

Town and Country Planning Act 1990 (as amended)

77 Drayton Gardens, London, SW10 9QZ

Appeal by Mr Maurice Nixon

Against The Royal Borough of Kensington and Chelsea

Planning Inspectorate Appeal Reference Numbers: APP/K5600/X/15/3136227 and

APP/K5600/C/16/3143934

Pre-Inquiry Statement of Case by the Royal Borough of Kensington and Chelsea

1.0 INTRODUCTION

1.1 This statement sets out the case for the Local Planning Authority, the Royal Borough of Kensington and Chelsea (the "Council") in respect of the appeals submitted by Mr Maurice Nixon (the "appellant") against the Council's refusal of an application for a Certificate of Lawfulness ("Appeal A") and against an Enforcement Notice served by the Council ("Appeal B") at 77 Drayton Gardens, London, SW10 9QZ.

1.2 The two appeals were previously being dealt with separately but have now been linked by the Planning Inspectorate.

1.3 The description of development for the Certificate of Lawfulness was:

Internal alterations involving amalgamation of two residential units into one

1.4 This application was refused on 28th August 2015 under delegated powers for the following reason:

The proposed amalgamation of 2 residential units into a single residential unit at second and third floor levels is a material change of use. Therefore the proposal constitutes development as defined by Section 55 of Town and Country Planning Act 1990 which would require planning permission.

1.5 Following the refusal of the Certificate of Lawfulness (and the refusal of planning application PP/15/05742 on 17th December 2015, which is not the subject of this appeal) an Enforcement Notice was served on 5th January 2016 and came into effect on 9th February 2016. The Notice requires the land to be restored to its former condition by reinstating the previous internal layout of the second and third floors of the building. The period of compliance is three calendar months after the notice takes effect.

2.0 THE SITE AND SURROUNDINGS

2.1 The appeal site relates to two residential units on the second and third floor levels of a five storey (including lower ground floor and mansard roof) end of terrace property on the eastern side of Drayton Gardens.

2.2 Following the receipt of an enforcement complaint on 7th May 2015, a Planning Contravention Notice was issued on 25th June 2015. The responses to this stated that the works to amalgamate the two residential units commenced on 1st May 2015.

2.3 The appeal site is in a predominantly residential area. The building is not listed nor is it in a conservation area. However the land and buildings to the west and north of the site lie within the Boltons Conservation Area and the land and buildings to the east and south of the site lie within the Thurloe/Smiths Charity Conservation Area.

3.0 PLANNING HISTORY

3.1 The site's relevant history will be described in detail by the Council, including pre-application discussions and written advice given which preceded the proposal. The history is summarised in the table below:

Reference	Summary description	Decision and date
PP/15/05742	Amalgamation of two residential units on second and third floors into one two bed unit and internal alterations.	Refused 17/12/2015

4.0 CONSULTATION

4.1 Whilst there is no statutory requirement for public consultation when considering a Certificate of Lawfulness, representations were received. The Council will elaborate on these responses as set out in the Officer's Report dated 28th August 2015. The Council will also refer to correspondence received as part of the enforcement investigation where appropriate.

5.0 PLANNING POLICY

5.1 For the avoidance of doubt, whilst planning considerations are relevant the planning merits of a proposal are not relevant at any stage to the determination of a Certificate of Lawfulness or in determining an appeal.

5.2 The Council will refer to the following sections of the Town and Country Planning Act 1990 ('the Act').

5.3 The key statutory framework for Certificates of Lawfulness and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 ('the Act').

5.4 Section 55 of the Act sets out what constitutes development.

National Framework

5.5 The Council will refer to the following national planning policy and guidance applicable to the appeal site:

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)

Development Plan

5.6 The Royal Borough of Kensington and Chelsea's Development Plan comprises:

- The London Plan: The Spatial Development Strategy for London (consolidated with alterations since 2011) March 2015;
- The Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015;
- 'Saved' policies of the Unitary Development Plan ('UDP') 2002.

Policy Changes since the Decision (Appeal A)

5.7 On 10 March 2015 the Mayor of London published the Further Alterations to the London Plan (FALP) and these are now published as formal alterations to the London Plan and form part of the development plan for Greater London. This document is now titled 'the London Plan- the Spatial Development Strategy for London- Consolidated with Alterations since 2011 (including the Further Alterations

to the London Plan March 2015), and hereon shall be referred to as the London Plan 2015.

The London Plan 2015

5.8 The Council will refer to the following policies from the London Plan:

Chapter 3 - London's People
Policy 3.3 – Increasing Housing Supply
Policy 3.14 – Existing Housing

The Consolidated Local Plan 2015

5.9 The following policies in the Consolidated Local Plan are considered to be applicable to this appeal and will be referred to by the Council

CH1 (Housing Targets)
CH2(f) (Housing Diversity)
CH3 (Protection of Residential Uses)

Regional Supplementary Planning Guidance and Documents

5.10 The Council will refer to the following regional supplementary planning guidance or documents:

- Housing SPG (London Plan), March 2016

Other information

5.11 The Council will also refer to a Legal Opinion from Leading Counsel dated 1st March 2016 and recent appeal decisions.

5.12 The Council reserves the right to refer to other policies, guidance, documents and appeal decisions that may be considered appropriate during preparation of evidence at the public inquiry.

6.0 THE COUNCIL'S CASE

6.1 In respect of Appeal A, the Council will demonstrate, in accordance with the reason for refusal set out above, that the proposed amalgamation of two residential units into a single residential unit is a material change of use, constituting development as defined by section 55 of the Act which would require planning permission. All the circumstances, particularly those relating to housing and its supply in Kensington and Chelsea require consideration.

6.2 In respect of Appeal B, the Council will demonstrate that planning permission would be required for the development and as indicated by the refusal of planning application PP/15/05742 in December 2015, would not be granted. The Council will also demonstrate that the matters stated in the enforcement notice do constitute a breach of planning control and that the period specified in the notice is reasonable.

6.3 It is surprising, given the appellants decision to include ground A in Appeal B that they have chosen not to appeal the Council's decision to refuse planning application PP/15/05742 which sought retrospective planning permission for the

amalgamation of the two units into one. The officer's recommendation was to refuse and enforce against the alleged breach of planning permission. It was following this decision that the enforcement notice was served.

The Planning Balance

- 6.4 The Borough has experienced a harmful erosion of its housing supply since the adoption of the Council's housing policies in 2010. The cumulative effect of the loss of dwellings through amalgamation of units coupled with the increasingly ambitious housing targets which have been set for the borough through London Plan policy 3.3, which have increased from 350 in 2010 to a current target of 733 units has the potential to have a significant effect on the delivery of much needed housing in the Borough. The Council will provide detailed evidence in respect of the effect of amalgamation on the ability of the Council to meet its housing targets and will demonstrate that the loss of a residential dwelling would add to an unacceptable cumulative impact on net housing supply in the borough by reducing the overall housing stock.
- 6.5 In respect of ground A of Appeal B, the Council will demonstrate that there is a sound policy basis against which proposals to amalgamate residential units can be assessed and that the decision to refuse planning application PP/15/05742, whilst not the subject of this appeal was justified.
- 6.6 The Consolidated Local Plan refers to an appropriate balance being struck between the loss of residential units and the need for larger family homes however this reflected the circumstances at the time and the increase in the housing targets has altered this. The Council will provide evidence in respect of housing need in terms of the type of housing with particular reference to the Strategic Housing Market Assessment (SHMA).
- 6.7 It is widely accepted that there is a shortage of housing in London and that certain types of housing in parts of London has become unobtainable for many people. Many people are not able to live and work in London as a result of this which leads to unsustainable commuting, possible overcrowding or unacceptable living conditions as people seek more affordable accommodation. The Council will demonstrate that the loss of a 1 bedroom unit not only has an unacceptable impact on net housing supply in the borough but reduces the range of residential accommodation available and the knock on effect the reduced range of accommodation on offer has on providing homes for people.
- 6.8 The two residential units were adequately sized and not substandard in quality. There are no particular features of the flats that would lead to the conclusion that they were of an unsatisfactory quality to justify their loss. Whilst there may be some benefit in creating a family home, this in itself would not outweigh the disadvantages of the loss of a residential unit and the clear conflict with the development plan to resist the loss of existing housing stock and increase housing supply.

7.0 COMMENTS ON THE APPELLANTS STATEMENT OF CASE

- 7.1 The Council shall demonstrate in the inquiry that the amalgamation of two units into one constitutes a material change of use which requires planning permission and for which planning permission should be refused and this shall address the points raised in the appellant's statement of case.

8.0 DOCUMENTS TO BE REFERRED TO IN EVIDENCE

8.1 The Council will refer to the policies and documents identified above in Section 5 and other relevant documents including:

- Letters of representation received during the consideration of the Certificate of Lawfulness application;
- The evidence base of the Borough's Development Plan, as appropriate;
- Partial Review of the existing Local Plan 2015 following the Issues and Options consultation;
- Any more recent updating information including relevant decisions and appeal decisions;
- All documents which formed part of, or accompanied, the Certificate of Lawfulness application and;
- Any other documents relevant to the appeal which later become part of the Council's case.

9.0 FURTHER INFORMATION

9.1 The Council's statement of case and the documents listed in Section 8 will be available for inspection and/or copying in The Customer Service Centre, The Town Hall, Hornton Street, London, W8 7NX between 8.30 am – 5.00 pm Monday to Fridays.

9.2 Central Government's policies and circulars referred to above are available to view online at www.planningportal.gov.uk

9.3 The London Plan and GLA supplementary planning documents are available to view online at www.london.gov.uk

9.4 The Council's policy documents are available to view online at www.rbkc.gov.uk/planning