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Town Planning Consultancy

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Date: 10th March 2022

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 76 SOUTH HILL PARK, LONDON NW3 2SN
LAWFUL DEVELOPMENT CERTIFICATE APPLICATION – PROPOSED USE
PLANNING PORTAL REFERENCE: PP-11094670

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 Flat C (ground floor level) and Flat D (basement and lower basement levels) to form a single self-contained maisonette at lower basement, basement and ground floor levels. The application is made by the Estate of Mr John Littler (deceased).

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

- The site location plan on which the application site is edged in red;
- Existing lower basement, basement and ground floor plan nos. EX-01, EX-02 and EX-03; and
- Proposed lower basement, basement and ground floor plan nos. P-01, P-02 and P-03.

Please note that no change is proposed to the external appearance of the Property, and none is shown on the proposed 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 west side of South Hill Park, and is occupied by a four storey (plus a basement and small lower basement) terraced property ("the Property") which would appear to be of post-war origin, constructed probably in replacement of an earlier building following WW2 bomb damage.

The Property is currently sub-divided into four self-contained dwellings known as Flats A, B, C and D. Flat A, located on the upper two floors of the Property, and Flat B, located on the first floor of the Property, do not form part of this application.

Flats C and D ("the Flats"), the subject of this LDC application, comprise (i) a one bedroom flat at ground floor level (Flat C), and (ii) a one bedroom flat at lower basement and basement levels (Flat D). The lower basement element of Flat D is located within a 'garden room' that projects beyond the main rear wall of the Property.

South Hill Park is a residential street that forms part of a controlled parking zone, and which is located within the South Hill Park Conservation Area ("the Conservation Area").

Relevant planning history

Planning permission was refused on 8th October 1991 (ref: 9100755) for the '*conversion of 3 storey maisonette to form self contained flat at first floor and basement and ground floor maisonette plus erection of rear conservation at ground and first floor together with the addition of front porch and other minor alterations*'.

Planning permission was granted on 5th June 1992 (ref: 9200099) for the '*change of use and conversion of the top floor of the existing 3 storey maisonette at basement ground and first floor levels to a self contained flat including enlargement of the exist window opening to the rear elevations to stairs bin storage and front canopy*'.

Planning permission was granted on 7th July 1995 (ref: 9500317) for '*works of alteration to rear elevation including the enclosure of part of the lower ground floor and the formation of a garden level room below the existing garden terrace*'.

Planning permission was refused on 19th February 1997 (ref: PW9702002) for the '*change of use of works of conversion to form one self- contained flat at each of ground and lower ground floor levels*'.

Planning permission was granted on 16th July 1997 (ref: 9702376) for the '*the change of use of the existing two bedroom maisonette at lower ground and ground floor levels to a self-contained three bedroom flat at lower ground floor level and a self-contained one bedroom flat at ground floor level, together with the erection of a single storey extension at rear garden level*'. This permission would appear to have been implemented although the lower unit (Flat D) does not appear to have ever included three bedrooms.

No other relevant planning history, including any planning enforcement 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.

The Amalgamation would comprise some limited internal works to provide an internal staircase link between the Flats. No changes are proposed to the external appearance of the Property.

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 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 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 ground floor entrance, and there would therefore be 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 any loss of residential floorspace, or in a material change in residential density. The Flats currently comprise five habitable rooms including (currently) two bedrooms, and the Amalgamation would result in a single unit with five habitable rooms including three bedrooms. Moreover, with regard to directly-applicable Camden Local Plan Policy H3, the Amalgamation would not result in a net loss of two or more homes, and there has been no previous amalgamation of units within the Property. The Amalgamation would also create a larger dwelling, better suited to occupation by a large household including a family with children.

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:-

Application reference	Property address	Development description
2019/4264/P	21 Gascony Avenue London NW6 4NB	Amalgamation of two flats into single dwelling house (Class C3)
2021/5301/P	7 Adamson Road London NW3 3HX	Amalgamation of two flats into one at lower ground floor level.
2020/3286/P	9 Evangelist Road London NW5 1UA	Amalgamation of 2 self-contained flats into a single dwellinghouse(Use Class C3)
2020/5030/P	7 Well Road London NW3 1LH	Amalgamation of 2no flats into a single residential unit (Use Class C3).
2021/0585/P	46 Gayton Road London 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 Rachel Hunt, the Estate of Mr John Littler (deceased)