
OUR REF: 3399

PLANNING STATEMENT

Application for a Lawful Development Certificate under Section 192 of the Town and Country Planning Act 1990 to confirm that the amalgamation of 23 and 24 Lisle Close (with no alterations to any external walls or openings) to form a single residential dwelling, does not amount to 'development' for which planning permission is required.

23 and 24 Lisle Close, Chalk, Kent, DA12 4XH

September 2021

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Appendix A: No longer required

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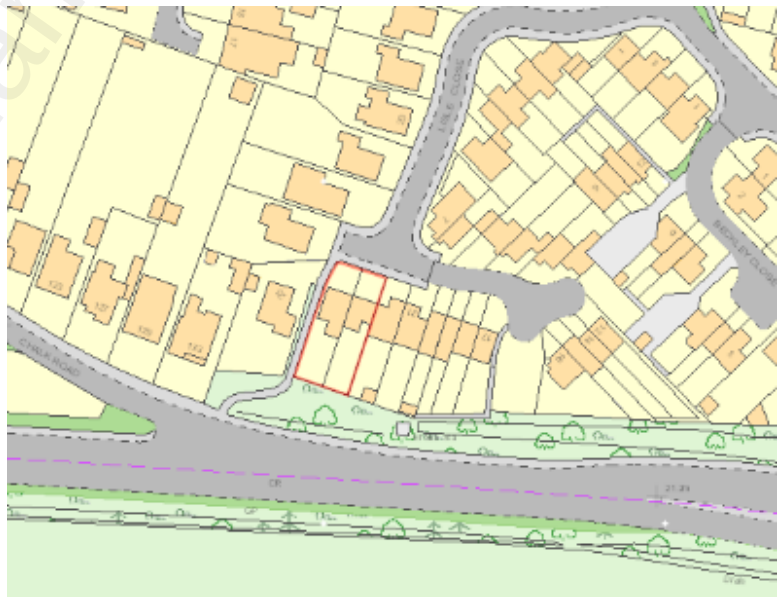
Appendix D: 3172201 Appeal Decision Notice

1.0 PROPOSAL

- 1.1 This statement is prepared in support of an application for a Certificate of Proposed Lawful Use or Development under Section 192 of the Town and Country Planning Act 1990, which seeks to confirm that the amalgamation of two semi-detached dwellings (23 and 24 Lisle Close) does not amount to ‘development’ for which planning permission is required.**
- 1.2** 23 and 24 Lisle Close are a pair of semi-detached dwellings on a modern housing estate erected in the early 1980’s. No external works are proposed as part of the amalgamation of the two dwellings and both front doors will remain. It is proposed to insert openings in the internal dividing walls (in the respective hallways of both dwellings) between numbers 23 and 24 Lisle Close (one at ground level and one at first floor level) to enable two properties to be used as one. It is also likely that one staircase will be removed.
- 1.3** These internal works do not amount to ‘development’ that requires planning permission. Furthermore, the amalgamation of the two units to form a single property does not constitute a material change in use. Planning permission is not, therefore, required for this element of the proposal either.
- 1.4** This application seeks a grant of certificate of lawfulness to confirm that the council agrees with this position. **The application seeks to confirm that the amalgamation of numbers 23 and 24 Lisle Close (with no alterations to any external walls or openings) to form a single dwelling, is lawful.**

2.0 Site Location and Description

- 2.1** The site is located on a modern housing estate in Chalk, abutting the urban area of Gravesend and incorporated into the ‘urban area’ on the Gravesham Local Plan Core Strategy Policies Map (September 2014). It is located to the north of the A226 which connects Gravesend to Higham and the A289 junction at Gad Hill Farm to the south east. Lisle Close is accessed from Filborough Way.



3.0 Description (and planning history) of the dwellings to which the application relates

- 3.1 23 and 24 Lisle Close are a pair of semi-detached dwellings, constructed in red brick with concrete roof tiles. The ridge line and floor levels of number 24 is a little higher than number 23 in response to the topography of the locality.



- 3.2 Each dwelling was constructed with a garage to the side and additional parking to the front of the garage. In 2005, planning permission (20051076) was granted at Number 24 to replace the original garage with a two-storey side extension to form a garage and study at ground floor level, with bedroom, bathroom and shower room at first floor level. Planning permission is required for any development that would preclude the parking of cars in the garages and the parking spaces in front.
- 3.3 Number 23 has two bedrooms and number 24 has three bedrooms. The dwellings are modest in size. Excluding the garages, Number 23 has an internal floor area of 53 sqm and number 24 has an internal floor area of 94 sqm (due to an additional extension and conservatory). The floor area of number 23 is significantly less than the minimum space standards for 2 bed, 3 person and 2 bed, 4 person homes (which have a minimum requirement of 70 sqm and 79 sqm respectively). Such a dwelling is unlikely to be permitted today.

4.0 Gravesham Planning Policy

- 4.1 **Policy CS02 (Scale and Distribution of Development)** explains that the Council's strategy is to retain and improve the existing stock of housing. **Policy CS14 (Housing Type and Size)** gives more information and specifies that the council will '*protect the mix of housing in the existing housing stock and will resist the conversion of family size residential units to smaller properties*'. This policy illustrates that it is the subdivision of existing dwellings that requires a policy response, and not the amalgamation of two dwellings. This is reinforced by the supporting text to the policy which refers to the need to protect family sized housing. If the council wishes to resist the amalgamation of housing units, then the policy would logically have said so.
- 4.2 **Policy CS15 (Housing Density)** seeks to ensure good design, and making an efficient use of land. **Policy CS19 (Development and Design Principles)** seeks to ensure that development accords with adopted Residential Layout Guidelines. The Council website explains that the Government's Nationally Described Space Standards supersede these guidelines. As set out in paragraph 3.3, number 23 Lisle Close does not satisfy the space Nationally Described Space

Standards. **Policy H5 (Increasing the housing stock by the conversion of existing buildings) of the Gravesham Local Plan First Review (1994)** focuses on the subdivision of existing dwellings in suitable locations.

- 4.3 The emerging Local Plan Regulation 18 Development Management Policies (2020) does not mention amalgamation of dwellings. Instead, **Policy RES5 (Residential Intensification through Sub-division and Conversion)** focuses on the anticipated pressure for more intensive residential intensification through subdivision and avoiding the loss of family sized dwellings (defined as up-to-four bedrooms). As has been discussed elsewhere in this statement, the small size of 23 Lisle Close means that it would be unsatisfactory to argue that it was a family sized dwelling. Paragraph 9.5.12 recognises the need for larger dwellings for multi-generational extended families.
- 4.4 Furthermore, even if a future policy did seek to resist the loss of dwellings to amalgamation, it would inevitably exclude dwellings which did not meet minimum space standards. Number 23 does not even meet national space standards for a 1 bed 2 person dwelling.

5.0 ASSESSMENT AND JUSTIFICATION

- 5.1 There are two matters for the Council to consider:

- a) Do the wholly internal alterations to amalgamate the two dwellings amount to development which requires planning permission?
- b) Does the amalgamation of numbers 23 and 24 Lisle Close to form one residential unit constitute a material change of use of the land for which planning permission is required?

Do the wholly internal alterations to amalgamate the two dwellings amount to development which requires planning permission?

- 5.2 Planning Permission is only required for alterations to a dwelling where these works constitute development as defined by Section 55 of the Town and Country Planning Act 1990. Section 55(2) specifically excludes the following:

(2) 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, and are not works for making good war damage or works begun after 5th December 1968 for the alteration of a building by providing additional space in it underground;*

- 5.3 **All the proposed work to the building are internal, and would not have a material impact on the external appearance of either 23 or 24 Lisle Close.**

Does the amalgamation of numbers 23 and 24 Lisle Close to form one residential unit constitute a material change of use of the land for which planning permission is required?

- 5.4 The creation of openings on internal walls and the use of 23 and 24 Lisle Close by a single family would result in one residential property in place of the existing two dwellings.
- 5.5 Section 55 (2) of the Town and Country Planning Act excludes the following from the definition of development:
- “in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.”*
- 5.6 This means that a change in the primary use of land or building is not development if the before and after use falls within the same use class. This is interpretation described in the NPPG Paragraph 001 Reference 13-001-20140306. The use before and after the development falls within the use Class C3.
- 5.7 Section 55(3) makes a relevant clarification stating:
- “(a) 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;”*
- 5.8 It is relevant that the opposite situation (amalgamation) is not mentioned even though it would have been simple to do so.
- 5.9 Section 55(1) states that development means, amongst other things, the making of a material change in the use. It is commonly considered to be the case that the amalgamation of two residential units in the same use class does not represent a material change in the use of the land and as such is not development that requires planning permission. Unlike London, in Kent amalgamation of two dwellings is unusual, because house values would normally dictate that it is cheaper to simply purchase a larger house. A search of public access planning application databases in Kent reveals very few examples. The most recent example identified was a 2019 (19/501064/LAWPRO) application in Faversham (see Appendix B) and the officer made the following statement in his report despite a substantial housing supply shortfall:
- “As noted above, the changes made to the property would be internal only, and I am of the opinion that the proposal to combine two properties already in the same Use Class into one property in the same Use Class would not create a material change to the building, especially as there is no local policy which aims to restrict such conversions. The building has lawful C3 use already, and the amalgamation of two units to form one would make no difference to that use whatsoever, and it would produce no effect at all”.*
- 5.10 Land values and housing pressure in London, however, created a situation where in the late 1990’s amalgamation of dwellings was considered by some boroughs to have an impact on housing targets. In the year 2001, a case known as *Richmond-upon-Thames LBC v SSETR* [2001] (for the conversion of a property in use as 7 flats to one dwelling) made an

unusual decision to conclude that housing need (where it was supported by local plan policy) was a material consideration.

- 5.11 A second high profile case (Kensington and Chelsea RBC v SSCLG & Reis & Tong [2016] EWHC 1785 (Admin) (Kensington)) considered the amalgamation of two flats. This Judgement stated the following:

“In the present case, the Council has reached the view at officer level that the rate at which the housing stock is decreasing in the Borough through amalgamations is jeopardising the achievement of housing targets, which targets have been increased since the adoption of the relevant Local Plan policies. The Council rightly says that the mere absence of any policies in the existing Local Plan to deal with those circumstances is not a sufficient basis in itself for concluding that they are of no significance to the application of planning control. In my judgment, it is plain that the Inspector, in his decision, did not get as far as considering issues of this kind because he wrongly treated the absence of policy support as determinative of the issue he was obliged to decide under section 55(1).”

- 5.12 Lawful development Certificate decisions do not normally take account of planning merit, and it is widely considered unfortunate that the Richmond decision was not challenged. The precedent for legal principle has nevertheless been established in the Courts. Parliament has never, however, amended the 1990 Act in response to that decision and that it relevant. It is therefore still the case that the amalgamation of two units does not always amount to a material change of use. **It would not be correct to assume that planning permission is always required for the amalgamation of two residential units.** Determination is based on ‘fact and degree’ arguments in any given case relating to the extent to which the loss of a single unit is ‘material’. The London Borough of Camden has granted 5 LDC’s for the amalgamation of two units this year (see example 2021/1098/P at Appendix C) and a further two have been submitted. Their approach resulted from an Appeal Decision APP/X5210/X/17/3172201 (Appendix D) which determined that the amalgamation of two units was not a material change of use.

- 5.13 Graham Simpkin Planning do not believe that a material change of use has occurred in this case for the following reasons:

Character of the site: The use of 23 and 24 Lisle Close as a single dwelling would be imperceptible. There would be no significant change to the appearance of the site or the nature and scale of activities.

Housing supply: Although there is an existing housing need (and an absence of a 5-year housing land supply), the loss of one housing unit **in this case** would not have significant housing consequences such that the change of use would be material at the District level. This is for the following reasons:

- a) The council has in its emerging (Regulation 18) Local Plan included a policy relating to the subdivision of existing homes (Policy RES5 Residential Intensification through Sub-division and Conversion) in order to resist the loss of family housing. Had the council been concerned about the impact of amalgamation, a suitable policy would be proposed.
- b) Noting the Council’s focus on retention of family housing, the current proposal will create one large family unit from two. It would not be

appropriate for the council to resist the loss of 23 Lisle Close as a family unit. This is because the property does not satisfy Nationally Described Housing Standards for a 2-bedroom home, or even a 1 bed 2 person home.

- c) 23 Lisle close is not suitable for use as a family unit. As a 4 / 5 bedroom home (when combined with number 24 Lisle Close) the dwelling will be available for larger or multigenerational families. The emerging local plan recognises (at paragraph 9.5.12) the potential for multi-generation living to increase, and observes that the proportion of four + bedroom properties is small.
- d) The occurrence of applications for the amalgamation of two dwellings in the Gravesham borough is very small indeed and is not reported in the council evidence base for the emerging local plan. In the January 2021 Five Year Housing Land Supply statement only one application is reported with a single dwelling loss. No other losses identified through discussions with Council Tax are reported in the report. There has not been an Annual Monitoring report published since 2016/17 and there is no evidence that the amalgamation of two dwellings to create one is having a material impact on housing supply at the borough level. **Such an activity is truly at the periphery of housing supply and will not materially impact the Borough's housing stock nor impact the ability of the council to meet its housing targets.**

6.0 Conclusion

- 6.1 This application has sought to confirm, through the Grant of a Certificate of Lawfulness that planning permission is not required to occupy numbers 23 and 24 Lisle Close as a single residential dwelling (C3).
- 6.2 There are no external alterations to any external wall or openings.
- 6.3 The amalgamation of two dwellings into one is not specified as 'development' in Section 55 of the Town and Country Planning Act 1990. Although Judgements in the High Court have identified that housing supply might be a material consideration, it is evident that the amalgamation of two units into one is not an identified issue of concern in the Gravesham Borough. The loss of one unit is at the periphery of housing supply and will not materially impact the Borough's housing stock nor impact the ability of the council to meet its housing targets. As a result, the emerging Local Plan does not suggest a Policy which would resist such changes. It seems to be an issue more relevant to London Boroughs.
- 6.4 Finally, it is important to observe that the Nationally Described Housing Space Standards are not met at number 23 Lisle Close. This is a material consideration and even if there was a policy resisting amalgamation of two units, the council would be unlikely to seek to resist the loss of a sub-standard dwelling. The loss of a single substandard unit would not have a material impact on housing supply, and in this case it is argued that the amalgamation of 23 and 24 lisle close is not a material change of use. It is not development in this case.

- 6.5** Finally, on submitting this application it was noted that on 'residential' fees, there is no suitable planning fee to select. The planning portal only recognises subdivision as a potential development. This supports the argument that the proposal is 'not development'.