

Date: 4 October 2022

24 Southwark Bridge Road
London
SE1 9HF

T 0203 268 2018

Planning Department
London Borough of Camden
Crowndale Centre
218 Eversholt Street
Somers Town
London
NW1 1BD

Dear Sir/Madam,

**Re: 127 Fordwych Road NW2 3NJ
Certificate of Lawfulness for Proposed Use**

We write in support of an application by [REDACTED] for a Certificate of Lawful Proposed Use for the use of the lower ground floor level of 127 Fordwych Road as an extension of the existing ground floor dwelling.

This letter sets out the background to the proposal, before detailing why a Certificate of Lawfulness should be granted.

Background

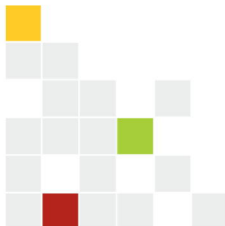
The Site is 127 Fordwych Road NW2 3NJ; a 3-storey semi-detached former house built during the late 19th century over four floors (lower ground, ground, first and second).

The Site is now arranged as three self-contained flats with one on each of the upper ground, first and second floors. The lower ground floor is used as ancillary storage space for the occupants of the flats.

The Applicant is the owner of the upper ground floor flat and the lower ground floor plot.

There is no record of any planning permission to convert the former house into flats which we expect took place some time in the mid-20th century and is lawful by virtue of being in existing for more than 4 years. The Council has been aware of this arrangement as flats since at least 1995 when it refused an application (ref: PL/951250) on 8 December 1995 to convert the basement into a separate self-contained flat.

A further application was made in 2020 (ref: 2020/5541/P) for alterations and extensions to facilitate conversion of the lower ground floor to a self-contained flat. That application was withdrawn. Recognising this history and the absence of any allegation of unlawful use of property as flats we consider the Council accepts the existing arrangement is lawful as 3no. self-contained flats (Class C3).



This history also demonstrates that the lower ground floor which was part of the original dwellinghouse was also originally in Class C3 use, and that it remains in that use albeit on an ancillary basis being used as storage for the dwellings above.

The Proposed Use

The use for which a Certificate of Lawful Proposed Use is sought is the use of the lower ground floor as additional habitable living accommodation in connection with the existing upper ground floor flat.

Drawings by Steven Adams Architects are submitted with the application that indicate the existing and proposed layouts. They show an internal staircase being installed to connect the existing upper ground floor to the lower ground floor space and the use of that lower ground floor space as a bedroom and other ancillary spaces.

No new dwellings would be created and no dwellings would be lost; the property would remain in use as 3 no. self-contained flats (Class C3).

No external alterations are currently proposed although it may be that a householder planning application is made in future for the installation of windows and/or other extensions and alterations.

Assessment

We consider the proposed use does not constitute development under The Town and Country Planning Act 1990 (as amended) (the 'Act') and therefore a Certificate of Lawful Proposed Use should be granted.

Section 55(1) of the Act, defines "development" in relation to changes of use as "*the making of a material change in the use of any buildings or land*". The key issue, therefore, is whether the use of the lower ground floor space as part of the existing upper ground floor flat would constitute a material change in the use of the land.

Section 55(2)(d) is also relevant in clarifying certain operations or uses of land that shall not be taken to involve development of the land. S55(2)(d) states that "*the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such*".

In this instance both the upper ground floor flat and the lower ground floor space are lawfully in Class C3 use and thus no change of use would take place with respect to The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

As mentioned above there would be no new dwellings created and no dwellings would be lost through the extension of the existing first floor dwelling into the lower ground floor space. On that basis alone we consider the Certificate should be granted.

However and furthermore, we note the use of the lower ground floor as additional living accommodation would not materially change the way the Site is used. It would remain in use as three self-contained flats.

The appeal at 3 Wildwood Grove NW3 7HU (ref: APP/X5210/X/17/3172201, decision issued 15 January 2018) is informative in this case. The appeal was different to the case here, involving the

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amalgamation of two large homes into an even larger home, which would result in the loss of an entire dwelling. The Council argued this change would result in a harmful under-occupation of the Site.

The Inspector first of all noted that planning merits play no part in the determination of an application for a Lawful Development Certificate, which is a fundamental matter and a useful reminder that planning merits should not be considered in this case.

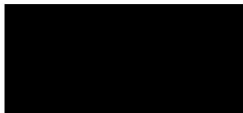
The Inspector also acknowledged that in order for changes associated with the way a building was used to constitute a material change of use, the change *"would have to be such that there was a material difference in the way the property was occupied, and given that the nature of the use remains residential, such a change would have to be quite significant"*. He then found that in that case no material change of use would take place and allowed the appeal.

In this case the change to the way the residential building would be used would be even less significant than in Wildwood Grove. There would be no loss of dwellings and only a very minor increase in the overall usable habitable space at the site, which would remain in use as three self-contained flats. Whilst it is feasible the additional habitable space may enable one or two more occupants to live at the Site this would not be a "quite significant" change to the way the Site is used, and less change to the use than was allowed at Wildwood Grove.

Conclusion

For the reasons set out above we consider a Certificate of Lawful Proposed Use should be granted for the use of the existing lower ground floor (Class C3) as an extension to the existing upper ground floor flat (Class C3). No material *"change in the use of any buildings or land"* (s55(1)) would take place, the proposed use being for a *"purpose incidental to the enjoyment of the [upper ground floor] dwellinghouse"* (s55(2)).

Yours sincerely,



Tel:

Email:



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