

DELEGATED REPORT

Report by Sam Summers	Date of report: 16/10/2024	Ref: 71070/LDCE
Registration: 15/08/2024	LDFC:	Expiry Date: 10/10/2024
Site Visit:	Site Notice: N/A	Press Date: N/A
Objections:	Con Area: N/A	Adv Type: NONE
Reason for Delay: N/A		EIA: NA
		Dec Level: DEL
		Stat Class: MIOT

Proposal: Certificate of Lawful Existing Use for existing amalgamation of 4no. self contained flats to 2no. single dwelling houses

Location: 84 & 86 Church Street West, Radcliffe, Manchester, M26 2SY

Description

Certificate of Lawful Existing Use for existing amalgamation of 4no. self contained flats to 2no. single dwelling houses.

The buildings have been converted from 4no. flats into 2no. dwelling houses. All works to be carried out are internal with no external alterations or extensions proposed. The proposal will result in the loss of two residential units.

Relevant Planning History

37639 - CONVERSION OF TWO VACANT RETAIL UNITS AND FIRST FLOOR ACCOMMODATION TO 4 NO. SELF-CONTAINED FLATS WITH PARKING TO REAR - Approved with conditions

Publicity

None

Statutory/Non-Statutory Consultations

None

Pre-start Conditions - None

Development Plan and Policies

Issues and Analysis

Planning Law and Court Rulings -

Planning legislation states that where development does not result in a change in the use class of a property, planning permission is not required (Section 55(2)f of The Town and Country Planning Act 1990). This would appear to cover the position where two or more units are amalgamated into a single unit. The use class is and remains C3 (dwellinghouses) and proposed internal works do not require planning permission.

However, the case of *The London Borough of Richmond-upon-Thames v SSETR and Richmond-upon-Thames Churches Housing Trust* [2000] 2 PLR 115 and the recent Royal Borough of Kensington & Chelsea appeal decision (3028049) (2016) have 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 in "use as a dwellinghouse".

Without the benefit of the "same use class" exception, the question then becomes, is the amalgamation of two dwellinghouses capable of being a material change of use for which planning permission is required? 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.

Material Considerations -

84-86 Church Street West was converted from retail 2 units with flats above to 4 self contained flats under planning permission reference 37639. In 2022 these 4 flats were converted into 2 dwellings.

The works to carry out the amalgamation from four flats to two dwellings involved only internal alterations and as such the appearance of the properties will not be changed. The resultant dwellinghouses would remain in Use Class C3. Furthermore there would be less impact with the servicing, access and parking on the residential amenity of nearby properties.

The Bury Adopted Unitary Development Plan does not contain policy considerations that specifically prevent the loss of any number of housing units through the granting of other development. As such any loss of housing units would have to be judged on its merits taking into account the requirement of the specific house type in a particular area and or the number of units to be lost, as to the impact on the housing supply as a whole and the local area in particular.

This proposal would lead to the loss of two dwellinghouses. There is no known identified chronic shortage of any particular house type in the area that would be subject to current policy requirements.

As such the proposal does not benefit from the protection of the "same use class" exception as laid down in the Richmond ruling. It is considered for the reasons given above the amalgamation of the four flats into two dwellinghouses would not constitute a material change of use and would therefore be lawful.

Recommendation: LAWFUL

Conditions and Reasons:

- 1 The proposal, described in the First Schedule, is not deemed to constitute development within the meaning of Section 55 of the Town & Country Planning Act 1990 (as amended) as the existing amalgamation of four flats into 2 dwellinghouses would not represent a material change of use from the existing C3 use, and would therefore be Lawful Development.

<u>Case Officer</u>	<u>Date</u>	<u>Sign off Officer</u>	<u>Date</u>
SS	16/10/2024	DM -	17/10/2024