

# CHRISTOPHER WICKHAM ASSOCIATES

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## Town Planning Consultancy

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Our ref: CWA/CMW/pl/1422

Date: 19<sup>th</sup> August 2021

London Borough of Camden  
Development Management  
5 Pancras Square  
London N1C 4AG.

VIA THE PLANNING PORTAL ONLY

Dear Sir or Madam,

**TOWN AND COUNTRY PLANNING ACT 1990**  
**SITE AT 2 BISHAM GARDENS, LONDON N6 6DD**  
**LAWFUL DEVELOPMENT CERTIFICATE APPLICATION – PROPOSED USE**  
**PLANNING PORTAL REFERENCE: PP-10133343**

We refer to the above site, and to the application for a Lawful Development Certificate (LDC) in respect of the proposed amalgamation (“the Amalgamation”) of the two existing flats (“the Flats”) at 2 Bisham Gardens, London N6 6DD (“the Property”) to form a single dwellinghouse (Use Class C3). The application is made by the co-owner and occupier of the Property, Ms Jana Sadler-Forster.

In addition to the application form and this covering letter, the application comprises the following documentation:-

- Site location and block plans drawing A-00-01 on which the application site is edged in red;
- Existing drawing set Ex.A-10-00, 01, 02, 03 & 04 ; Ex.A-15-01; and Ex.A-20-01, 02 & 03; showing the layout of the Flats;
- Proposed drawing set P.A-10-00, 01, 02, 03 & 04; and P.A-15-01 showing the layout of the proposed single dwellinghouse; and
- The CIL Information form.

Please note that although the submitted drawings include section and elevation drawings, no changes are proposed to the external appearance of the Property, and none are shown on the drawings.

The application fee of £231 is being paid via the portal.

In assessing this application, the local planning authority (LPA) is requested to have regard to the following:-

### **Site Context**

The application site is located on the south side of Bisham Gardens, and is occupied by a three storey plus basement, end-of-terrace house which dates from the late Victorian period. The Property is currently sub-divided into the Flats which comprise a ground floor and basement two bedroom unit, and an upper floor four bedroom unit. The ground and basement floor unit is accessed via the front door which faces Bisham Gardens, and the upper floor unit is accessed via a side door. The side door is reached via an area of hardstanding located directly adjacent to the Property's front door.

Bisham Gardens is a residential street leading south-westwards from Highgate High Street. The road forms part of a controlled parking zone, and the site is served by various bus routes on Highgate High Street. The application site is located within the Highgate Conservation Area ("the Conservation Area").

### **Relevant planning history**

Planning permission was granted on 15<sup>th</sup> June 1989 under reference 8903080 for alterations to the shopfront. On the same date, planning consent was granted under references 8903084 and 8903085 (duplicate applications) for the change of use of the ground floor from a photographic studio to a use within Class A2.

Planning permission was granted on 15<sup>th</sup> April 2002 under reference PEX0200072 for the change of use of the basement, ground floor and first floor from shop/professional services (Class A2) to dental surgery (Class D1).

Planning permission was granted on 19<sup>th</sup> March 2012 under reference 2012/0253/P for the change of use from dental surgery (Class D1) on basement, ground and first floor, and a flat on the second floor to use as a single-family dwelling house (Class C3) and for associated alterations to ground floor front elevation including installation of a new door and window. This consent was implemented in so far as the Property was converted into a single dwelling at that time.

Planning permission was granted on 23<sup>rd</sup> October 2014 under reference 2014/5030/P for the conversion of the single dwelling into two self-contained flats. This permission was implemented through the formation of the Flats.

No other relevant planning history has been identified.

### **The existing use for which the LDC is sought**

The LDC is sought in respect of the proposed Amalgamation of the Flats to form a single dwellinghouse under Use Class C3, this being a previous and recent use of the Property following the grant of planning permission 2012/0253/P. The Amalgamation would comprise some limited internal works to the Property, specifically (i) the removal, at ground floor level, of a fire door set within the partitioning to the stair compartment to allow internal access between the ground and upper floors, and (ii) the re-purposing of the existing second floor

kitchen/dining and living room as a bedroom. No works or alterations of any kind are proposed to the exterior of the Property, and the two existing ground floor entrance doors would be retained.

The LDC is sought on the basis that, for the reasons set out below, the Amalgamation of the Flats to form a single dwellinghouse would not amount to a material change of use of the Property, and would therefore not require planning permission.

### **Reasons**

#### **Statutory Framework**

S.55(1) of the Town & Country Planning Act 1990 (“the Act) defines “development” as “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land [emphasis added]”.

S.55(3)(a) of the Act states that “*for the avoidance of doubt...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, no such clarification is provided in respect of an amalgamation of separate dwellinghouses to create a single dwellinghouse.

#### **Interpretation of Statutory Framework**

For many years, LPAs and planning appeal Inspectors took the view that, generally speaking, the amalgamation of dwellings did not involve a material change, and therefore planning permission for such works was not normally required. This was because, in assessing whether a material change of use would arise, the principal test that was whether an amalgamation would result in a change in the amenity character of the use of the land, for example in respect of the number of residents or visitors. For a small-scale amalgamation of, for example, two dwellings to form a single dwelling, it would be most unlikely that the change in the character of the use of the land would be significant enough to be material. However, the question as to what amounts to a material change of use has evolved in recent years following consideration by the courts.

In the case of *Richmond upon Thames London Borough Council v. Secretary of State for the Environment [2000]* (“the Richmond Case”), the Judge concluded that if a proposed loss of dwellings, by way of amalgamation, resulted in planning considerations such as the loss of a particular type of accommodation which fulfilled a planning purpose, this was relevant to the question of whether the change of use would be material in planning terms. The High Court quashed a Planning Inspector’s decision to grant a Certificate of Lawful Development (CLD) for the conversion of a property from seven flats to one dwelling.

The Richmond Case was followed more recently by the case of *R on the application of the Royal Borough of Kensington & Chelsea v. Secretary of State for Communities & Local Government [2016]* (“the RBK&C case”) where it was decided that, in assessing whether an amalgamation amounted to a material change of use, an LPA may consider whether this would have an impact on housing supply even if development plan policies were silent on the matter.

In the RBK&C case, Mr Justice Holgate set out the following key principles which apply to whether a change of use is likely to be material:-

***“(1) A planning purpose is one which relates to the character of the use of land;***

***(2) Whether there would be a material change in the use of land or buildings falling within the definition of "development" in section 55 of TCPA 1990 depends upon whether there would be a change in the character of the use of land;***

***(3) The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. Thus, the need for a land use such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;***

***(4) Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;***

***(5) The issues in (2) and (4) above are issues of fact and degree for the decision maker and are only subject to challenge on public law grounds;***

***(6) Whether or not a planning policy addresses a planning consequence of the loss of an existing use is relevant to, but not determinative of, an issue under (4) above.”***

#### *Impact of the Amalgamation on amenity*

The Amalgamation would not result in any material change in the amenity character of the use of the Property which would remain in residential use.

The level of occupation would be likely to be subject to only minimal variation given the limited change in the number of bedrooms. The Property would continue to be served by the existing two ground floor entrances. Although, the main front door facing Bisham Gardens would be the principal means of entry and exit to and from the dwelling, the close proximity of this door to the side door which currently serves the upper floor unit would ensure no material change in the location of arrivals and departures in comparison to the existing arrangements.

Given the above, and the absence of any proposed change to the external appearance of the Property, the Amalgamation would have no impact on the character or appearance of the Conservation Area.

#### *Impact of the Amalgamation on other planning purposes*

Turning to the impact of the Amalgamation on other planning purposes, the starting point is the policy position, as set out in both the London Plan (2021) and the Camden Local Plan (2017). Taken together, these two documents comprise key components of the statutory development plan for the area. Both adopted plans contain policies which are of direct applicability to the proposed Amalgamation of the Property.

London Plan Policy H8 states that the loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace.

Camden Local Plan Policy H3 states the Council will aim to ensure that existing housing continues to meet the needs of existing and future households by, inter alia, resisting

development that would involve a net loss of residential floorspace, and resisting development that would involve the net loss of two or more homes.

The Amalgamation would not result in a material reduction in residential density. Moreover, with regard to directly-applicable Camden Local Plan Policy H3, the Amalgamation would not result in either a net loss of residential floorspace or the net loss of two or more homes. Furthermore, the accommodation within the Property would continue to offer a family-sized dwelling.

For the above reasons, the Amalgamation would not have a significant planning consequence in terms of the LPA's objectives for the protection of existing housing. This position is reinforced by Camden's latest Authority Monitoring Report which indicates that the Council expects to exceed its 5 year housing supply target in the context of the ongoing operation of applicable Local Plan policies including Policy H3.

#### Other decisions

It is also noted that the LPA has recently issued various (existing and proposed) LDCs for the amalgamation of dwellings in the borough. Examples include the following:-

| <b>Application reference</b> | <b>Property address</b>                             | <b>Development description</b>   |
|------------------------------|---|--|
| 2019/4264/P                  | 21 Gascony Avenue<br>London NW6 4NB                 | Amalgamation of two flats into single dwelling house (Class C3)  |
| 2020/2970/P                  | Flat A 78 Belsize Park<br>Gardens London NW3<br>4NG | Continued use of the property as a single residential unit following the amalgamation of 3 flats (Use Class C3). |
| 2020/3286/P                  | 9 Evangelist Road<br>London NW5 1UA                 | Amalgamation of 2 self-contained flats into a single dwellinghouse(Use Class C3)                                 |
| 2020/5030/P                  | 7 Well Road London<br>NW3 1LH                       | Amalgamation of 2no flats into a single residential unit (Use Class C3).   |
| 2021/0585/P                  | 46 Gayton Road London<br>NW3 1TU                    | Amalgamation of 2 flats into a single dwellinghouse (Class C3).  |

#### Conclusion

For the reasons set out above, the proposed Amalgamation of the Flats to form a single dwellinghouse would not amount to a material change in the use of the Property, and planning permission would therefore not be required. The LPA is requested to issue the LDC at the earliest opportunity.

We look forward to the early and favourable determination of the application. In the meantime, if the case officer requires any further information or needs to arrange a site inspection, please do not hesitate to contact us.

Yours faithfully,

*Christopher Wickham Associates*

**CHRISTOPHER WICKHAM ASSOCIATES**

c.c. Ms Jana Sadler-Forster