



5 February 2016

The Planning Inspectorate
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Dear Sir / Madam

KENSINGTON AND CHELSEA: NO. 77 DRAYTON GARDENS

1. This letter contains the appellant's initial representations in respect of an appeal against an enforcement notice served by the Royal Borough on 5 January in respect of the amalgamation of two flats at No 77 Drayton Gardens into a single maisonette. The reason for serving the Enforcement Notice was: *the development involves the loss of a residential unit which reduces the supply and choice of housing available within the Borough and does not contribute to meeting housing targets and housing needs for the Borough and London as a whole through ensuring a net increase in residential accommodation. This is contrary to the aims of the development plan, in particular policies CH1, CH2 and CH3 of the Consolidated Local Plan and policies 3.3, 3.9 and 3.14 of the Consolidated London Plan.*
2. No 77 Drayton Gardens is a 5-storey (including lower ground floor and mansard roof) end of terrace property subdivided into 5 self-contained open market flats. The appeal relates to the second and third floor flats, the first of which is marginally substandard and the second considerably substandard on the basis of the GLA requirements.
3. The Council has no objection to any physical aspect of the amalgamation.
4. The appeal is on grounds a, c and g.

Procedure

5. We request that the appeal should be considered at a public inquiry consistent with the normal procedure for appeals involving ground c. Issues of law and good practice are involved that should be the subject of cross examination. An accompanied site visit is needed if the Inspector wishes to view the interior of the building, although this is not a primary consideration.
6. We anticipate the inquiry will last no more than day. There will be a junior barrister and a planning consultant witness.

Related Appeal

7. An LDC application (proposed development) was submitted in respect of the amalgamation. This was refused on 28 August and is now subject of written representations appeal **APP/K560//X/15/3136227** lodged on 9 October.
8. Obviously the appellant has to appeal the enforcement notice to prevent it taking effect and so there are effectively duplicate ground c appeals.

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9. The appellant wishes to continue with the LDC appeal. Exchange of evidence is complete and we hope this will lead to a faster decision than will take place with this appeal. We will write separately to the Inspectorate asking that (consistent with paras 1.11 and 1.12 of the Procedural Guidance) the subsequent Stanhope Gardens LDC appeal and costs decisions (27 November) and 2015 Local Plan Partial Review Issues and Options Consultation (about 15 December) is taken into account in the decision.
10. We are surprised that the Council served the appeal enforcement notice before this appeal was determined as the decision on it could have avoided the need for this appeal.

Background

11. Amalgamation commenced in May 2015 on the basis that it was not development requiring planning consent because no change of use identified as development in the 1990 Act is involved. This was consistent with the Council's LDC decisions up to August 2014 when (as the appellant subsequently learned) it made an unpublicised reversal of its position and decided that it did need consent.
12. The reversal was not based on new case law, not consulted upon, not the subject of a Council resolution, not publicised on its website and not reflected in new policy in its Consolidated Local Plan (CLP) adopted a year later in July 2015, which contains policy CH2(f) that only precludes amalgamation of more than 5 units.

The Legal Ground C appeal

13. A clear recent working through of the issues raised by this appeal Borough is in the very recent LDC appeal decision in respect of **Flats 1 and 3, 44 Stanhope Gardens** that was reported in Planning Resource. Costs were awarded against the Council.
14. Richmond Churches Housing Trust identified issues of fact and degree as being material to considering whether amalgamation of units needs consent. The Council did not take account of any case-specific matters of fact and degree when determining the LDC application and deciding to serve the EN.
15. Eight matters of fact and degree are relevant in this appeal:
 - a. The proposal will not affect the external appearance of the building;
 - b. It falls within the same Use Class;
 - c. The character of the occupation of the amalgamated units will not be materially different to present;
 - d. There is no evidence of an undersupply of small units in the Borough;
 - e. The loss of one unit will have a minimal effect on the Borough's housing stock;
 - f. Amalgamation has an insignificant effect on the Council's ability to meet the FALP housing target;
 - g. Amalgamations have no material effect on Borough's housing stock;
 - h. The adopted policy referred to in the reason for serving the notice does not support the Council's case - as the Stanhope Gardens appeal and costs decisions confirm.

The Planning Ground A appeal

16. One of the existing units is substandard, while the amalgamation unit satisfies the GLA standard. Amalgamation of this number of units is consistent with the development plan and does not materially harm any interest of recognised planning importance.
17. The relevant planning issues have been covered above:
 - The policies identified by the Council do not support refusal;
 - The statistical basis of the Council's concern about the effect of amalgamation on its ability to achieve its FALP housing target is flawed, incomplete and inconsistent with the confidence of the 2014 AMR that permitted sites would come forward;
 - There are no other material considerations that support refusal.
18. If consent is needed for it, it should be granted

The Ground G appeal

19. Because there is a well-publicised building boom in London one year would be a more realistic time to commission an appropriate builder and undertake the work.

Costs

20. On the face of it the Council has behaved unreasonably both in requiring the appellant to fight duplicate appeals and because the basis of the enforcement notice is fundamentally flawed. Its explanation is awaited with interest and a costs application may be made.

Sources

21. The following may be referred to in evidence:

- Case Officer's reports on the refused LDC and planning applications on this site;
- Case Officer's report on No 34 Lansdowne Crescent LDC application;
- Flats 1 and 3, 44 Stanhope Gardens and Laburnum Villas LDC appeal decisions;
- Richmond upon Thames LBC v SoSETR [2001] JPL 84 (the Richmond Churches Housing Trust judgement);
- Email correspondence chain leading to the LDC application;
- 2015 Consolidated Local Plan (CLP);
- 2015 Local Plan Partial Review Issues and Options Consultation (LPPR);
- 2014 Annual Monitoring Report (AMR);
- FALP, including Table A4.1;
- London DataStore housing stock statistics.

I would be very grateful if you could acknowledge receipt.

Yours faithfully

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