

MR MAURICE NIXON

77 DRAYTON GARDENS, LONDON, SW10 9QZ

APP/K5600/C/16/3143934 & APP/K5600/X/15/3136227

11 OCTOBER 2016

**OUTLINE OPENING SUBMISSIONS
ON BEHALF OF APPELLANT**

1. The LDC should never have been refused in this case, and the enforcement notice should never have been served. The reasons for these contentions will be explored in evidence and cross-examination, and summarised in Closing Submissions.

2. Both actions of the Council are founded on a change in its long-standing position on these matters, which took place in August 2014. Prior to that, in the context of the same legal position and development plan policy position as has obtained throughout, the Council took the position that residential amalgamations involving less than four units did not constitute development. When planning applications were made, they were granted.

3. The position changed, behind closed doors, and without any documentation, in August 2014. The circumstances of this change will be explored in evidence.

4. As a matter of law, whether a proposal or action constitutes a change of use, and – if so – whether it is material, is a matter of fact and degree. There are many planning considerations which are relevant to that decision, in any particular case. That is not remotely how the decision was made in the present case. The Council do not contend that the amalgamation caused any external planning impact. There was one factor, and one factor only, the loss of one residential unit. That loss is simply not discernible in the K&C context, especially having regard to the ample ability for the Council to meet its housing targets.
5. The service of the enforcement notice was wholly unreasonable and unnecessary. The works commenced in the reasonable belief that they did not constitute development. When this was queried, the Appellant promptly made the LDC application. When this was refused, he promptly appealed. There was no justification for serving the enforcement notice before the LDC appeal was determined.
6. Since August 2014, the Council has attempted to assert that a proposal for the amalgamation of four or less units does not comply with the development plan. This has been by reference, in particular, to policies CH2(f) of the CLP 2015, and policy 3.14B of the London Plan. So far as one can tell, all appeals determined by hearing or inquiry have rejected the Council's position. However, the matter is now completely put to rest by the recent High Court decision: Royal Borough of Kensington and Chelsea v. Secretary of State for Communities and Local Government [2016] EWHC 1785. This upheld the approach in policy terms of the Inspector at the Stanhope Gardens appeal, and accepting the concession freely made by the Council, the Court endorsed the position that any amalgamation of four or less units complies with the development plan, i.e. the relevant policies of the CLP and the LP.

7. It is wholly consistent with the Council's position that it completely ignores the now established position, and continues to assert that the amalgamation in this case does not comply with the development plan. This is a wholly unreasonable approach.
8. The evidence does, and the cross-examination will, investigate in detail the levels of past, present, and future housing performance in RBKC. This is not the place for these details to be laid out. In short, the position is much stronger than the Council asserts, with levels of permissions and completions, pipeline supply, amalgamations etc. demonstrating ample ability over the foreseeable period (and certainly over the five year period) to meet housing targets.
9. It is therefore submitted that both appeals should be allowed. The enforcement notice appeal was lodged on grounds (a), (c) and (g). Ground (c) has been withdrawn, so that the appeal proceeds on grounds (a) and (g).

C. LOCKHART-MUMMERY QC

Landmark Chambers
180 Fleet Street
London EC4A 2HG
11th October 2016

