property as a single dwellinghouse was lawful at the date of the application.

Simon Hand

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 October 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: the amalgamation of Nos 2 and 3 Wildwood Grove into a single dwellinghouse did not amount to a material change of use and so was not development that required planning permission.

Signed

Simon Hand

Inspector

Date: 15 January 2018

Reference: APP/X5210/X/17/3172201

First Schedule

Use of 2 and 3 Wildwood Grove as one single dwellinghouse

Second Schedule

Land at 3 Wildwood Grove, London, NW3 7HU

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

This is the plan referred to in the Lawful Development Certificate dated: 15 January 2018

Land at: 3 Wildwood Grove, London, NW3 7HU

Scale: not to scale

Appendix 4

Appeal Decision

Site visit made on 26 January 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 February 2016

Appeal Ref: APP/K5600/X/15/3132022

15 Ifield Road, London, SW10 9AZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Finborough Investments Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref. CL/14/08833, dated 18 December 2014, was refused by notice dated 2 March 2015.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a LDC is sought is the amalgamation of 3 apartments into one dwellinghouse.

Summary of Decision: The appeal is allowed and a LDC is issued in the terms set out below in the Formal Decision

Reasons

1. It is common ground that the property in question is in use as 3 self-contained apartments comprising a maisonette on the basement and ground floors and flats on the first and second floors. Plans showing the layout have been provided and I was able to view inside the first floor flat. I take this to be the lawful use of the property as there is nothing before me to suggest otherwise. Planning permission for the maisonette was granted on 15 January 1962.
2. The supporting documentation explains that the intention is to convert the property back to its original use as a single dwellinghouse on all four floors but that no external works are proposed. The single issue to consider therefore is whether this would amount to a material change of use that requires planning permission. If the conclusion is that it does then the change would not be lawful. If it does not then the LDC should be issued.
3. The law on this matter has been the subject of court decisions. The leading case to which both parties have referred is *Richmond-upon-Thames LB v SSETR [2001] JPL 84*. In that case it was held that an Inspector had erred in disregarding the loss of 7 flats in a proposal to convert a property into a single dwellinghouse. The Inspector had found that no material change of use had occurred but the court concluded that the extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether there has been a material change of use. The court also rejected the notion that both uses fell within Class C3 (dwellinghouses) as the planning unit before was not a dwellinghouse, but more than one.

4. The parties are in agreement that s55(1) of the 1990 Act, as amended, defines the meaning of development which includes the making of a material change in the use of any buildings. It is also agreed that whilst s55(3)(a) of the same indicates that the use of two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building, the Act is silent on the reverse situation.
5. Following court authority, including *Richmond* and the earlier case of *Panayi v SSE [1985] 50 PCR 109*, the recognised legal position is that such a change can amount to a material change of use and that in each case it is a matter of fact and degree. In *Panayi* it was indicated in the judgment that relevant factors could include important planning considerations such as the effect on the residential character of the area. These findings informed the decision of the District Judge (Christopher Lockhart-Mummery QC) who decided the *Richmond* case which gave rise to the point that consideration in each case of this type should be given to whether the present use fulfils a legitimate or recognised planning purpose, which engages policy considerations.
6. It is however useful to note what the same judge said when providing advice on another similar appeal case in the Council's jurisdiction, which is quoted in the appellant's agent's statement. I appreciate this is only his opinion but as he was the one who decided the *Richmond* case it warrants attention. He commented on what his judgment did not decide. Firstly, it did not decide that the inclusion of a policy factor meant that there had to be, or indeed was, a material change of use in that case or any other. Secondly, it did not decide that a change of use would be a material one where the only factor arising concerned policy. He adds that such an argument was not even raised and that he would have "given it short shrift if it had been". He also refers back to *Panayi* pointing out that the first factor regarded as relevant in that case was the effect on the character of the area.
7. With this legal background in mind I will firstly consider the likely effect of the change on the character of the area. I will then come on to the Council's arguments regarding housing policy, including what they describe as a recent change in the emphasis or interpretation of policy concerning the conversion of flats back into single dwellinghouses since August 2014.
8. The character of this part of Ifield Road appears to be primarily if not wholly residential and this is not disputed. I do not have details of the exact make-up of the residential uses but from my own observations it is apparent that some properties, which would have originally been 4 storey houses, have multiple occupiers, probably as self-contained units but possibly with some bedsits and houses in multiple occupation. Others appear to remain as single dwellinghouses and some may have been converted back from flats, apartments or bedsits into single dwellinghouses. A case in point is the neighbouring building, 17 Ifield Road, which benefits from planning permission dated 14 June 2012, for the conversion from two maisonettes to a single 4 storey dwelling. The Council contend that this permission was granted prior to the recent change in policy stance on such conversions but it is interesting to note that the case officer's report commented: "...in any case, it should be noted that the amalgamation of two flats would not normally be considered development". Whilst this may only be an observation it was made well after the judgment in *Richmond* was reached and presumably was the Council's position at that time.

9. The first question to address is whether the change from 3 apartments to one dwellinghouse in this location would lead to a material change in the character of this residential street. Given my observations and from the information before me I consider that the area has a mixed residential character comprising a variety of types of housing accommodation. I do not consider that one type predominates and it is evident that single family dwellinghouses are a significant and historic part of that character – or to put it another way - a contributory factor to the inherent nature of the residential area. For this reason I do not consider that the change proposed would materially alter this character. Indeed it would be consistent with the prevailing character of a mixture of types of residential accommodation.
10. In terms of the building itself, as there would be no physical alterations to the exterior of the building its appearance would not change. In terms of use it would retain a residential character. There may be fewer daily movements from the property as a result but this cannot be said with any certainty as a large family occupying the whole building could generate more comings and goings than the present occupation as 3 separate apartments. That said I would not expect the difference to be so significant as to constitute a change in the character of the use of the building or the area.
11. I have gone on to consider the Council's arguments concerning planning policy. I can appreciate their concerns about housing provision in general and the need to achieve a balance in type and tenure, to meet increased and more ambitious housing targets and to monitor the effect of conversions and amalgamation of flats into one dwelling in terms of maintaining housing stock to meet needs and demand. However, even if policy considerations have a bearing on this case – and the legal authorities above suggest they could do although they are not likely to be the sole determinant – then it is the adopted policies that must take precedence. I do not consider it is necessary to rehearse the reasons I come to that conclusion in detail. Suffice to say adopted policies have been the subject of the full rigour on the development plan process; they have had to be the subject of consultation at a number of stages in the plan production process; they will have been part of a plan which was the subject of a formal examination where the whole gamut of housing issues would almost certainly have been considered.
12. With this background in mind I consider the most relevant adopted policy applying to this specific part of London is Policy CH2 of the 2010 Core Strategy. I have not been provided with a full copy of the wording but the Council say that it states they "*will resist development which results in the net loss of five or more residential units*". The supporting text (para. 35.3.18) explains "*In order to limit the loss of residential units whilst allowing some flexibility in terms of the creation of larger residential units, a policy has been developed which resists proposals which result in the net loss of five or more residential units*". The Council argue that the policy is restrictive and it does not automatically allow or justify a loss of less than five units. This may be so as there will often be other material considerations but it clearly sets down a benchmark to be applied. If it were to be less than quite obviously the policy would say so. It does not even say, as far as I am aware, that the loss of less than five will be judged on its merits. I do not consider that the Council are in a position to go behind this policy and try to make it mean something other than what it actually states. The only way to do so would be to withdraw or modify the policy through the required statutory process.

13. Taken at face value therefore, there is no conflict with this policy whatsoever. Thus even if policy is a determining factor, but not the sole one as court authority would suggest, there is no basis for concluding that a material change of use would occur having regard to the wording of Policy CH2. I appreciate that the Council seem to be arguing that it is out-of-date and needs to be replaced but they have not done so. Indeed I have not been provided with any documentation which indicates that an alternative draft policy has been published.
14. What the Council do say can be taken from paragraph 1.11 of their statement which I quote in full:
- “To address this issue (*the loss of smaller units of accommodation*), in August 2014 the Council changed its interpretation as to how much amalgamation could occur without planning permission being required. It is important to note that this was not a change in development plan policy (i.e. in the Core Strategy / Local Plan) and as such no consultation/examination was necessary, or indeed appropriate. The Council takes the view that any amalgamation which includes the loss of a unit will be development which requires planning permission. This reflects increasing housing targets and the impact that amalgamation is having upon the progress on achieving these”.
15. This blanket approach is being applied based on an interpretation which fails to take account of the principal test established through the courts that is the effect on the character of the area. Such an approach flies in the face of court authority and suggests that general concerns about housing provision and the loss of small units, not even supported by an adopted local plan policy, should trump any material consideration of the impact on the character of a specific area. I cannot accept that this is correct approach in law and it seems to be a position which the judge in *Richmond* made clear would not form a sound basis for resisting the issuing of a LDC, if that was the only argument.
16. The appellant’s agent draws my attention to two other properties where LDCs were issued by the Council for the amalgamation of flats into single dwellings in 2011 and June 2014¹. The Council’s response is that these were “*determined prior to the change in the Council’s interpretation of the legislation and are not pertinent to the consideration of this appeal*”. I disagree as these decisions are clearly of some bearing given their relatively recent determination and the Council have not explained on what basis they have chosen to arrive at a different interpretation of the legislation to the one that presumably informed these earlier decisions. It is not suggested that a new court authority has led to this change of stance and so the principles set out above which flow from *Richmond* and *Panayi* would still apply. That being so the present position they are adopting appears to lack a sound legal foundation and for that reason I do not find it persuasive in this case.
17. I have noted the general arguments the Council have supplied regarding housing provision and the net loss in units that are said to have occurred through amalgamations of smaller units between 2010-2014. I am also mindful of the Government policy in the National Planning Policy Framework (NPPF) to ensure the delivery of housing to meet identified need and the similar thrust of housing policies in the London Plan 2015 as regards the capital.

¹ Ref. CL/11/03277 – 66 Cathcart Road – 3 dwgs into one; Ref. CL/14/02329 – 34 Lansdowne Crescent – 2 dwgs into one

Nevertheless, these general policies are aimed at striking a balance to meet all housing needs in terms of size, type and tenure. It is not just a question of total numbers. The only way to properly examine the issues of housing need and supply at the local level is through a systematic analysis informing the Core Strategy and any supporting local plan in Kensington and Chelsea. That is a rigorous evidence based approach which demonstrates where the needs exist and what policies and strategies are required to address these needs. This may lead to the modification or replacement of policy CH2 but at present it remains the policy to follow having regard to the requirements of s38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 154 of the NPPF.

18. Bringing these findings together I am satisfied that the proposed use would not result in a material change in the character of property or the residential area and on this basis would not amount to a material change of use. I have also considered whether the present use fulfils a legitimate or recognised planning purpose, which engages policy considerations, but it has not been demonstrated that the proposal would clearly conflict with any relevant adopted development plan policies. I have taken account of the wider aspirations of the Council to be more restrictive on what may be permitted by way of the amalgamation of apartments into single dwellinghouses and to take a harder line on what may be accepted in law. However, an LDC appeal is not a legitimate method for bringing about planning policy changes and the Council's present blanket interpretation of what amounts to a material change of use fails to take account of court authority requiring each case to be considered as a matter of fact and degree having regard primarily to the impact on the character of an area.
19. For these reasons, as expanded upon above, I conclude, on the evidence available, that the Council's refusal to grant a LDC in respect of the amalgamation of 3 apartments into one dwellinghouse was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

20. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the proposed use which is considered to be lawful.

NP Freeman

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 18 December 2014 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the Plan A attached to this certificate, would have been lawful within the meaning of the relevant section of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use does not amount to a material change of use requiring planning permission.

Signed:

N P Freeman

Mr N P Freeman
Inspector

Date: 24.02.2016

Reference: APP/K5600/X/15/3132022

First Schedule:

The amalgamation of 3 apartments into one dwellinghouse.

Second Schedule:

15 Ifield Road, London, SW10 9AZ

NOTES:

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on Plan A. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan A

This is the plan referred to in the Lawful Development Certificate dated: 24.02.2016

by N P Freeman BA(Hons) DipTP MRTPI DMS

Land at: 15 Ifield Road, London, SW10 9AZ

Reference: APP/K5600/X/15/3132022

Do not scale – identification only

