

|                                     |   |   |               |
|-------------------------------------|---|---|---------------|
| CITY OF WESTMINSTER                 |   |   |               |
| PLANNING APPLICATIONS SUB COMMITTEE | Date<br>17 October 2017   | Classification<br>For General Release           |               |
| Report of<br>Director of Planning   |   | Ward(s) involved<br>Knightsbridge And Belgravia |               |
| Subject of Report                   | Flat 11.01, The Knightsbridge Apartments, 199 Knightsbridge, London, SW7 1RH, |   |               |
| Proposal                            | The amalgamation of two residential Units, Flats 11.01 and 11.02.             |   |               |
| Agent                               | Ms Sophie Hinton  |   |               |
| On behalf of                        | Mr Ashley Tabor   |   |               |
| Registered Number                   | 17/06994/CLOPUD   | Date amended/<br>completed                      | 4 August 2017 |
| Date Application Received           | 4 August 2017   |   |               |
| Historic Building Grade             | Unlisted  |   |               |
| Conservation Area                   | No  |   |               |

## 1. RECOMMENDATION

1. Refuse certificate.

## 2. SUMMARY

An application is submitted seeking a Certificate of Lawfulness of Proposed Use or Development for the amalgamation of two residential Units, Flats 11.01 and 11.02 of The Knightsbridge Apartments, 199 Knightsbridge.

The works proposed would amalgamate the two top floor flats of the block through the central link corridor and would combine Flat 11.01, currently comprising 4 bedrooms, and Flat 11.02, comprising 6 bedrooms, and would maintain 10 bedrooms within the amalgamated single unit. There would be no loss of residential floorspace or bedrooms under the proposals, however there would be a loss of one residential unit.

A change from one dwellinghouse to two or more would constitute a material change of use; however, the relevant legislation does not provide guidance on whether the same is true for the reverse. The test therefore is whether the proposed change of use would, as a matter of fact and degree, be 'material' and therefore constitute 'development' under s.55(1) of the Town and Country Planning Act 1990.

The applicant cites two planning decisions within the Knightsbridge Apartments which refer to the amalgamation of units not being considered as constituting development under s.55(1) of the Town and Country Planning Act 1990. Firstly in September 2010, where the City Council granted a Certificate of Lawfulness of Proposed Use or Development for the amalgamation of two residential

units into a single dwelling unit and the removal of front entrance door and replacement with glazing (RN: 10/06205/CLOPUD). Secondly in September 2006, where the City Council considered that planning permission was not required for internal alterations in connection with linking Flat Nos. 124 and 125 at first floor level (RN: 06/06301/FULL).

Since these decisions, the City Council has introduced Policy S14 of the City Plan (adopted in November 2016) which prevents proposals that result in a reduction in the number of residential units, except in certain circumstances, including two flats being joined in order to create a larger family sized (3 bedroom or more) unit. While the current proposal would create a larger family sized dwelling, the policy seeks to protect each individual unit.

Given that Policy S14 serves the express purpose of controlling the merging of any residential units in the City it is a significant material consideration in arriving at a planning decision as to whether the amalgamation of residential units in the City constitutes development.

In this context, the amalgamation of the two existing family sized flats is considered to be a material change of use which would constitute 'development' under s.55(1) of the Town and Country Planning Act 1990. The policy background has changed since the previous decisions in September 2010 and September 2006 cited by the applicant and so the question of whether the amalgamation of units constitutes development cannot be effectively argued from the point of inconsistency.

The applicant has submitted a Legal Opinion from C. Lockhart-Mummery QC, which draws on case law involving the amalgamation of residential units. Firstly, in *The London Borough of Richmond upon Thames v. The Secretary of State for the Environment, Transport and the Regions and Richmond upon Thames Churches Housing Trust* [2000] 2 PLR 115, the matter involved the refusal by the local authority, and subsequent grant on appeal, of a certificate confirming that the change of use of seven self-contained flats into a single dwelling house would be lawful. The Court held that the extent to which a particular use fulfils a legitimate or recognised planning purpose (in terms of a purpose relating to the character of the land), is relevant in deciding whether a change away from that use is a material change of use. The case did not however establish that the mere inclusion of such a "policy" factor meant that there had to be a material change of use, nor that a change of use would necessarily be material if the policy factor was the only factor.

The most recent authority with regards to amalgamation of residential units is the case of *R (Royal Borough of Kensington and Chelsea) v. Secretary of State for Communities and Local Government* [2016] EWHC 1785 (Admin). In this case, the Royal Borough of Kensington and Chelsea relied on the policy factor as the sole determinant of whether planning permission was required. The case concerned the grant of a certificate of lawfulness and planning permission for the amalgamation of two flats. At the time the Royal Borough had a policy resisting the net loss of five or more residential units through amalgamation nevertheless the council was also concerned at the steady erosion of the Borough's net housing stock as existing flats had been joined together to create a smaller number of larger units. In this case the Court held that despite not having a specific planning policy in place, the impact of the loss of a single unit through amalgamation of two units could constitute 'a significant planning consequence'. On that basis the amalgamation of two units was accepted to be a material change of use that would require planning permission.

Following on from this, the applicant's Legal Opinion considers the issue to be 'whether the amalgamation in the present case, involving the loss of a single unit, could reasonably be held to cause significant planning consequences, in the Westminster context.' It is argued that the situation concerning housing supply in Westminster is 'starkly different' to that of Kensington and Chelsea

because the predicted supply in Westminster, as demonstrated in the City Plan, will consistently exceed the London Plan target. The Legal Opinion argues that this is in contrast to Kensington and Chelsea where 'there has been a record of under-delivery against relevant housing targets from the London Plan'. In addition the legal opinion argues that 'there are some 120,000 dwellings in Westminster. The loss of one unit (0.0008%) would be imperceptible. It would be of no planning significance whatever, let alone a matter of "significant consequence"'.

Officers have a different opinion to that presented by the applicant. To achieve and exceed Westminster's London Plan housing targets it is necessary to bring forward new housing as appropriate across the City but also to protect the existing housing stock. The policy framework to protect existing housing is set out in Policy S14 [Optimising Housing Delivery] of the City Plan, adopted November 2016. The policy states that 'The Council will work to achieve and exceed its borough housing target set out in the London Plan....All residential uses, floorspace and land will be protected. Proposals that would result in a reduction in the number of residential units will not be acceptable, except where:

- the Council considers that reconfiguration or redevelopment of affordable housing would better meet affordable housing need;
- a converted house is being returned to a family-sized dwelling or dwellings; or
- 2 flats are being joined to create a family-sized dwelling.

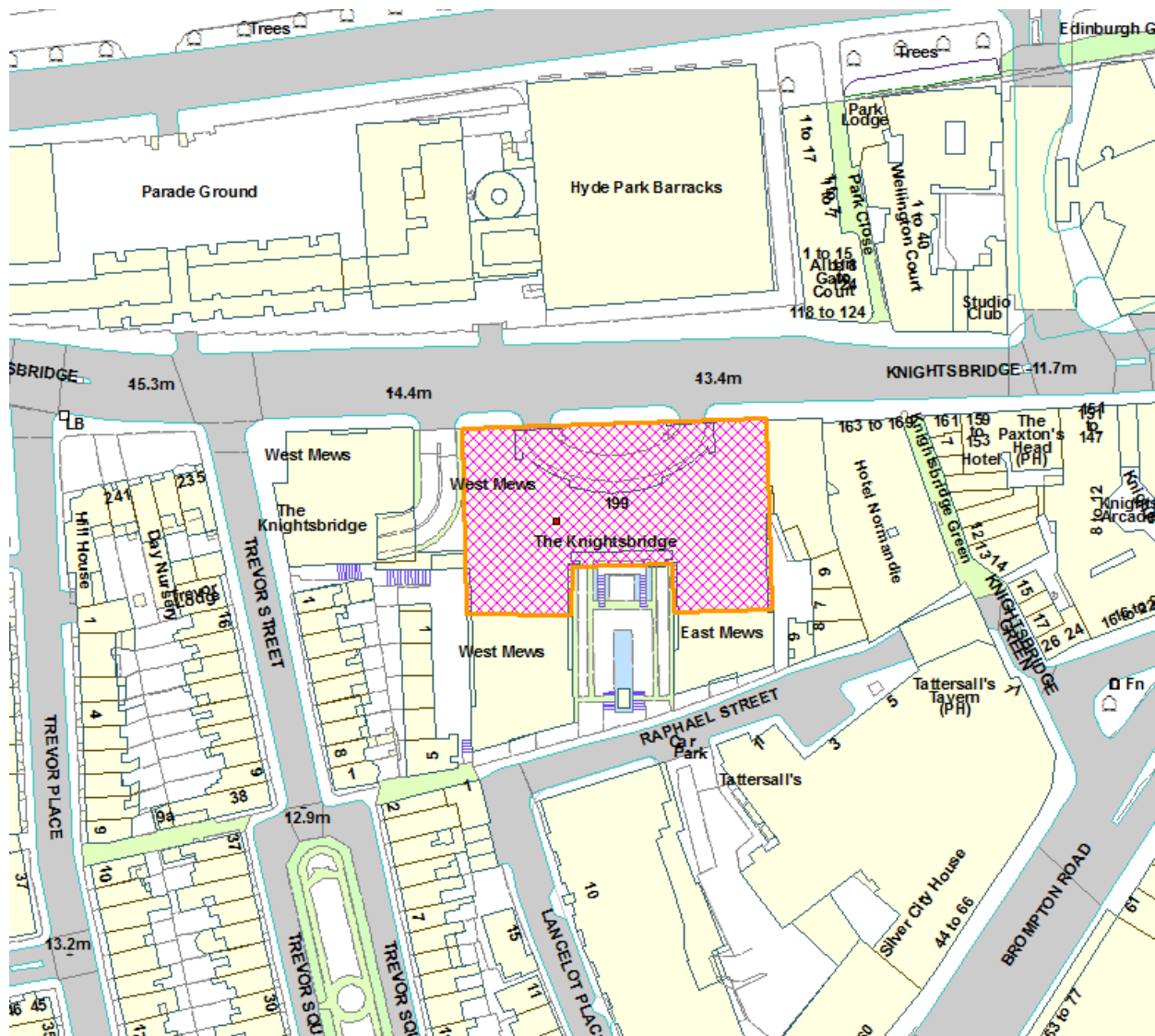
Family-sized dwellings are defined as comprising three or more bedrooms. Given that both of the units to be amalgamated are already family-sized (Flat 11.01 having four bedrooms and Flat 11.02 six bedrooms) it is not considered that this exception could be applied in these circumstances as although the amalgamation would create a larger family-sized dwelling, the proposals would result in the loss of a family-sized residential unit. Therefore, rather than a family-sized unit being brought about by the proposed amalgamation, a family-sized unit would in fact be lost by the proposals.

Both the London Plan and the City Plan set aspirations in policy to exceed the London Plan Housing target for Westminster and there is a clear policy imperative to do so. The Council considers that optimising the number of new homes delivered, rather than simply meeting London Plan housing targets, is important in Westminster because significant amounts of market housing within Westminster are unavailable to residents as its global city role means some housing is used as second homes, left empty as an investment, or is used as temporary sleeping accommodation/ short-term lets.

If the certificate for the amalgamation of two flats was granted then it would effectively prevent the Council from optimising housing delivery contrary to the aims of adopted Policy S14. Whilst it may be true that any individual unit of housing will inevitably represent only a small percentage of the entire housing stock in the City, the potential for numbers of similar cases coming forward and the potential cumulative impact of this on overall housing availability is considered to be a significant planning consequence. The granting of the certificate would mean that other flats across the City could be joined to create a smaller number of larger units. This would erode the City Council's housing stock and prevent the Council from meeting or exceeding its housing need targets.

In this context, the amalgamation would at least in part prevent the Council from optimising housing delivery and meeting or exceeding its housing need targets set out in S14 of the City Plan and consequently the amalgamation of the two existing family sized flats is considered to be a material change of use which would constitute 'development' under s.55(1) of the Town and Country Planning Act 1990.

### 3. LOCATION PLAN



This production includes mapping data licensed from Ordnance Survey with the permission of the controller of Her Majesty's Stationary Office (C) Crown Copyright and /or database rights 2013. All rights reserved License Number LA 100019597

#### 4. PHOTOGRAPHS



**5. CONSULTATIONS**

None required.

**6. RELEVANT PLANNING HISTORY**

Planning permission was granted in April 2001 for demolition and reconstruction to form buildings between 2 and 13 storeys, to provide 196 flats, 8 houses, an ancillary health club and 343 basement car parking spaces (204 for the flats only and 139 for the flats or other local residents).

Planning permission was granted in April 2016 for the installation of glazed wind screens to existing outdoor terrace and electric heaters to roof overhang at eleventh floor level in relation to Flat 11.02.

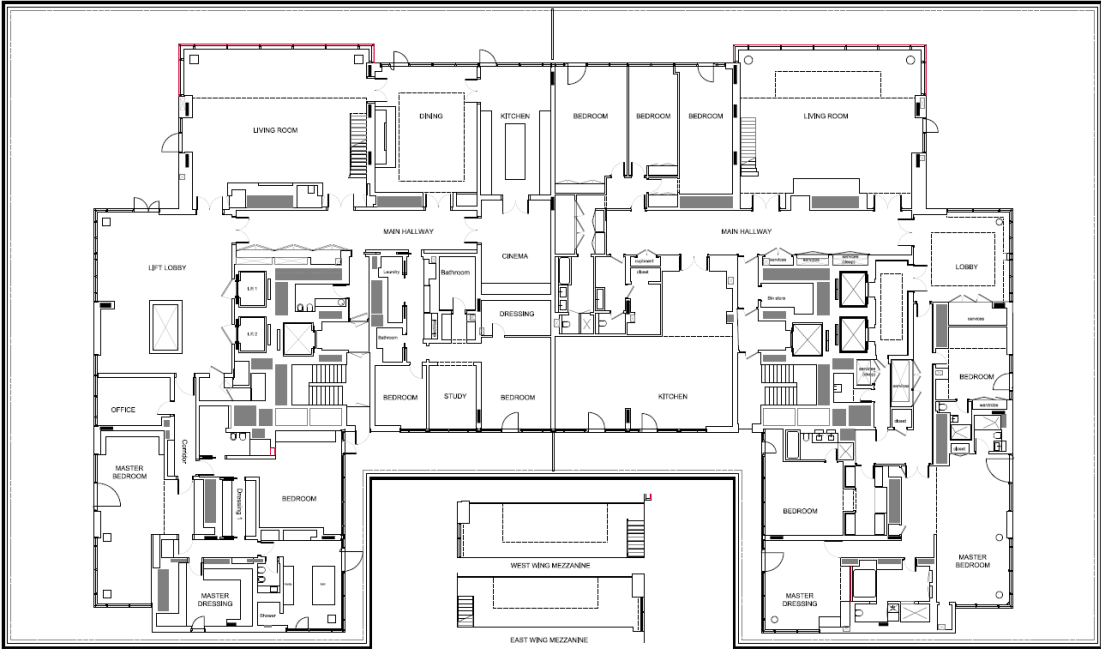
**7. BACKGROUND PAPERS**

1. Application form

(Please note: All the application drawings and other relevant documents and Background Papers are available to view on the Council's website)

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT PLEASE CONTACT THE PRESENTING OFFICER: MATTHEW MASON BY EMAIL AT [mmason@westminster.gov.uk](mailto:mmason@westminster.gov.uk).

8. KEY DRAWINGS

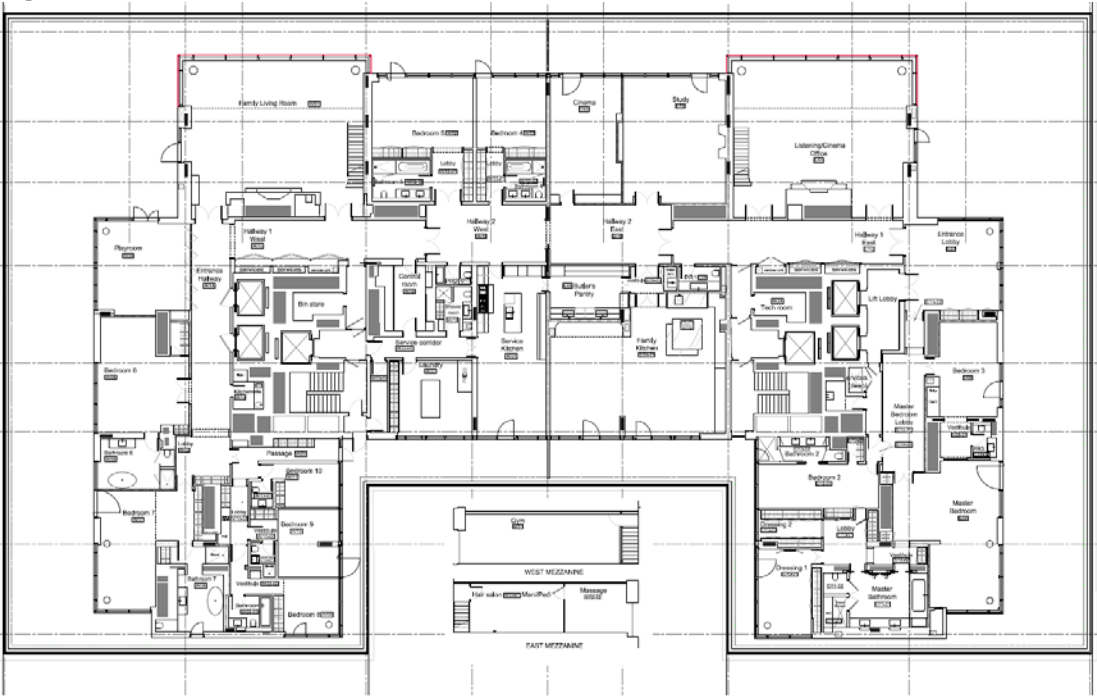


NOTE:  
Total amount of bedrooms - 10  
Gross Internal Area: 1,415.50 m<sup>2</sup>

General notes:  
1. All dimensions to be verified in field, architect owner to be notified of discrepancy before construction commences.  
2. All building work to be in accordance with local building regulations.  
3. All materials to meet architect's sample, all materials to be chosen in advance prior to fabrication.

RENTS LTD  
Interior Architecture  
45 National Street  
London  
Date: 10/04/17  
Scale: 1:200 @  
EXISTING 11th FLC

Existing 11<sup>th</sup> Floor Plan



NOTE:  
Total amount of bedrooms - 10  
Gross Internal Area: 1,415 m<sup>2</sup>

General notes:  
1. All dimensions to be verified in field, architect owner to be notified of discrepancy before construction commences.  
2. All building work to be in accordance with local building regulations.  
3. All materials to meet architect's sample, all materials to be chosen in advance prior to fabrication.

RENTS LTD  
Interior Architecture  
45 National Street  
London  
Date: 10/04/17  
Scale: 1:200  
PROPOSED 11th

Proposed 11<sup>th</sup> Floor Plan



**DRAFT DECISION LETTER**

**Address:** Flat 11.01, The Knightsbridge Apartments, 199 Knightsbridge, London, SW7 1RH,

**Proposal:** The amalgamation of two residential Units, Flats 11.01 and 11.02.

**Reference:** 17/06994/CLOPUD

**Plan Nos:** 1.0; (01)03-01; (03)01; Certificate of Lawfulness of Use or Proposed Development, 11.01 and 11.02 Knightsbridge Apartments (Statement and Appendices) dated 4 August 2017, prepared by Gerald Eve LLP.

**Case Officer:** Sebastian Knox **Direct Tel. No.** 020 7641 4208

**Recommended Condition(s) and Reason(s)**

- Reason:
- 1 The amalgamation of two residential units into one unit constitutes a material change of use for the purposes of s.55(1) of the Town and Country Planning Act 1990 which is not permitted by any Statutory Order or Act and therefore planning permission is required.

Please note: the full text for informatives can be found in the Council's Conditions, Reasons & Policies handbook, copies of which can be found in the Committee Room whilst the meeting is in progress, and on the Council's website.