



Delegated Report

Lawful Development Certificate (Proposed)

Application no: 20211155

Location: 23 and 24 Lisle Close Gravesend Kent DA12 4XH

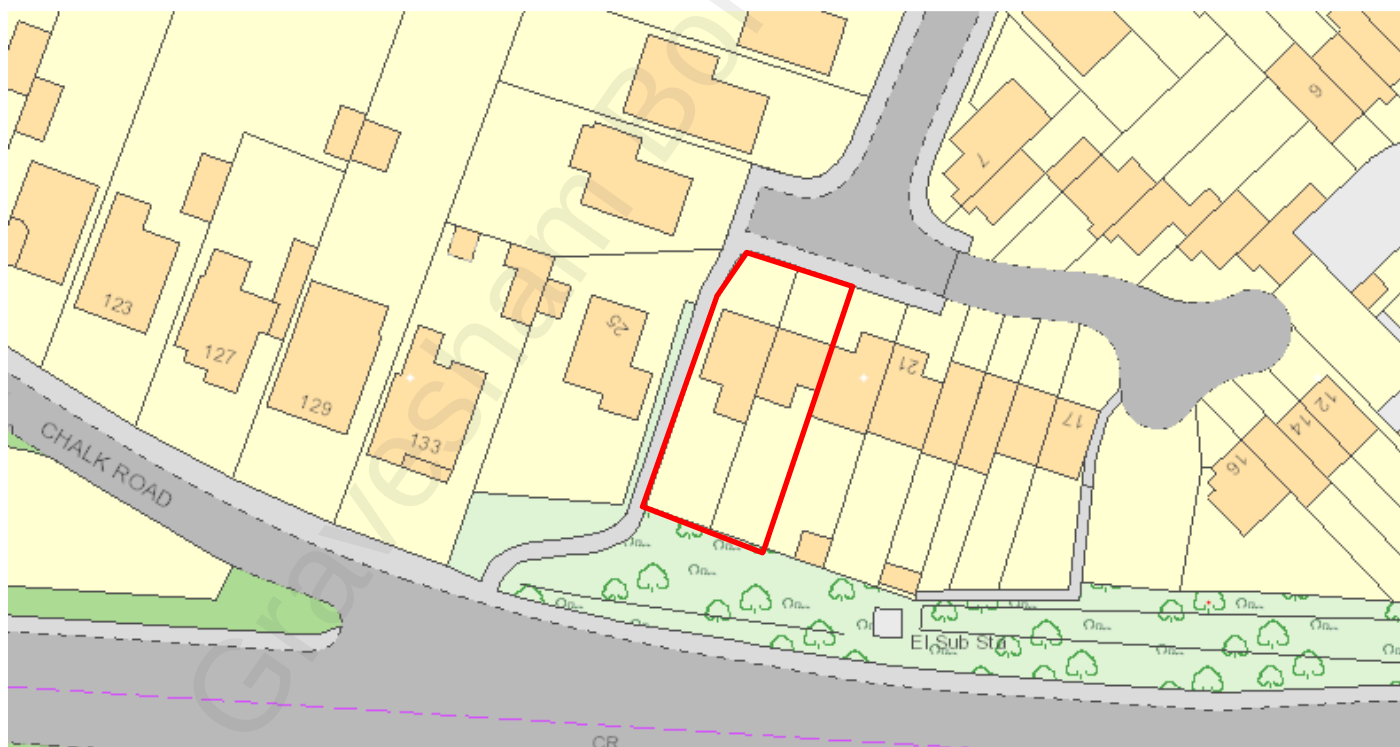
Description: Application for Lawful Development Certificate for proposed conversion of the properties into one single dwelling, with no alterations to any external walls or openings.

Applicant: Alan and Jan Stopford

Site Visit Date: Desktop only

Site and Surroundings

23 and 24 Lisle Close (see red line site plan below) are a pair of semi-detached dwellings on a modern housing estate built in the early 1980's by McLean Homes. Lisle Close is a cul de sac accessed from Filborough Way.



They are constructed in red brick with concrete roof tiles. The ridge line and floor levels of number 24 are a little higher than number 23 in response to the topography of the site. Number 24 Lisle Close has been extended at the side but with a lower roof than the main roof.

Each dwelling was constructed with a garage to the side and additional parking to the front of the garage.

Number 23 Lisle Close has two bedrooms and number 24 has three bedrooms. Number 23 has an internal floor area of 53m² and number 24 has an internal floor area of 94m² (due to an additional extension and conservatory). They were originally the same house type when the estate was first built.



Submitted Plans & Documents

Application Form;
Drawing No 3399 01 Rev A: Site Location Plan;
Drawing No 3399 02 Rev A: Existing and Proposed Block Plan;
Drawing No 3399 03 Rev C: Existing Floor Plans;
Drawing No 3399 04 Rev B: Indicative Proposed Floor Plans;

Planning Statement (ref 3399) by Graham Simpkin Planning September 2021;
Appendix B: Swale LDC (ref 19/501064);
Appendix C: Camden LDC (ref 2021/1098/P);
Appendix D: Camden Appeal Decision Notice (ref APP/X5210/X/17/3172201)

Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Relevant Planning History

Planning Applications

Ref No	Description and Site	Decision	Date
19790776	Erection of 103 houses with garages and laying out of estate roads.	Permission	15.11.1979
19820289	Erection of 115 houses, 15 bungalows, 108 garages and provision of 152 parking spaces and laying out of estate roads.	Permission	09.06.1982

19820289	Submission of details of external materials, landscaping	Approved	25.05.1983
20051076	Erection of two storey side extension to form a garage and study at ground floor level with bedroom, bathroom/wc and en-suite shower room/wc at first floor level (at 24 Lisle Close).	Permission	17.01.2006

Pre-Application Advice

PRE20210001: Combining two units into one at 23-24 Lisle Close. Advised that planning permission is required 21.05.2021

Development Plan Policy and Other Material Planning Considerations

Note: Whilst an application for a Lawful Development Certificate is judged in relation to law rather than planning policy or planning merits the following text below provides the planning policy background although it should be recognised that not all the policies are necessarily relevant to the determination as to whether the change of use is material.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The Courts have held that it is a matter of planning judgement as to whether a proposal is in accordance with the development plan when 'read as a whole' and conflict with a particular policy or policies may not pass that threshold.¹

Where there are other material considerations, the development plan should be the starting point, and other material considerations should be taken into account in reaching a decision. One such consideration will be whether the plan policies are relevant and up to date.

In this instance the Development Plan for Gravesham currently comprises: -

- *The Gravesham Local Plan Core Strategy (September 2014);*
- *Remaining Saved Policies of the Local Plan First Review (1994); and*
- *The Kent Minerals and Waste Local Plan 2013 - 2030 (2016, revised 2020)*

There are a number of other planning policy documents which are of some relevance to the consideration of planning applications and are material considerations, including national planning advice and guidance in the National Planning Policy Framework (NPPF), the National Planning Practice Guidance (NPPG), and supplementary planning guidance and where they exist neighbourhood plans. There are currently no relevant neighbourhood plans.

Previous decisions on planning applications and appeals relating to the site and relevant case law etc. are also capable of being material considerations.

Local Planning Guidance

Gravesham Local Plan Core Strategy, September 2014

The Core Strategy sets out the Council's spatial vision and strategic objectives for the Borough to 2028 and the policies which will deliver them. It identifies the main areas where major change is likely to take place and allocates sites which are key to achieving the strategy.

The application site is shown as being within an **urban area** (Policy CS02) as defined in the Gravesham Local Plan Core Strategy Policies Map.

¹ See the Judgement in the Court of Appeal on R(on the application of William Corbett) and The Cornwall Council and others [2020] EWCA Civ 508 at <https://www.bailii.org/ew/cases/EWCA/Civ/2020/508.pdf>

The following development plan policies in the Gravesham Local Plan Core Strategy are of relevance to the consideration of this application.

Core Strategy Policy CS01: Sustainable Development
Core Strategy Policy CS02: Scale and Distribution of Development
Core Strategy Policy CS14: Housing Type and Size
Core Strategy Policy CS15: Housing Density
Core Strategy Policy CS19: Development and Design Principles

Gravesham Local Plan First Review 1994

The Gravesham Local Plan First Review was originally adopted in November 1994.

A substantial number of policies of the Gravesham Local Plan First Review were saved by a Direction dated 25 September 2007 of the Secretary of State under paragraph 1 (3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 as transitional arrangements pending adoption of the Core Strategy.

Saved policies contained in the Gravesham Local Plan First Review should still be accorded significant weight, albeit that the weight accorded should be greater where policies are consistent with the National Planning Policy Framework (NPPF, paragraph 219).

Those Local Plan First Review policies that remain in force are listed in Appendix 1 of the Local Plan Core Strategy. The remaining saved policies will be replaced following the adoption of the Site Allocations and Development Management Policies Development Plan Document.

The following remaining saved policies are relevant to the consideration of this application:

Policy H5: Increasing the housing stock by the conversion of existing buildings

Review of the Local Plan

Paragraph 33 of the NPPF (2021) sets out those policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and it found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02 due to the increased need for housing since adoption and the need to ensure a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan First Review (1994) generally conform with the National Planning Policy Framework (2021), the Council will also seek to replace these in due course.

Gravesham Local Plan Regulation 18 Stage 2 Consultation Part 2: Draft Development Management Policies Document October 2020

The Council published in 2020 a Regulation 18 (stage 2) consultation on its proposed Development Management Policies Document, replacing the 2018 Stage 1 version, which will in due course form part of and update the Gravesham Local Plan. Under paragraph 48 of the NPPF 2021, policies in this document may be accorded weight in the decision making process with this varying according to its stage of preparation; the extent to which there are unresolved objections; and the degree of consistency of policy with those in the Framework. As the Development Management Policies Document is at an early stage and the fact that the consultation has only recently concluded, the policies therein should at this stage be given very limited weight. It should be noted, in any event, that many of the relevant policies reflect those set out in the Framework and for the purposes of this application these should be relied on instead.

The following draft policies from the Regulation 18 (Stage 2) Development Management Policies Document (2020) show the direction of travel the Council is going and are considered as being relevant to the consideration of this application albeit the weight that these emerging policies may be accorded at this stage is very limited:

Proposed Policy RES 2: Residential Space Standards
Proposed Policy RES5: Residential Intensification through Sub-division and Conversion

The National Planning Policy Framework (NPPF)

The National Planning Policy Framework (NPPF) July 2021 is a material consideration.

At the heart of the NPPF is a presumption in favour of sustainable development (paragraph 11) which means approving development proposals that accord with the development plan without delay and where there are no relevant development plan policies or where the policies are out of date planning permission should be granted unless policies of the Framework provide a clear reason for refusing the development such as where land is designated as Green Belt or any adverse impacts would so significantly and demonstrably outweigh the benefits or specific policies in the NPPF taken as a whole.

The NPPF includes (in paragraph 8) three overarching objectives to achieving sustainable development:

- An economic objective;
- A social objective; and
- An environmental objective.

The following paragraphs are specifically highlighted as being of importance to the consideration of the application proposals, but it should not be taken that these are the only parts of the NPPF that need to be considered.

- Section 2, Paragraphs 7 - 14: Achieving Sustainable Development;
- Section 4, Paragraphs 38 - 59: Decision Making;
- Section 5, Paragraphs 60 - 80: Delivering a sufficient supply of homes;
- Section 12, Paragraphs 126 - 136: Achieving well-designed places;

The National Planning Practice Guidance (NPPG)

Planning Practice Guidance (www.gov.uk) supports and clarifies areas in the NPPF.

The NPPG provides guidance on how a lawful development certificate application is determined. (Paragraph 009 Reference ID: 17c-009-20140306)

Supplementary Planning Guidance and other Documents

The Council has adopted a number of Supplementary Planning Guidance documents, Development Briefs and Conservation Area Appraisals. These elaborate on saved policies in the Gravesham Local Plan First Review and policies in the Gravesham Local Plan Core Strategy and are material considerations in determining planning applications.

In addition, the Council has adopted a number of documents that have been produced by Kent County Council also as Supplementary Guidance.

The following documents are relevant to the consideration of this application:

- Adopted Kent Vehicle Parking Standards (SPG 4 published in 2003 and adopted in 2006);
- GBC Residential Layout Guidelines including Housing Standards Policy Statement October 2015, (SPG2) Adopted February 1996 - amended June 2020;
- Technical Housing Standards: Nationally Described Space Standards, March 2015;
- Householder Extensions/Alterations Design Guide SPD, adopted 01 October 2021;

Consultations, Publicity and Representations

As an application for an LDC, consultations are not normally necessary although in this case Natural England, KCC Heritage and the local Ward Councillor were directly consulted but have not responded.

Legal advice was sought from Medway Council & Gravesham Shared Legal Service and reference is made to that advice within this report.

No neighbour consultation was undertaken or necessary in this case.

Planning Officer Assessment and Analysis

Introduction and Applicants Case

This application is for a Lawful Development Certificate for the proposed conversion of the properties at 23 and 24 Lisle Close Gravesend into one single dwelling, with no alterations to any external walls or openings.

The burden of proof of the lawfulness of the proposed use is on the applicants and the standard of proof is that of the balance of probabilities.

In the planning statement submitted by the applicant's agents (Graham Simpkin Planning) it is indicated that:

- The internal works do not amount to 'development' that requires planning permission.
 - There would be no material impact on the external appearance of either 23 or 24 Lisle Close;
 - Section 55 of the Town and Country Planning Act 1990 indicates that 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, does not involve development
- The amalgamation of the two units to form a single property does not constitute a material change in use.
 - The use before and after is within the same use class (C3). This is interpretation described in the NPPG Paragraph 001 Reference 13-001-20140306;
 - 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;"
 - The opposite situation (amalgamation) is not mentioned;
 - 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;
 - In a case in Faversham Kent in 2019 (ref 19/501064/LAWPRO) 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".
- There would be no impact on the 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;
- There would be no impact on housing supply.

- 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;
 - The occurrence of applications for the amalgamation of two dwellings in the Borough is very small 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;
 - The emerging Local Plan does not suggest a Policy which would resist such changes; there is a policy relating to the subdivision of existing homes in order to resist the loss of family housing but had the
 - Such an activity 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;
 - It seems to be an issue more relevant to London Boroughs;
- Currently one of the houses (23 Lisle Close) does not meet the Nationally Described Housing Space Standards.
 - 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;
 - 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.

Whether the conversion works ('Change of Use') is Development

As a starting point the assessment needs to take into account whether the proposal is development or not.

The Council's legal advice comments:

On the evidence supplied and the wording of the Act, I agree with the applicants' agent that the proposed development does not amount to "development" under s.55 (2) of the Act. However, what is not so clear is whether the proposed development amounts to a "material" change of use, which requires planning permission or whether it is permitted development, (i.e. they claim the development is a change of use within the same use class and therefore does not require permission). In determining whether the change of use is material or not a comparison needs to be undertaken between the current use and the proposed use, the current use is 2 x dwellinghouse by a single household (C3), and the proposed use is the use as a single dwellinghouse by a single dwellinghouse (C3).

The previous LDC decision is useful in your determination, I consider that the other decision is of less use as the issue was part of a larger planning permission and so matters of planning policy were part of the determination. The LDC decision usefully sets out a balanced analysis of the current position and the Richmond case

(<https://uk.westlaw.com/Document/I979C49E0E43611DA8FC2A0F0355337E9/View/FullText.html>) which remains the leading case on this issue. As stated in many commentaries and the extract from the LDC report each case needs to be considered on its merits. It is my view, on the basis of the information supplied, that the certificate can be issued, on the basis that although the proposed development does amount to a change of use (from the premise that it is a change of use of 2 dwellings used by 2 single households to one dwellinghouse to be used by one single household) on the facts I do not consider that it is "material".

I consider that this case can be distinguished materially from the Richmond case as in that case it was 7 units to one, which could be argued as tipping the balance into "material" with the loss of 6 residential units, whereas here it is only the loss of 1 unit, which it is argued falls below the national space standards (I cannot comment as to whether this is actually the case, this is a matter of your planning judgement).

It is considered that the proposal to combine two properties already in the same Use Class into one property in the same Use Class would not amount to a material change to the building. The building(s) has lawful C3 use already, and the amalgamation of two units to form one would make no difference to that use and would still remain in the same Use Class (Class C3 - Dwellinghouses), and specifically Class C3 (a).

In terms of the applicant's argument relating to the size of the two-bed unit not meeting the Nationally Described Housing Space Standards the unit, according to the applicants agent, has a floor area of 53m² and this is 17m² below the minimum standard of 70m² in the national standards.

Permitted Developments Rights Restrictions

It is also necessary to consider whether or not permitted development rights may exist or have been restricted (due to Article 2, Article 4 or by planning conditions) and this is set out in the table below

Article 2 (3) Land (AONB, Conservation Area)	No
Article 4 Direction	No
Permitted Development Rights Removed/Restricted by Condition	Yes

Condition (viii) of the original planning permission for the estate in which these dwellings are located says:

Notwithstanding the provisions of Article 3 of and Class I of Schedule 1 to the Town and Country Planning General Development Order 1977 (as amended) no porch shall be erected outside any front door of any dwelling hereby permitted, and within the areas shown coloured green in plan no. CK 100A dated 15.6.82 deposited with the Borough Council, no enlargement or alteration of any dwelling shall be carried out nor the erection, construction or placing of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse save with the prior permission, in writing, of the District Planning Authority.

Ground: In order to ensure that the orderly layout of the estate is not marred by unsympathetic future alterations to the dwellings, to the detriment of visual amenity.

It has not been possible to locate the relevant plan mentioned in the above planning condition however it is understood that the greater restriction only applied to those properties on this estate that were close to the known archaeological deposits on the site within the north west corner.

Moreover, the Council's legal advice comments:

I do not consider that the condition on the original planning permission is relevant to the determination of this application, as it would not prevent the amalgamation, which does not affect the external appearance, the condition does not prevent internal alterations. As to future works, the 1977 GPDO has been superseded and there is no reference in the condition to the applicability of future amendments to the Order, so it is arguable that the current GPDO would apply.

Details of Similar Proposals and Other Relevant Decisions

Whilst this LDC assessment must be based on fact and degree, reference can be made to two more recent similar applications and their respective decisions within the Borough concerning amalgamation of two dwellings into one unit.

Application ref 20160463

The first was application ref 20160463. This was a planning application for the conversion of two dwellings into one incorporating the erection of a two storey side extension, single storey rear and side extensions and infilling of the two front porches with a new pitched roof over at 1 and 2 Haig Gardens Gravesend Kent granted permission.

The case officer report commented on the principle of the change of use:

Policy CS14 (Housing Type and Size) states that the Council will protect the mix of housing in the existing housing stock and will resist the conversion of family sized residential units to smaller properties. It does not specifically comment on unit amalgamation through the conversion of 2 or more independent dwellings into one residential unit. The development strategy in policy CS02 of the Core Strategy is to retain and improve

the existing stock of housing in Gravesham. Arguably the loss of one residential unit through amalgamation would fail to retain the existing stock in terms of the net loss.

Notwithstanding this it is noted that the proposal retains the building in residential use and although the number of residential units would be reduced from two to one, the size of the building and its retention, keeps open the possibility of subdivision again at some time in the future, should circumstances change.

The development could also be seen to constitute an improvement when the size and type of accommodation is compared; at present the two semi-detached dwellings fails the new national internal space standards (NISS) for a two storey, 3 bedroom 4 person property (existing internal space 72 sq. m per dwelling, 12 sq. m below the 84 sq. m required to meet NISS), while the proposed dwelling would provide a generous 4 bedroom single family dwelling which exceeds local and national space standards. Moreover, the proposal would create a large family sized unit which local policy C14 seeks to specifically protect.

The report concluded:

The proposed change of use from two dwellinghouses to one single family dwelling is considered acceptable. It is within a housing area and would not undermine the mix of housing or character of the area. Moreover the development will provide larger accommodation which local policies specifically seek to protect. The proposal would provide sufficient amenity for future occupiers with and would not have a harmful impact on the amenity of any neighbouring properties. The proposal would retain sufficient off-street parking provision at the premises and providing the conditions are implemented to secure the visual amenity provided by the aspect of the front garden the proposal is considered acceptable and should be approved.

Application ref 20200325

This was an application for a lawful development certificate in respect of the proposed re-categorising of Sole Street House and the Cottage in one single residential dwelling at Sole Street House Sole Street Cobham Gravesend. A lawful development certificate was granted with the officer report concluding that:

The proposed amalgamation of Sole Street House and the Cottage as one single family dwellinghouse, and in the absence of any internal alterations, would not result in a material change of use and is within the same 'Use Class' (C3 Dwelling house) in the Town and Country Planning (Use Classes) Order 1987, as amended, and therefore planning permission is not required and a Lawful Development Certificate can be granted.

The delegated officer report also commented:

Whilst planning permission is needed to convert one dwelling into two or more, it has generally always been the case that the reverse conversion of two dwellings into one would not need permission as it does not result in a material change of use, the use class C3 (dwelling houses) would remain as such. This was because such development does not result in a change in the use class of the property, and planning permission is not required - where two flats are amalgamated into a single dwellinghouse the use class was and remains C3 (dwellinghouses) and internal works (other than in a listed building) do not require planning permission. Although this can never be an easy answer as any associated external works (even in an unlisted building) could arguably require planning permission as technically there are no permitted development rights for such alterations.

Conversely there have been more recent appeal cases where Planning Inspectors have taken a different view. In an unsuccessful appeal against the refusal of the Royal Borough of Kensington & Chelsea to grant a lawful development certificate ("LDC") the Planning Inspector concluded in that particular case that the amalgamation of two flats into one larger flat was development constituting a material change of use for which planning permission was required.

There was also a case of The London Borough of Richmond-upon-Thames v SSETR and Richmond-upon-Thames Churches Housing Trust [2000] 2 PLR 115 which ruled that the "same use class" exception cannot be relied upon in residential amalgamation cases. This is because the wording of the Use Classes Order refers to "a dwellinghouse" i.e. a single dwellinghouse. When two separate dwellinghouses are amalgamated, the "same use class" exception does not apply because the original use of the two units to be amalgamated was not "use as a dwellinghouse".

The Richmond case and the recent Royal Borough of Kensington & Chelsea appeal decision have both held that amalgamation is capable of being a material change of use in planning terms. However, this is not a blanket rule and each case requires assessment on a fact and degree basis against the background of the applicable development plan policy and any other material considerations.

Whilst no floor plans have been submitted, the agent has confirmed by email that no internal works would take place which means the proposal would not affect the special interest of the Grade II listed building.

There appears to have been no separation of the planning unit such as the subdivision of the garden or the creation of separate accesses.

The available evidence leads to the conclusion that the reinstatement of the building as a single family dwelling as just one property (hereditament) does not require planning permission.

Conclusions

It is acknowledged that the potential net loss of a dwelling unit by the proposed amalgamation of these two adjoining dwelling units into one would run contrary to planning policy (CS02 and CS14 of the Gravesham Local Plan Core Strategy) in that it would fail to retain the existing housing stock.

Nevertheless on a fact and degree basis in this case having regard to the applicants evidence, the legal advice offered to the Borough Council, and the examination of planning case law and similar local decisions, it is concluded that on the balance of probabilities the proposed conversion of the properties at 23 and 24 Lisle Close Gravesend into one single dwelling, with no alterations to any external walls or openings, is not development amounting to a material change of use and is within the same 'Use Class' (C3 Dwelling house) in the Town and Country Planning (Use Classes) Order 1987, as amended, and such development is in any event not subject to restrictions removing permitted development rights for such conversion and therefore planning permission is not required and a Lawful Development Certificate can be issued.

RECOMMENDATION:

On the balance of probabilities, the proposed conversion of the properties at 23 and 24 Lisle Close Gravesend into one single dwelling, with no alterations to any external walls or openings, is not development amounting to a material change of use and is within the same 'Use Class' (C3 Dwelling house) in the Town and Country Planning (Use Classes) Order 1987, as amended, and such development is in any event not subject to restrictions removing permitted development rights for such conversion and therefore planning permission is not required and a Lawful Development Certificate can be issued.

INFORMATIVES

1. DECISION PLANS

For the avoidance of doubt, the forms, plans and documents upon which this decision is made comprise:

Application Form;
Drawing No 3399 01 Rev A: Site Location Plan;
Drawing No 3399 02 Rev A: Existing and Proposed Block Plan;
Drawing No 3399 03 Rev C: Existing Floor Plans;
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Recommendation: Grant Lawful Development Certificate

	Name/Signature	Date
Planning Case Officer	Mr Peter Price 	16.12.21
Team Leader	Miss Faye Hobbs 	16.12.21

File Location: F: Plan/Typing/General/Peter/Delegated Reports/Uniform - 20211155 - Delegated Report - 23 and 24 Lisle Close
Gravesend - LDC re proposed conversion of two dwellings into one