Lewis & Co Planning
town planning consultants

PLANNING STATEMENT

APPLICATION FOR A CERTIFICATE OF LAWFULNESS: PROPOSED USE

BY MR & MRS JENKINS

SITE: 35 BUCKINGHAM ROAD, SHOREHAM-BY-SEA, BN43 5UA



JUNE 2022

Lewis and Co Planning, 2 Port Hall Road, Brighton, BN1 5PD. T: 01273 413700 E: admin@lewisplanning.co.uk

1.0 INTRODUCTION

1.1 This statement is submitted in support of the application for a Certificate of Lawfulness for a proposed use by Mr & Mrs Jenkins, relating to the site: 35 Buckingham Road, Shoreham-by-Sea.

1.2 A certificate is sought under Section 192 of the Town & Country Planning Act to confirm the proposed amalgamation of three self-contained dwellings into two dwellings does not constitute development for which planning permission is required.

1.3 This statement should be read in conjunction with the application forms and drawings. The application drawings, provided by the Applicant, are:

- Site Location plans
- Existing and proposed lower ground floor plans
- Existing and proposed ground floor plans
- Existing and proposed first floor plans
- Existing and proposed roof space plans

Please note that the application relates to the amalgamation of the three units (and minor internal works that arise from the amalgamation) and that no external works are necessary.

1.4 To demonstrate that a Certificate of Lawfulness should be granted for the proposed use this statement provides an analysis of:

- The site
- The proposed use and alterations
- Definition of development in Section 55 of the Town & Country Planning Act 1990
- Whether a material change of use would occur

2.0 SITE & AREA

2.1 The application relates to a semi-detached property on the west side of Buckingham Road in Shoreham-by-Sea. The building is located close (less than 200metres to the north) to Shoreham railway station and Shoreham-by-Sea town centre. The site is not listed and is not in any conservation area.



(Aerial image of site and neighbours: Google Earth)

2.2 The building is currently arranged as three separate flats:

- 35a: Lower ground Floor - Self-contained two-bedroom flat – own entrance at lower ground.
- 35b: Ground Floor - Self-contained two-bedroom flat – accessed via front door at raised ground.
- 35c: First and Second (roof) floors – Self-contained two / three-bedroom maisonette – accessed via external stairs to side.

2.3 This arrangement as three self-contained residential units is confirmed in the Council Tax Records published by the Government:

35C BUCKINGHAM ROAD, Shoreham-by-sea, West Sussex, BN43 5UA	C	Adur
FLAT BST 35A BUCKINGHAM ROAD, Shoreham-by-sea, West Sussex, BN43 5UA	B	Adur
FLAT GND FLR 35B BUCKINGHAM ROAD, Shoreham-by-sea, West Sussex, BN43 5UA	B	Adur

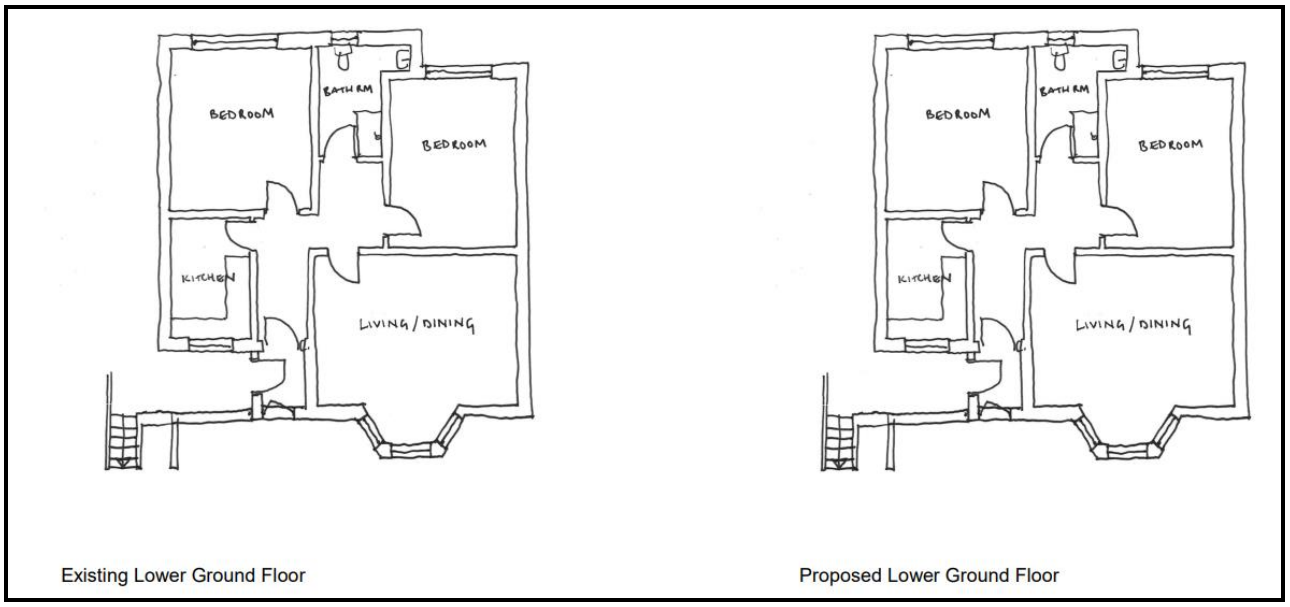
(Extract www.gov.uk/council-tax-bands)

2.4 It is noted that planning permission was granted on 27th October 2015 to convert 35c (the upper floors maisonette) into 2 separate flats. This planning permission (AWDM/1083/15) was granted subject to a condition that the works must be carried out within 3 years of the date of the decision (i.e. before 27th October 2018) and further conditions that required the providing of cycle stores and bin stores prior to the occupation of the new dwellings to be created.

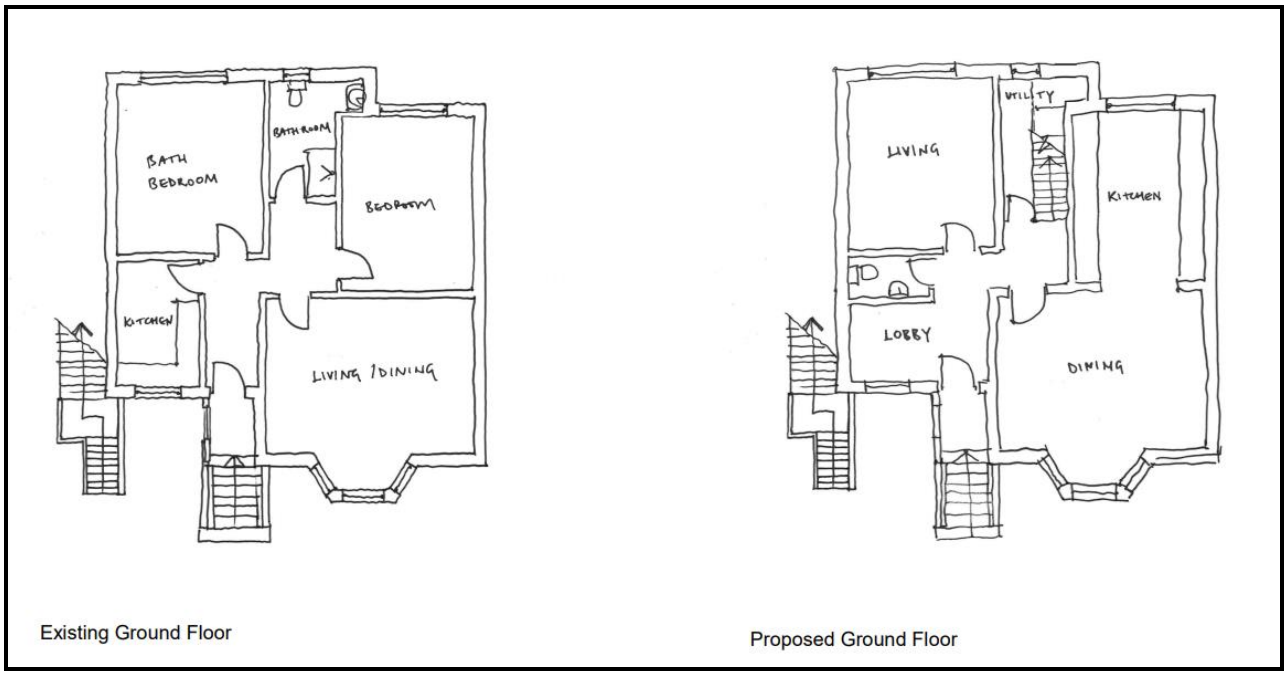
2.5 It is clear from the current Council Tax records that the upper floors are still a single maisonette. It is also clear that none of the conditions imposed on the 2015 permission have been compiled with or discharged. Therefore, the 2015 permission to divide 35c into 2 flats has now lapsed and the current lawful use of 35c is as a single maisonette.

2.6 For these reasons, the current lawful use of the site is as 3no self-contained flats known as A, B, and C.

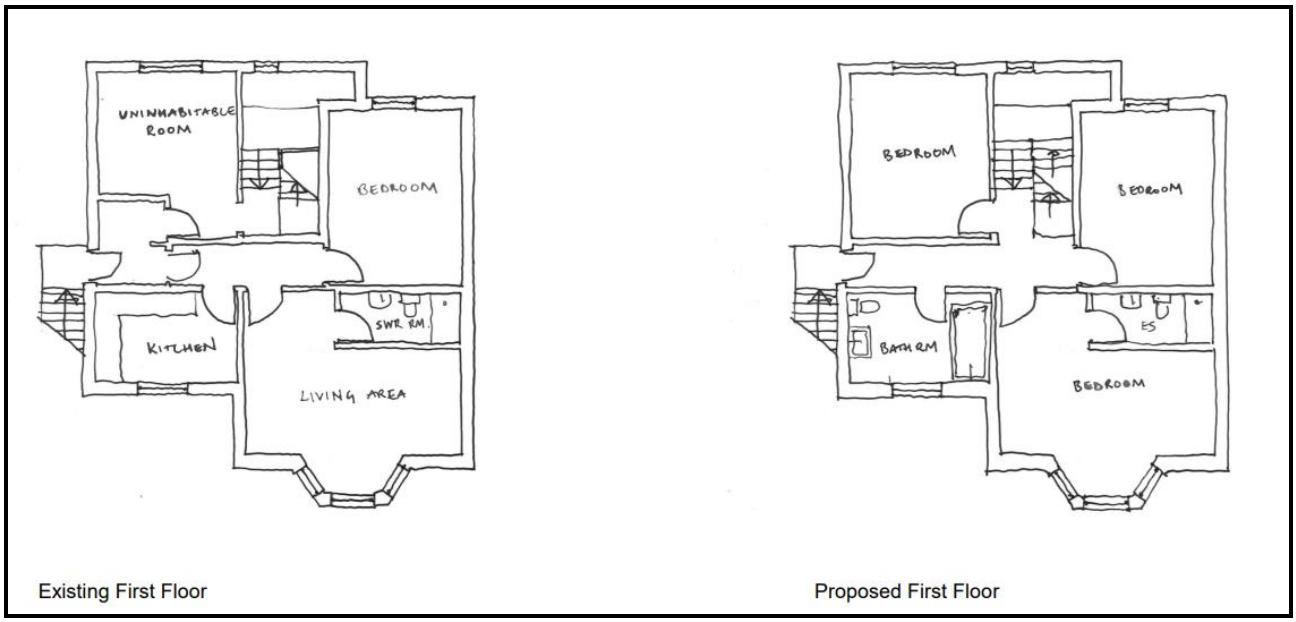
2.7 Existing floor plans are included overleaf to illustrate the existing arrangement of 35 Buckingham Road, Shoreham-by-Sea. The existing plans are compared with the proposed plans for ease of reference.



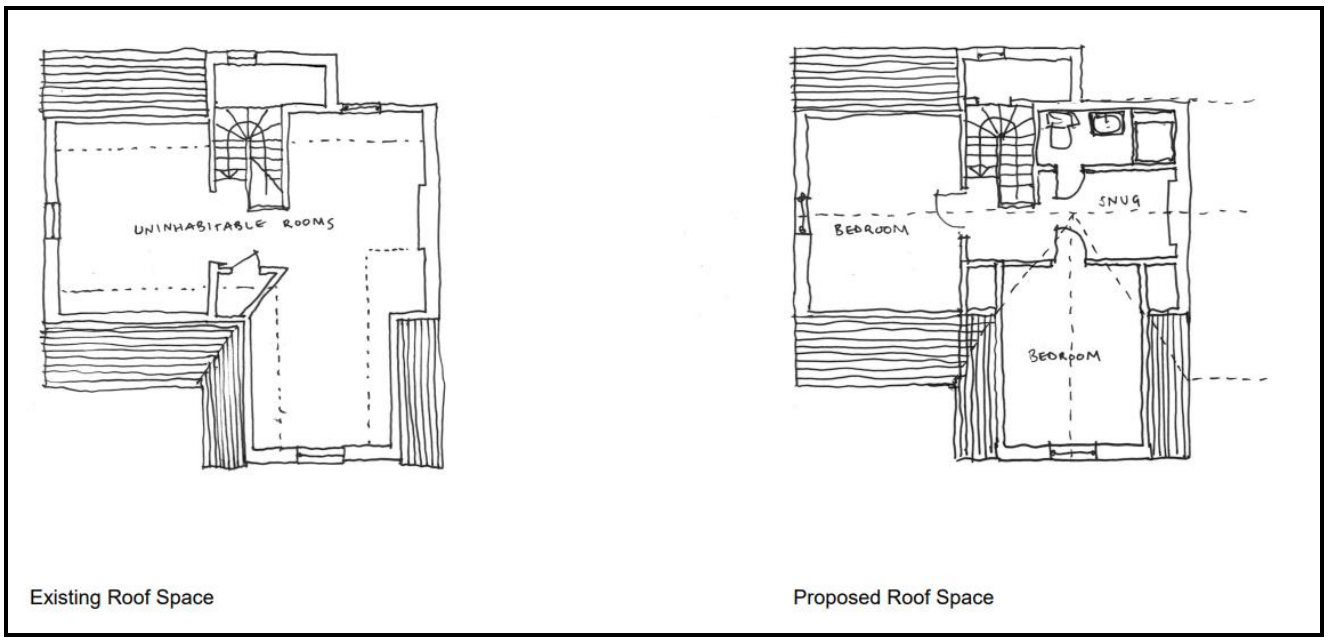
(Existing and Proposed Lower Ground Floor plans (35A))



(Existing and Proposed Ground Floor plans (35B))



(Existing and Proposed First Floor plans (35C))



(Existing and Proposed Roof (second floor) plans (35C))

3.0 PROPOSED USE & ALTERATIONS

3.1 The Applicant proposes the amalgamation of the two existing self-contained flats within the upper parts of the building (flats B & C) into a self-contained dwelling. The maisonette over ground, first and second floors will be occupied by the Applicant's family.

3.2 The Lower Ground Floor Flat (A) will remain as a self-contained two-bedroom flat.

3.3 No external alterations are required for the proposed amalgamation to be achieved.

3.4 Minor internal alterations are proposed. A staircase from ground floor to first floor would be reinstated. The resultant five-bedroom maisonette would provide residential accommodation over three floors. The maisonette would be accessed via the main front door at raised ground with a secondary entrance to the side at first floor.

3.5 At ground floor there would be dining room, kitchen, living room, WC and lobby. To the first floor there would be three bedrooms – one with en-suite, and a bathroom. At second floor there would be two bedrooms, a snug and bathroom.

4.0 PLANNING CONTEXT

4.1 The works proposed relate only to the interior of the building. Consequently, these works do not constitute development and do not require planning permission by virtue of Section 55 (2) (a) of the Town and Country Planning Act 1990 (TCPA1990).

4.2 This section of the Act states that the carrying out of works that only affect the interior of a building, or that do not materially affect the external appearance of the building, do not require planning permission. Section 55 of the TCPA1990 has been amended by Section 49 of the Planning and Compulsory Purchase Act 2004, however the amendments relate to internal alterations that provide additional floor space (ie mezzanine floors). No additional floor space is being created so this amendment is not relevant to the consideration of this application.

55 Meaning of "development" and "new development".

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

[F1 (1A) For the purposes of this Act "building operations" includes—

(a) demolition of buildings;

(b) rebuilding;

(c) structural alterations of or additions to buildings; and

(d) other operations normally undertaken by a person carrying on business as a builder.]

(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;

(b) the carrying out on land within the boundaries of a road by a F2. . . highway authority of any works required for the maintenance or improvement of the road [F3 but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment];

(c) the carrying out by a local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) 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;

(e) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use for any of those purposes of any building occupied together with land so used;

(f) 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.

[F4 (g) the demolition of any description of building specified in a direction given by the Secretary of State to local planning authorities generally or to a particular local planning authority.]

(Extract from Section 55 of the TCPA 1990)

4.3 For the purposes of this application, it is also necessary to confirm that the proposed amalgamation of three dwellings to two dwellings would not constitute a material change of use.

4.4 Paragraph (3) of Section 55 (not included in extract above) states:

(3) For the avoidance of doubt, it is hereby declared that for the purposes of this section—

(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;

4.5 Section 55 of the TCPA 1990 specifically refers to the subdivision of residential units being a material change of use that requires planning permission. However, the Act does not specify that the amalgamation of dwellings into one involves a material change of use. It has been reasonably assumed that the absence of such a provision in the Act was a clear indication that no such provision was intended and that the amalgamation of units does not constitute a material change of use.

4.6 However, the High Court judgement in *Richmond-upon-Thames LBC v SSETR [2001] J.P.L 84* found that the amalgamation of residential units may, in certain cases, amount to a significant planning consequence that would be considered a material change of use. The judgement held that a planning decision has to be made as to whether an amalgamation of planning units has as a 'matter of fact and degree' resulted in a change to the character and impact of the use that would constitute a material change of use in planning terms.

4.7 In the *Richmond* case the conversion of seven flats into one dwellinghouse was proposed. The loss of six residential units was considered a significant planning consequence. Whereas the amalgamation of one unit, as proposed at 35 Buckingham Road, does not lead to a significant planning consequence.

4.8 Case law has developed further in recent years through the High Court judgement in *R(Kensington and Chelsea RBC) v SSCLG [2016] EWHC 1785.* This judgement found that the amalgamation of two units into one dwelling can constitute a material change of use, in circumstances where the frequency of

such conversions in an area have led to an adverse impact on housing supply and the local provision of housing types. Neither the *Richmond* nor *Kensington and Chelsea* judgements find that the amalgamation of residential units automatically constitutes a material change of use. Both find that whether a change of use has occurred depends on the circumstances of the individual case and is a matter of fact and degree.

4.9 With regard to 35 Buckingham Road, the conversion will not amount to a material change of use nor a significant planning consequence. The existing use of the building is residential (C3). The proposed use of the building is residential (C3), so no change of use would occur.

4.10 The proposed use of the three flats in the building as two dwellings is not materially different in planning terms. The residential character of the building would be unaltered. There would be no intensification of the use and the resultant levels of residential activity from the site would not materially change.

4.11 Furthermore, there is no evidence that other, similar amalgamations of dwellings in the area have adversely impacted local housing supply or the local stock of two or three-bedroom flats. Therefore, the circumstances of this case are materially different to those of the *Kensington and Chelsea,* and indeed the *Richmond,* cases.

4.12 For these reasons, the proposed conversion of the three existing flats into two dwellings does not constitute development requiring planning permission and would not lead to a significant planning consequence that defines the conversion as a material change of use.

5.0 EXAMPLES OF LOCAL APPROVALS OF 2 INTO 1 CERTIFICATES OF LAWFUL USE

5.1 The Neighbouring Planning Authority, Brighton & Hove City Council, has consistently agreed with the rationale above and has issued Lawful Development Certificates for the amalgamation of dwellings. Examples of such decisions include, but are not limited to, the sites listed below.

- 21 Vallance Road, Hove (BH2022/00581) - proposed conversion of existing 2no. flats to create a single dwellinghouse. Approved 23rd March 2022.

- 9 – 10 York Place, Brighton (BH2022/00118) - proposed combining of three self-contained flats into two dwellings. Approved 14th March 2022.

- 24 and 24a West Drive (BH2021/01159) – conversion of two flats into a self-contained dwelling house. Approved 13 May 2021

- 13 Buckingham Road, Brighton (BH2020/01163) - conversion of two residential units into a single dwelling. Approved 23 June 2020.

- 13 Brunswick Place, Hove (BH2020/01315) – conversion of two self-contained maisonettes into one dwelling (C3). Approved 26th May 2020.

- 30 Beaconsfield Villas (BH2020/00683) – conversion of two flats back into one house. Approved 22 April 2020

- 6 Ventnor Villas, Hove (BH2018/03931) – conversion of ground and first floor flats into one maisonette. Approved 02 May 2019.

- 51 Surrenden Road (BH2019/00804) – 2 maisonettes into 1 dwelling house, approved 26 April 2019.

- 107 Beaconsfield Villas (BH2017/04167) – 2 self-contained flats converted into a 5-bedroom dwelling. Approved 26th April 2018;

6.0 CONCLUSION

6.1 A Certificate of Lawfulness: Proposed Use is sought at 35 Buckingham Road, Shoreham-by-Sea, BN43 5UA to confirm that the proposed amalgamation of three flats within the building into two dwellings does not constitute development for which planning permission is required.

6.2 As the proposed works only effect the interior of the building, and do not materially affect the external appearance of the building, they are not considered development as defined by Section 55 of the Town and Country Planning Act 1990.

6.3 The amalgamation of the three flats into two dwellings would not result in a material change of use, as the character and the impact of the residential use will not be altered.

6.4 Furthermore, the loss of one dwelling through this conversion does not amount to a significant planning consequence within the context of local housing supply and delivery.

6.5 In light of the above Adur District Council is respectfully requested to issue a Certificate of Lawfulness for the proposed use of 35 Buckingham Road, Shoreham-by-Sea, BN43 5UA without undue delay.

Lewis & Co Planning
June 2022