The Planning Inspectorate

Appeal Decisions

Inquiry held on 11 and 12 October 2016

Site visit made on 12 October 2016

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 November 2016

Appeal A: APP/K5600/C/16/3143934
Land at 77 Drayton Gardens, London, SW10 9QZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Maurice Nixon against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
- The enforcement notice Ref E/15/00578, was issued on 5 January 2016.
- The breach of planning control as alleged in the notice is without planning permission, the amalgamation of two separate self-contained residential units on the second and third floors of the property.
- The requirements of the notice are to restore the land to its former condition by reinstating the previous internal layout of the second and third floors of the building in accordance with existing drawings numbered 653/A3/150 and 653/A3/151 of planning application PP/15/05742 such that the two floors are arranged as two separate self-contained dwellings.
- The period for compliance with the requirements is three calendar months after the notice takes effect.
- The appeal was made on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, subject to a correction, and planning permission is granted in the terms set out below in the Decision.

Appeal B: APP/K5600/X/16/3136227
Land at 77 Drayton Gardens, London, SW10 9QZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Maurice Nixon against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref CL/15/04119, dated 1 July 2015, was refused by notice dated 28 August 2015.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the amalgamation of two residential units (second and third floor flats) into a single residential unit.

Summary of Decision: The appeal is dismissed.

Application for costs

1. At the inquiry an application for costs was made by Mr Maurice Nixon against The Council of The Royal Borough of Kensington & Chelsea. This application is the subject of a separate Decision.

Procedural and preliminary matters

2. The appellant withdrew ground (c) shortly before the inquiry opened, but the question of the lawfulness of amalgamation is covered by appeal B in any event. The withdrawal of ground (c) from appeal A does not therefore imply any concession on the appellant's part that the matter alleged in the notice constitutes a breach of planning control.

3. Whilst I understand that an earlier version of Mr Burroughs' proof submitted in June 2016 also referred to ground (b), that ground was not cited in the appeal form and is not part of appeal A. Indeed I was advised that Mr Burroughs' September 2016 proof superseded the June version, which I have not read[1].

4. The enforcement notice bears the heading "(Operational Development)" and the Council acknowledges that this was an error. It is apparent from the rest of the notice that it relates to an alleged material change of use and I will correct the heading accordingly, both parties having accepted that no injustice will result from that correction.

5. Given the nature of the matters in dispute and the evidence to be given, the parties agreed that it was not necessary to take evidence on oath.

6. It makes sense for me to consider whether planning permission should be granted on appeal A in the light of my conclusions regarding lawfulness under appeal B. I shall therefore consider appeal B first.

APPEAL B

Main Issue

7. The main issue is whether the Council's refusal of an LDC was well-founded. This depends on whether the amalgamation of two residential units (second and third floor flats) into a single residential unit constitutes development requiring planning permission. Planning permission is required for development and section 55 of the 1990 Act says 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." It is common ground that there has been no operational development in this case. I must therefore determine whether the appellant has proved on the balance of probability that the amalgamation does not constitute a material change of use.

Reasons

8. There is no statutory definition of "material change of use". Whilst section 55(3)(a) provides that, "for the avoidance of doubt, the use as two or more separate dwellinghouses of any building previously used as a single

[1] Save that the Council's 2014 Annual Monitoring Report was omitted from appendix 4 of the September proof. I have therefor referred to the June proof, where that document appears as appendix 4. Unless otherwise indicated, references to Mr Burroughs' proof are to his September proof.

dwellinghouse involves a material change of use…", there is no similar clarification with respect to the opposite process, namely amalgamations.

9. Whether something constitutes a change of use, and if so, whether it is material, is a matter of fact and degree. In this case each original flat was a separate planning unit; indeed each one was a separate building in terms of the definition in section 336 of the 1990 Act. Each planning unit was used as a separate dwellinghouse and the amalgamation results in each of those planning units being used as *part* of a single dwellinghouse and part of a larger single planning unit. There has therefore been a change of use.

10. The next question is whether that change of use is a material one. However, before addressing that issue, mention needs to be made of section 55(2)(f) of the 1990 Act and the Town and Country Planning (Use Classes) Order 1987. Section 55(2)(f) provides that "in the case of buildings or other land which are used for a purpose of any class specified in any 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 other land, for any other purpose of the same class" shall not be taken to involve development. Prior to the amalgamation, each flat/building was used as a separate Class C3 dwellinghouse. Post-amalgamation each one is used as part of a dwellinghouse. Use as part of a dwellinghouse is not a use within the same class. So, if the change of use is material, it will constitute development, notwithstanding those provisions.

11. The recent case of *R (oao) The Royal Borough of Kensington and Chelsea v (1) Secretary of State for Communities and Local Government (2) David Reis (3) Gianna Tong [2016] EWHC 1785 (Admin)*[2] (the *Kensington v SSCLG* judgement) usefully summarises the principles to be applied when determining whether a change of use is material:

> "(1) A planning purpose is one which relates to the character of the use of land;
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> (2) Whether there would be a material change in the use of land or buildings falling within the definition of "development" in section 55 of the TCPA 1990 depends upon whether there would be a change in the character of the use of the land;
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> (3) The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. Thus, the need for a land use, such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;
>
> (4) Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;
>
> (5) The issues of (2) and (4) above are issues of fact and degree for the decision maker and are only subject to challenge on public law grounds;

[2] Ms Cheung's supplementary proof, appendix E.

(6) Whether or not a planning policy addresses a planning consequence of the loss of an existing use is relevant to, but not determinative of, an issue under (4) above."

12. Whilst there are objections from neighbours, the Council accepts that the loss of one dwelling in this case results in no amenity or environmental impact. However, paragraph 47 of the National Planning Policy Framework encourages all local planning authorities to "boost significantly the supply of housing". Amalgamations can clearly reduce the supply of housing and in a dense London Borough such as this, where property values are extremely high, there is a pressing need for relatively low cost housing. Ms Cheung says that the loss of smaller units and the creation of larger ones through amalgamation makes it harder for people, particularly young people to live and work in London. She says that the knock on effect of this includes unsustainable commuting, because people are forced to live outside London.[3]

13. In this borough, the expression "relatively low cost" is used advisedly, as most people would not recognise any of the housing as genuinely "affordable." Ms Cheung gave evidence of property values in her proof[4] and Mr Burroughs' evidence in chief included up to date information from 'Zoopla'. Although the parties express different views over whether the flat resulting from this amalgamation should be described as having 2 or 3 bedrooms[5], Mr Burroughs said that the average price of a 1 bedroom flat in this area is around £985,000; a 2 bedroom flat would cost over £1.4 million; and a 3 bedroom property is £2.8 million. He acknowledged that the value per square metre of 2 and 3 bedroom flats is markedly higher than that of 1 bedroom flats. There are also very significant differences in rental values between smaller and larger flats.[6] In this borough, the need for housing and particularly relatively low cost housing is a planning purpose which relates to the character of the use of land in accordance with principle (3) of the *Kensington v SSCLG* judgement above.

14. In the appeal concerning 44 Stanhope Gardens (the Stanhope Gardens appeal), which is the subject of the *Kensington v SSCLG* judgement, the Inspector said that the scale of amalgamations in the borough "may be having a material effect on the number of dwellings in the housing stock"[7] and "the loss of housing units …through the amalgamation of units could jeopardise the Council's attempts to meet the LP targets."[8] However, as no other harm was alleged and he found that the amalgamation of the 2 flats did not conflict with any development plan policies, he concluded that the effect of the amalgamation on the number of dwellings in the housing stock was a material consideration of no weight in the assessment of whether the change of use was material.[9]

15. This approach did not accord with principle (6), as set out in the *Kensington v SSCLG* judgement, and this is the basis on which the Inspector's decision to refuse an LDC in that case was quashed. Mr Justice Holgate ruled that *London Borough of Richmond v Secretary of State and Richmond upon Thames*

[3] Ms Cheung's proof, paragraphs 7.13 and 7.24.
[4] Ibid, paragraphs 7.21-7.23.
[5] The rear room on the second floor is designated on drawing No 653/A3/350 as a "study", but could be used as a bedroom.
[6] Ibid paragraph 7.23
[7] Ms Cheung's supplementary proof, appendix D, paragraph 16.
[8] Ibid, at paragraph 22.
[9] Ibid, at paragraph 16.

Churches Housing Trust [2000] 2 PLR 115[10] "did not decide that the need for housing, or any other planning consideration relevant to a determination of whether a material change of use would be involved, must be supported by a planning policy. It may be, or it may not be."[11] He added that the Inspector "was therefore obliged to consider whether that factor was significant for the specific purpose of deciding whether the proposal fell within the scope of planning control under section 55(1). He was not entitled to decide that question simply by saying that the consideration raised by the Council was unsupported by any planning policy."[12]

16. In this case, the appellant contends[13] that, for various reasons, the amalgamation and resulting loss of 1 residential unit would not have significant planning consequences. Those reasons include Mr Burroughs' evidence that the Council's housing target can be met and, in particular that: the numbers of planning permissions granted and dwellings completed has gone up in recent years; the number of amalgamations has been over-stated; the Council used the gross housing target figure, when assessing the impact of amalgamations, without taking account of the number of long term vacant units returning to use; there has been a considerable fall in the vacancy rate; the housing requirement is based on overstated population growth figures and the Framework's 20% buffer is inappropriate; there is a need for larger units; and this development results in better quality accommodation.

17. I shall come back to these points, but the appellant also contends that the *Kensington v SSCLG* judgement records and indeed endorses a concession made by the Council that the amalgamation of 2 flats to form 1 did not conflict with the Development Plan and that I am bound by that[14]. The Council does not accept that contention[15] and I must take a view on it. Even though loss of housing, or a type of housing, does not have to conflict with the Development Plan to be a factor in determining whether there has been a material change of use, if it is, that must add to the significance of the planning consequences under principles (4) and (6) of the *Kensington v SSCLG* judgement[16].

18. The relevant passages from that judgement are as follows:

> "21… It is accepted by the Council that, unlike its neighbour Westminster City Council, the local plan policies for Kensington and Chelsea do not seek to resist a development which results in the net loss of only one residential unit, or indeed any net loss of up to and including four units.
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> 35…the Inspector agreed with the Owners that the proposed change of use did not conflict with any of the relevant local policies. Indeed, he concluded that the proposal accorded with the Development Plan.
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> 36. Mr Straker QC confirmed that the Council does not contend that the Inspector misinterpreted any part of the Development Plan…or that the decision is open to challenge because of a failure to take into account any relevant policy or because of any legally defective reasoning in this respect.

[10] Submitted with the LDC appeal.
[11] M Cheung's supplementary proof, appendix E, paragraph 45.
[12] Ibid, paragraph 47.
[13] Mr Burroughs' proof, paragraphs 86 – 130.
[14] Inquiry document 13, paragraph 20.
[15] Inquiry document 12, paragraphs 18-22.
[16] See paragraph 47 of the *Kensington v SSCLG* judgement at appendix E of Ms Cheung's supplementary proof.

…

63…in DL23 and DL24 the Inspector explained why the proposals did not conflict with existing policies…"

19. In short, Mr Straker QC says the fact that he and the Council did not contend that the Inspector misinterpreted the Development Plan and did not develop such an argument before the court does not mean they conceded that there was no conflict. I accept that as a general proposition, but paragraph 21 of the *Kensington v SSCLG* judgement does appear to record a concession on behalf of the Council that a net loss of one residential unit does not conflict with the Council's policies.

20. Nevertheless, I see nothing in the judgement which amounts to an endorsement of that by the High Court. It was not a point on which the court needed to rule. The Council's argument, which the court accepted, was that even if there was no conflict with policy, the Inspector should nevertheless have considered the significance of the effect of housing conversions on housing supply in deciding whether the change of use was material. Whilst I will look more closely at what was said in evidence at my inquiry, whatever concessions were made in the High Court, the Council does now contend that the amalgamation in this case conflicts with the Development Plan and I must conclude on that. I see nothing in the *Kensington v SSCLG* judgement which binds me to a conclusion that there is no breach of the Development Plan.

21. The Development Plan comprises The Royal Borough of Kensington and Chelsea Consolidated Local Plan (CLP), adopted 2015, the saved policies of the Royal Borough of Kensington and Chelsea Unitary Development Plan (UDP), adopted 2002 and The London Plan – Spatial Development Strategy for London Consolidated with Alterations since 2011 (LP)[17].

22. CLP Policy CH1 provides that the Council will ensure that sufficient housing sites are allocated in order to meet housing targets. It initially set a target of a minimum of 350 net additional dwellings per annum (dpa) until replacement of the London Plan (estimated as 2011-12) and thereafter a minimum of 600 net additional dpa until 2027-28, but it provided that the exact target would be set through the London Plan Process. In 2015, the Further Alterations to the London Plan set a target of 733 dpa, though this includes vacancies returning to use and non-self-contained units.[18]

23. Under cross examination, Ms Cheung first agreed that there was no breach of CH1, but later equivocated, saying that, as the Council is not meeting its housing targets, she could not agree there was no breach of CH1. During re-examination, she said that in order to address the CH1 targets, there is a need to protect residential units. I understand that point but, whilst Policy CH1 establishes the background, it is an allocations and plan making policy and the amalgamation in this case cannot be characterised as a breach of that policy.

24. CLP Policy CH2 says that the Council will ensure new housing development is provided so as to further refine the grain of the mix of housing across the borough. As part of the means of delivering this, in relation to housing mix

[17] Further Alterations to the London Plan were published in March 2015 and these were augmented by the Minor Alterations to the London Plan in March 2016.
[18] Mr Burroughs' proof, paragraph 74.

and types, CH2(f) states that the Council will resist development which results in the net loss of five or more residential units.

25. Paragraph 35.3.18 of the supporting text for policy CH2 refers to the creation of larger dwellings through the amalgamation of smaller ones and the resulting loss of dwellings. It recognises the demand for larger dwellings of 3 or more bedrooms and says a balance needs to be struck. The supporting text explains that CH2(f) seeks to strike that balance, limiting the loss of residential units while allowing some flexibility in terms of the creation of larger units. The amalgamation of 2 units in this case cannot conflict with this policy, but CH2(f) does not go so far as to say that the net loss of fewer than 5 units complies with the Development Plan. That conclusion cannot be reached without looking at other policies of the Development Plan.

26. CLP Policy CH3 states that to deliver a net increase in residential accommodation, the Council will "(a) protect market and residential use and floorspace" subject to exceptions (i) – (v). By way of example, these include (i) "in higher order town centres, where the loss is to a town centre use." However, none of the specified exceptions applies in this case.

27. The appellant contends that there is no breach of CH3 because the use remains residential and there is no loss of residential floor space. Ms Cheung's did not positively assert a breach of CH3 in her proof, but she drew attention to paragraph 35.3.34 of the supporting text for Policy CH3. When cross examined she said that there was no breach of CH3 in isolation, but she referred to the supporting text again and said there was a breach of CH3 when taken together with CH1.

28. Ms Cheung's evidence on policy CH3 could have been clearer and she admitted at one stage during a very rigorous cross examination that she "must have got confused." I note that, unlike CH3(b), concerning social rented and intermediate affordable housing, CH3(a) refers to "residential use", rather than specifically "units." However, paragraph 35.3.34 of the supporting text for the whole of policy CH3 says that the loss of housing through "deconversion" *[sic]* can reduce the overall provision of housing stock and that to "achieve the annual housing target in Policy CH1, which takes account of net losses of units, it is therefore important to protect residential units in most circumstances. However, there are a limited number of situations in which losses will be permitted in order to meet various policy objectives of this plan. These are set out in the policy below."

29. Against this background, Policy CH3's protection of "market residential use and floorspace" must involve avoiding the loss of residential units and not just floor space. There is no conflict between the policy wording itself and the supporting text in this regard and it is not adding a further criterion, not already contained within the policy itself. If the policy was not seeking to restrict the loss of residential units, it would simply have required the Council to "protect residential floor space."

30. Whilst the wording of CLP Policy CH2(f) might appear to imply that the loss of fewer than 5 residential units will be acceptable, it does not say that and CH2(f) does not conflict with Policy CH3. In short, taken together, CH2(f) and CH3 provide that the net loss of 5 or more residential units will be a breach of policy in any event but, whether the loss of a smaller number will be a breach of policy depends on whether any of the exceptions in CH3 are met.

31. For the reasons given, I must respectfully disagree with the Inspector in the Stanhope Gardens appeal, when he found no breach of CH3. Furthermore, I reach this conclusion despite any concession previously made by the Council, as recorded in the *Kensington v SSCLG* judgement. I also note that, in another appeal concerning the amalgamation of 2 flats in Chepstow Crescent[19], the Inspector found conflict with CH3.

32. Saved UDP Policy H17 states simply that the Council will resist the loss of "existing, small, self-contained flats of one or two habitable rooms." This policy was not cited in the reasons for issuing the enforcement notice the subject of appeal A. Neither was it referred to in the delegated report concerning refusal of the LDC[20] or, in the December 2015, in the reasons for refusing the planning application submitted in respect of the amalgamation, following the refusal of the LDC[21]. As a result, Mr Burroughs did not address this policy in his proof. However, Policy H17 was referred to in pre-appliaction advice given to the appellant's architect on 2 October 2014, which indicated that amalgamation would be resisted[22]. Furthermore, Ms Cheung cites the breach of Policy H17 in her proof[23] and says that smaller units with one or two habitable rooms make an important contribution to the overall housing mix.[24]

33. When cross examined, Mr Burroughs did not dispute that amalgamation in this case is in breach of Policy H17, but maintained that H17 is an old policy, which conflicts with CLP Policy CH2(f). Under cross examination, Ms Cheung accepted there was conflict between these policies but, when re-examined, she said that there could be conflict in some circumstances, but not in the circumstances of this case. For my part, I do not accept that Policy H17 is "wholly inconsistent with CH2(f)", as suggested by Mr Lockhart-Mummery QC in closing. CH2(f) does not say that amalgamations of fewer than 5 small, self-contained flats of one or two habitable rooms will be granted planning permission.

34. There might appear to be conflict between Policy H17 and CH3 in some circumstances, for example, where there would be the loss of a small, self-contained flat to a town centre use in a higher order town centre. However, no such apparent conflict arises in this case. Having regard to the conclusions reached above, CH2(f), CH3 and H17 work together in the following way: developments involving the net loss of 5 or more residential units, or the loss of small, self-contained flats will be resisted in any event; and in all other circumstances, residential units or floorspace will be protected, unless specified exceptions are met. In this case, Policy CH2(f) is not breached, but CH3 and H17 are. (I note in passing that there was no breach of Policy H17 in the Stanhope Gardens appeal, because both flats had more than 2 habitable rooms).[25]

35. In addition to the conflict argument advanced by Mr Burroughs in evidence, when supplementing his written closing submissions orally, Mr Lockhart-Mummery QC asserted that UDP Policy H17 is an "inflexible policy", which is out of date by the standards of the Framework and it should therefore be given minimal weight. That point was not put to Ms Cheung in cross examination

[19] Appeal Ref APP/K5600/W/15/3030628 – see Ms Cheung's proof at paragraph 7.73 and appendix O.
[20] Mr Burroughs' appendix 3, page 24
[21] Ms Cheung's proof, paragraphs 1.5 – 1.6 and Mr Burroughs' appendix 3.
[22] Ms Cheung's appendix A.
[23] Paragraph 7.67.
[24] Paragraph 7.50.
[25] Ms Cheung's supplementary proof, appendix D, paragraph 14.

and it was not developed by Mr Burroughs in his evidence. However, paragraph 14 of the Framework does state that "Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change" and that where policies are out of date, "planning permission should be granted "unless any adverse impacts would significantly and demonstrably outweigh the benefits…" Paragraph 215 indicates that where, as in the case of H17, a relevant policy was adopted before 2004, due weight should be given to that policy according to its consistency with the Framework.

36. In his written closing, Mr Lockhart-Mummery QC also said that Policy H17 was formulated at a time when it was thought that there were good affordability reasons for preserving one-bed units, but those days are long since gone[26]. The reality of "affordability" in Kensington and Chelsea was covered in evidence, but the implications for Policy H17 were not specifically addressed. Whilst this particular argument was not explicitly developed in evidence, I do not lightly disregard assertions from leading counsel. However, the notion that it is pointless to attempt to retain relatively low cost housing in this borough strikes me as a counsel of despair. I also note that Policy H17 was given full weight in other recent appeals concerning proposals involving the loss of one residential unit at sites on Tite Street[27] and Chepstow Crescent[28].

37. Nevertheless, H17 is arguably a little inflexible. This reduces its weight to some degree, but it is still part of the Development Plan and, in the absence of evidence from Mr Burroughs to support Mr Lockhart-Mummery QC's contention, I do not accept that it carries only minimal weight. In any event, even before considering the LP polices, the amalgamation also conflicts with CLP Policy CH3, which is not out of date, so the presumption in favour of permission set out in paragraph 14 of the Framework does not apply.

38. The reasons for issuing the enforcement notice and the refusal of the appellant's planning application indicate that the amalgamation is contrary to LP Policies 3.3, 3.9 and 3.14. Policy 3.3 recognises the "pressing need for more homes in London in order to provide a real choice for all Londoners in ways that meet their needs at a price they can afford." It requires boroughs to seek to achieve and exceed their relevant minimum annual average housing target. Ms Cheung did not contend a breach of Policy 3.3 in her proof or oral evidence. Mr Burroughs made the point that this is not an operational policy, but guidance for Local Plan preparation. I accept that point. Even though a breach of Policy 3.3 was identified in another recent appeal concerning the amalgamation of 3 units at a site at Oxford Gardens[29], no breach of this policy was identified in the Stanhope Gardens appeal and, for the reasons given, I find no conflict with it in this case.

39. LP Policy 3.9 promotes a balanced mix of tenures but, as Mr Burroughs said, the amalgamation in this case will have no impact on tenure[30]. Ms Cheung did not contend any breach of Policy 3.9 and I am satisfied that there is none.

40. LP Policy 3.14B indicates that loss of housing should be resisted "unless the housing is replaced at existing or higher densities with at least equivalent floorspace." Ms Cheung says that, as residential density is generally counted

[26] Inquiry document 13, paragraph 28.
[27] Appeal Ref APP/K5600/W/15/3141434 - see Ms Cheung's proof at paragraph 7.79 and appendix T.
[28] Appeal Ref APP/K5600/W/15/3030628 – see Ms Cheung's proof at paragraph 7.73 and appendix O.
[29] Inquiry document 6.
[30] Mr Burroughs' proof, paragraph 67.

in units, this policy should be interpreted as requiring re-provision of at least the existing number of units, with at least the equivalent residential floorspace.

41. That approach was followed in recent appeals concerning sites at Cheyne Gardens[31], Vicarage Gate[32], Oxford Gardens[33] and Evelyn Gardens[34]. I do note however that the Inspectors in the Cheyne Gardens and Oxford Gardens appeals appear to have been under the mistaken impression that Policy 3.14B explicitly refers to the loss of "housing units".

42. In contrast to those decisions, the Inspector in the Stanhope Gardens appeal took the view that Policy 3.14 is part of a strategic plan and that it places emphasis on residential floorspace, rather than the number of units. Mr Burroughs acknowledged that, where targets are expressed in units, the number of units is relevant. He also said that Policy 3.14 is "slightly ambiguous", but he referred to the Mayor of London's Housing Supplementary Planning Guidance (SPG), dated March 2016, which includes a density matrix that takes habitable rooms per hectare as the starting point for the measurement of density and then converts that to dwellings per hectare.[35] In another appeal concerning a site at Portland Road[36], the Inspector considered that the reference to densities in Policy 3.14B meant "bed-spaces per hectare."

43. However, paragraph 1.2.38 of the SPG indicates that the "de-conversion of a number of smaller units into larger accommodation" can reduce capacity to meet the requirements of small households and where there is local evidence that "the amalgamation of separate flats into larger units is leading to the sustained loss of homes, boroughs are encouraged to resist this process in line with London Plan Policy 3.14." Paragraph 3.81 of the supporting text of Policy 3.14 says that to address London's housing needs, "existing housing should be retained…" Whether or not local evidence demonstrates a sustained loss of housing through amalgamations in this case, that paragraph and paragraph 1.2.38 of the SPG together provide strong support for the most logical interpretation of LP Policy 3.14B. That is that it seeks to resist the loss of housing units and density relates to the number of units, rather than habitable rooms. Mr Burroughs also accepted during cross examination that, before amalgamation, if they were both occupied, the flats would always house at least 2 people, whereas following the amalgamation, the dwelling might only house 1 individual.

44. In all the circumstances, in addition to the conflict with CLP Policy CH3 and saved UDP Policy H17, I conclude that this amalgamation does conflict with LP Policy 3.14B.

45. I refer in paragraph 16 above to a range of factors which the appellant says indicate that the amalgamation does not prejudice the Council's ability to meet housing targets and does not amount to a material change of use. However, this is against the background of the appellant's view that no planning policy precluded the amalgamation.[37] I have found that the amalgamation is contrary to the Development Plan in this case. Whilst the appellant nevertheless urges

[31] Ms Cheung's proof, at paragraph 7.74 and appendix P.
[32] Ibid, at paragraph 7.76 and appendix H
[33] Inquiry document 6.
[34] Ms Cheung's proof, at paragraph 7.80 and Appendix U. (It is notable that, in that case, although there would be a net loss of 2 units, there would be a "significant increase in the overall amount of residential floor space").
[35] Mr Burroughs' proof, at paragraph 145 and appendix 13.
[36] APP/K5600/W/15/3136075 – see Ms Cheung's supplementary proof, appendix B, at paragraph 27.
[37] Mr Burroughs' proof, paragraph 83.

me to look in detail at all of the factors referred to, the following comments from Holgate J in the *Kensington v SSCLG* judgement are pertinent:

> *"51. Both Mr Williams and Mr Lockhart-Mummery QC went on to submit that the decision should not be quashed in the exercise of the court's discretion…They relied upon DL25 which formed part of the reasoning for the Inspector's decision to allow the appeal against refusal of planning permission, in which he stated:*
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> *i. "Given the AMR projections, the loss of one residential unit at this time would not have a material adverse effect on the efforts towards meeting London Plan housing targets."*
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> *52. I have no hesitation in rejecting this argument…in DL22 the Inspector did recognise the planning harm that could arise from an amalgamation of dwellings in the Borough. In DL25 the Inspector merely expressed his judgement that the effect of losing one residential unit in this case would not have a "material adverse effect" on the achievement of London Plan housing targets. That could only mean an adverse effect of such significance as to justify, and it must be emphasised, the refusal of planning permission.*[38]
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> *53. It does not follow from such a conclusion on the planning merits of the proposed amalgamation that the housing need concerns raised by the Council were not significant for the threshold purpose of deciding whether planning control even applied. Self-evidently, the two questions are not the same and must not be confused by decision makers. The questions need not be answered in the same way. A decision that a planning consideration is not significant for the purposes of section 55(1) means that it does not even merit assessment under section 70(1) in the exercise of planning control."*

Conclusion on appeal B

46. With reference to the principles summarised at paragraph 8 of the *Kensington v SSCLG* judgement, I have found that the need for housing, and particularly relatively low cost housing, is a planning purpose which relates to the character of the use of land. I have also concluded that the amalgamation in this case is contrary to CLP Policy C3, saved UDP Policy H17 and LP Policy 3.14B.

47. Having regard to that 'policy harm', notwithstanding the absence amenity or environmental impact, I am satisfied that the amalgamation would have significant planning consequences for the threshold purpose of deciding whether planning control applies. Principle 6 of the *Kensington v SSCLG* judgement indicates that, whether a planning policy addresses a planning consequence is not determinative. However, that principle was articulated in circumstances where the Inspector had found no policy conflict. I have found that there are relevant policies and that they have been breached in this case. That must greatly increase the significance of the planning consequences in relation to the "threshold."

48. In note that the Council has granted LDCs in the past for similar amalgamations against the same policy and legal background, most notably on 25 June 2014, in relation to a property at Lansdowne Crescent. That decision represented the Council's view at the time, but it does not alter my reasoning

[38] In the judgement itself, italics were used for emphasis, rather than underlining.

in this case. I also note that on 2 October 2014, the Council advised the appellant's architects that the proposed amalgamation would be resisted upon application, because the proposal would result in the net loss of a residential unit.[39] On the appellant's evidence, this was some 7 months before the amalgamation works commenced[40] and it was 9 months before the LDC application was submitted.

49. As a matter of fact and degree, I conclude that the amalgamation of two residential units (second and third floor flats) into a single residential unit does involve a material change of use and the Council's refusal of an LDC was therefore well-founded and appeal B must therefore fail.

50. The amalgamation may arguably deliver benefits, such as contributing to meeting the need for larger dwellings, or improving the quality of accommodation. These must be weighed in the balance under section 70(1), but they do not affect my decision on the threshold position for the purposes of section 55(1).

APPEAL A

Main Issues

51. In relation to ground (a)/the deemed application for planning permission, I indicated in a pre-inquiry note, and at the start of the inquiry, that the main issues were:

- whether the amalgamation of two residential units (second and third floor flats) into a single residential unit accords with development plan policies aimed at ensuring an adequate supply and choice of housing to meet identified needs; and

- the impact of the amalgamation on living conditions in terms of living space.

52. Having already concluded on appeal B that the amalgamation conflicts with relevant development plan policies, namely CLP Policy CH3, saved UDP Policy H17 and LP Policy 3.14B, the main issue becomes whether material considerations nevertheless indicate that planning permission should be granted. As part of that, I will consider the impact on living conditions, in terms of living space.

Reasons

The same considerations advanced by the appellant to indicate that planning permission was not required are relevant to whether planning permission should be granted. These considerations, outlined in paragraph 16 above, can be grouped under the headings: ***Performance against housing targets*** and ***Type and quality of housing***

53. The 2014 AMR[41] indicated that the Council appeared to be "on track to meet its housing targets by the end of the plan period in 2025/26 with a suitable buffer."[42] Though the housing target was then increased, the 2015 AMR

[39] Ms Cheung's proof, paragraph 4.3 and appendix A.
[40] Mr Burroughs' proof, paragraph 37.
[41] Appendix 4 of Mr Burroughs' June proof.
[42] Ibid, at paragraph 46.

indicated that the 5 year housing target would be met, assuming a 20% buffer[43].

54. The Council's starting point is that, as indicated earlier in relation to appeal B, its current housing target for 1 April 2015 – 31 March 2020, as set out in the LP, is 733 dpa. However, when the 20% buffer is added under the Framework, for persistent under delivery, this rises to 880 dpa. The 2015 AMR states this as 4,398 over the 5 year period[44] and indicates that the current supply from deliverable sites is 4,416. This provides a marginal buffer, or 'headroom', as Mr Burroughs calls it, of less than 20 units. However, Ms Cheung says that the loss of units through amalgamations, estimated at 50 dpa, must then be factored in, the result being that the Council will not be able to meet its supply targets. Mr Burroughs' analysis challenges that conclusion, on the basis discussed below. The first points fall broadly under the heading:

Performance against housing targets

Increase in planning permissions and completions

55. During the period from 2009/10 to 2013/14, the gross housing target was 2455. Whilst there were 3719 approvals (51% above target), there were only 930 completions (62% below target)[45]. Against that background, and knowing that the LP target was about to increase, Mr Burroughs says it was not surprising that the Council sought to prevent stock loss in mid-2014, concluding that all amalgamations constituted development.[46] (The increase to 733 dpa was then adopted in March 2015).

56. However, Mr Burroughs said the trend then changed in 2014/15, when there were 982 completions (80% above the target for that year of 585 dpa) and there were 1303 approvals (140% above target).[47] It is difficult to conclude from the 2014/15 figures alone that there was a "fundamental change in the trend"[48], as opposed to a 'blip', so it is important to look at the available evidence for 2015/16.

57. Mr Burroughs refers to a table published by the Department of Communities and Local Government (DCLG)[49] which records 1040 completions for 2015/16, compared to the 2015 AMR projection of just 377 units[50]. This is a dramatic contrast, but the Council does not accept the 1040 figure. The DCLG figure is the only published one, but the Council produced its own table for the purposes of the inquiry[51]. This indicates that 522 dwellings were actually completed in 2015/16; significantly more than the 377 projection from the 2015 AMR, but obviously much less than the DCLG figure of 1040.

58. Neither Ms Cheung nor Mr Burroughs could confidently explain the discrepancy. Ms Cheung said that the DCLG figures are derived from returns made by the Council's Building Control Department to the DCLG. However, the Planning Department is charged with monitoring actual completions and the figures in

[43] Mr Burroughs' proof, appendix 4.
[44] Ms Cheung's proof, paragraph 7.34 and appendix G, paragraph 10.13.
[45] Mr Burroughs' proof, paragraphs 88-89
[46] Mr Burroughs' proof, paragraph 89.
[47] Ibid, paragraph 91.
[48] Ibid.
[49] Mr Burroughs' proof paragraph 92 – 94 and appendix 9.
[50] Mr Burroughs' appendix 4, Fig. 10.1.
[51] Inquiry document 8.

Ms Cheung's table come from that monitoring. The date of issue of a Building Regulations Completion Certificate may not correspond with the date of actual completion and some of the completions recorded in one year may have actually taken place in the previous year.[52] That is a plausible explanation.

59. It is worth considering all of the information on the table produced by Ms Cheung, so I set it out below.[53]

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	Total
Council	175	102	65	264	982	377* 522*	1965
DCLG	N/A	50	150	20	180	1040	1440

*projected completions (RBKC)

**actual completions (RBKC)

60. The first thing to note is that, in identifying a new trend in completions, Mr Burroughs used the 2015 AMR figures to 2014/15 and then the DCLG figure for 2015/16. However, the AMR completion figures for 2010/11 – 2014/15 are the same as the Planning Department's monitoring figures, as set out in the above table, not the figures published by the DCLG. To ensure a comparison of like with like, it therefore makes sense to use the Council's number of 522 in the series from 2010/11 – 2015/16, when seeking to detect any new trend. Furthermore, whilst there are big variations in the Council's numbers for each year, they are not as wild as the variations in the DCLG published figures. In my view, those wild variations in themselves indicate a need for caution. Finally, there is no reason to suspect that the Council is under-recording completions, because its total for 2010/11 – 2015/16 is significantly greater than the DCLG published total, even allowing for the fact that no DCLG figure is provided for 2010/11.

61. Completions appear to have increased significantly in 2014-2016, compared to previous years, but it is not safe to conclude on the evidence before me that the Council's figures for 2014-2016 and the DCLG published figure for 2015/16 reveal a new trend of very substantially increased completions that will continue at a similar trajectory for the next few years. I say this notwithstanding the significant increase in planning permissions from 2013/14, if only because, of the 1292 units permitted in 2013/14, 994 units were on the Earl's Court Strategic Site. This had not even started by April 2015 and could take some time to complete[54].

62. The evidence concerning new permissions and completions does not, in itself, provide a sufficient basis for concluding that amalgamations will probably not have a significant impact on the Council's ability to meet housing targets.

[52] See inquiry document 9.
[53] Ibid.
[54] See paragraphs 44 and 10.13 of the 2014 AMR at appendix 4 of Mr Burroughs' June proof.

Impact on the gross housing target figure of vacant units returning to use

63. As indicated, the Council has assessed the position on the basis of the LP target of 733 dpa. However, the Council did not challenge Mr Burroughs' evidence that this is the wrong approach, because the LP indicates that 46 of those 733 units will be achieved through long term vacant units returning to use. On this basis, I accept that the new stock housing target would therefore be 687 dpa.[55] Taking account of the 20% buffer, this results in a 5 year target of 4,122 against a supply from deliverable sites of 4,416. This provides headroom of 298 dpa which would accommodate 250 amalgamations at the Council's suggested rate of 50 dpa.[56]

Fall in vacancy rates

64. In addition to this, Mr Burroughs points out that vacancies have fallen much faster than the assumed rate of 46 dpa. The 2014 AMR assumed that around 118 vacant units per annum would return to use.[57] However, having regard to DCLG figures, which show returning vacancies at 77 dpa[58], Mr Burroughs suggested in his oral evidence that I should work on the basis of a reasonably conservative estimate of 100 returning vacancies per annum. The Council did not dispute that and, on this basis, the 5 year requirement would be 3,798 including the 20% buffer. The supply of 4,416 would leave headroom of 618 to accommodate 250 assumed amalgamations over that period.

The number of amalgamations

65. As indicated, the Council's evidence is that amalgamations are likely to reduce the supply over the current 5 year period by some 50 dpa. In closing, Mr Lockhart-Mummery QC submitted that this must be an overstatement, "in the light of the post-2014 position and the forthcoming tightening of policy."[59] However, this was not a point developed with Mr Burroughs during his examination in chief and neither was it put to Ms Cheung in cross examination.

66. Mr Burroughs' proof acknowledges that the 2015 AMR recorded an average loss through amalgamations of 68 dpa from 2010 – 2015, though this figure is derived from LDC approvals and may not therefore reflect the full position. However, Mr Burroughs notes that the officer's report on the appellant's planning application recorded a loss of 34 units in 2013/14, compared to the 40 mentioned in the AMR.[60] That report also refers to a loss of 93 units for 2014/15, compared to the 112 shown in the AMR. However, given that the Council's figure of 50 dpa would still be below the average of the previous 5 years, these discrepancies do not suggest that figure is overstated.

67. Whilst the issue of amalgamations is being addressed in the Local Plan Partial Review[61], it is too early to say what the result of that will be. Furthermore, the expression "tightening of policy" does not fit with my interpretation of existing policies.

[55] Mr Burroughs' proof said 684 at paragraph 101, but this was corrected in his evidence in chief.
[56] Ms Cheung's proof, paragraph 7.34.
[57] See paragraphs 105 of Mr Burroughs September proof and paragraph 10.13 of the 2014 AMR, reproduced at appendix 4 of Mr Burroughs' June proof.
[58] Mr Burroughs' proof, paragraph 104.
[59] Inquiry document 13, paragraph 34.
[60] Mr Burroughs' proof, paragraph 98 – 99.
[61] See inquiry document 5 and the Issues and Options Consultation Document December 2015, at Mr Burroughs' appendix 5.

Population growth figures and the 20% buffer

68. The LP housing target of 733 dpa for the borough relies on the Greater London Authority's (GLA) population forecasts, which in turn rely on Office for National Statistics (ONS) mid-year population estimates. However, the 2011 census indicates that the ONS estimates for the 2000s were seriously inaccurate. Based on ONS estimates, the GLA's 2009 projection was that 171,600 people would be living in the borough by 2014, but the 2014 projection forecasts just 155,700. Whilst acknowledging that property price rises had doubtless been a factor in the population decline, Mr Burroughs indicated that, on current forecasts, the borough's population will not return to the 2005 level until about 2037.[62]

69. That evidence was not challenged by the Council and the Local Plan Partial Review Issues and Options Consultation Document December 2015 (LPPRIO) refers to the 2015 Strategic Housing Market Assessment (SHMA)[63], which identified an objectively assessed need (OAN) of just 575 dpa. On this basis, Mr Burroughs suggested that the Council's housing target of 733 dpa is likely to be reduced. However, the SHMA states at paragraph 7.38 that: "The London Plan requires a minimum level of provision in RBKC of 733 dwellings per annum to meet strategic housing needs. This represents a margin of 27% in addition to OAN (575 dwellings per annum) as identified in this report to reflect market signals. This report suggests that RBKC should plan to achieve the target level of provision."

70. In any event, Mr Burroughs acknowledged in his proof, his evidence in chief and during cross examination that, whilst he believes the 733 housing target will be reduced, he was not attacking that figure, as this was not a local plan inquiry. He nevertheless suggested that, in these "very special circumstances", there is discretion to look at the buffer. Indeed he said it would be inappropriate to apply that buffer and, in closing, Mr Lockhart-Mummery QC said it would make "no sense."[64] Mr Burroughs said that if the 20% buffer were not applied, it must be common ground that the Council would have no difficulty in achieving its housing target, despite the assumed level of amalgamations.

71. Ms Cheung was not asked to comment on this proposition, but it was rejected by Mr Straker QC in closing.[65] Mr Burroughs admitted he knew of no appeals in which there had been persistent under delivery and yet the 20% buffer was not applied. He also accepted that, in this borough, there had been under delivery in each year from 2009/10 – 2013/14 by a "considerable margin". In these circumstances, there is nothing in the Framework to support Mr Burroughs' contention that the 20% buffer should not be applied. I am satisfied that it should.

Conclusion in relation to housing performance

72. Notwithstanding recent increases in planning permission granted and in completions, the appropriate 5 year target is (733 – 100[66]) x 5 + 20% =

[62] Mr Burroughs proof, paragraphs 112-118.
[63] Mr Burroughs' proof, appendix 5, at paragraph 10.4.11; and Ms Cheung's proof, appendix C, at paragraphs 7.36-7.38..
[64] Inquiry document 13, paragraph 42.
[65] Inquiry document 12, paragraph 30.
[66] Returning vacancies per annum.

3,798. As the supply is 4,416, this leaves headroom of 618 within which to accommodate the 250 amalgamations anticipated by the Council over that period. Even taking account of the cumulative impact advanced by Ms Cheung[67], the evidence before me enables me to be reasonably confident that allowing this appeal would probably not prejudice the Council's ability to meet, and indeed comfortably exceed, its housing targets. I will consider the impact on the range and type of accommodation below.

Type and quality of housing

The need for larger units

73. At paragraph 35.3.10, the supporting text for CLP Policy CH2 indicated that, over the following 20 years, the size of new market housing likely to be required was 20% 1 and 2 bedroom units and 80% 3 and 4 or more bedroom units. However, Ms Cheung says the position has changed since adoption of the CLP and refers to the following information, taken from the SHMA, concerning the relative need for dwellings of different sizes:

Dwelling Size	**Percentage**
1 bed	23%
2 bed	29%
3 bed	30%
4 + beds	18%

74. This indicates no greater need for family sized units. However, referring to paragraph 10.4.5 of the LPPRIO, Mr Burroughs points out that, whilst the need for 1 and 2 bedroom dwellings amounts to 52%, such units represent 72% of the existing stock. In these terms, there is an over-supply of 1 and 2 bedroom units, whereas just 28% of the stock is available to meet the 48% need for larger dwellings. Indeed, figure 10.5 from the LPPRIO indicates that 1 bedroom units represent around 37% of the stock against the need for 1 bedroom dwellings at 23% of the stock. That figure also indicates that 3 bedroom units make up around 16% of the stock against an identified 30% need.

75. Whilst I acknowledge the desire to retain relatively low cost units, Ms Cheung accepted during cross examination that there is nothing to suggest a need to retain 1 bedroom units at this site. Indeed, on the evidence before me, there is some benefit in creating a larger unit. The weight of this point is diminished a little by the appellant's characterisation of the resulting unit as 2 bedroom dwelling. However, this is based on his description of a room on the second floor as a study. In reality, it could be used as a bedroom and indeed it was so used prior to the amalgamation. The Council considers the new unit to have 3 bedrooms.[68]

76. Notwithstanding the changes that have taken place since the adoption of the CLP, the evidence before me indicates that there is probably still a need for

[67] Paragraph 7.64 of her proof
[68] Ms Cheung's proof, paragraph 2.2.

larger dwellings of 3 or more bedrooms. This amalgamation would contribute to meeting that need, even though Mr Burroughs acknowledged the possibility that it might only be occupied by one person.

Improved accommodation

77. LP Policy 3.14A states that the maintenance and enhancement of the condition and quality of London's existing homes should be supported and LP Policy 3.5C incorporates minimum space standards[69].

78. Prior to the amalgamation, the second floor flat had an overall size of 49 sqm compared to the standard of 50 sqm. Whilst this is a marginal deficit, the 99 sqm unit (including stairs and circulation space) resulting from the amalgamation is comfortably above the standard for either a 2 bedroom (4 person) or 3 bedroom (4 or 5 person) 2 storey dwelling.[70] The improved circulation space results in part from the removal of the cylinder and store, which took up some of the space in the original flat on the third floor. This improvement in space above the minimum standard represents some benefit, in terms of enhanced quality, in accordance with LP Policy 3.14A.

Conclusion in relation to the type and quality of housing

79. Whilst there I an understandable desire to retain relatively low cost housing units, there is nothing to suggest a need to retain 1 bedroom units at this site, whereas there is evidence of a need for larger units. The amalgamation also improves living conditions, in terms of living space, and therefore the quality of housing in accordance with LP Policy 3.14A.

Other matters

80. As part of its Local Plan Partial Review, the Council is about to consult on a policy which would permit the amalgamation of two residential units to one, if the gross floorspace of the resulting unit would not exceed 170 sqm.[71] Mr Burroughs' unchallenged evidence is that the resulting unit in this case is 99 sqm. It is far too early to say that this, or something similar, is likely to become the adopted policy of the Council and, in accordance with the Framework, it therefore carries minimal weight as emerging policy. However, the fact that the Council is about to propose a policy which would allow the amalgamation in this case must provide some limited support for the appeal.

81. I note the concerns of residents on the lower floors of the appeal building relating to the loss of the sense of space and access to natural light in the common areas. Prior to the amalgamation works, these areas benefitted from light from the small glass roof or atrium at the top of the building. By incorporating part of the stairs and common area within the new dwelling, the amalgamation has obstructed this and increased the sense of enclosure.

82. Whilst this might arguably be a factor which bolsters my conclusion on appeal B that there has been a material change of use, I am not convinced that it is sufficient to justify dismissal of appeal A, especially since the impact on light to the common parts can be mitigated through the imposition of a

[69] Inquiry document 3.
[70] Ibid and Mr Burroughs' proof paragraphs 138-144 and appendices 12 and 13.
[71] Inquiry document 5, paragraph 4.9.

condition requiring the submission for approval and subsequent implementation of a lighting scheme.

Overall planning balance and conclusion on appeal A (ground (a))

83. The amalgamation of two residential units (second and third floor flats) into a single residential unit conflicts with CLP Policy CH3, saved UDP Policy H17 and LP Policy 3.14B, which aim to ensure an adequate supply and choice of housing to meet identified needs. The Framework also requires Council to boost significantly the supply of housing. However, on the evidence before me, the amalgamation will not, on the balance of probability, affect the Council's ability to meet its housing targets. Furthermore, it will contribute to meeting a current identified need for larger dwellings in the borough, whilst improving the quality of accommodation, in accordance with LP 3.14A. Furthermore, in the light of the terms of a policy now being proposed as part of the Local Plan Partial Review, the Council appears to consider that amalgamations of this kind could be acceptable. On balance, these are material considerations which indicate that I should allow the appeal on ground (a) and grant planning permission, notwithstanding the conflict with the development plan.

Conditions

84. The internal works have not yet been fully completed and therefore, in the interests of certainty, I shall impose a condition requiring the development to be carried out in accordance with the submitted plans. Although the Council's suggested condition included drawing number 653/A3/100, I will omit that reference, as this was merely an additional location plan.

85. As indicated, subject to minor amendments in the interests of precision and enforceability, I will impose the appellant's suggested condition[72] concerning lighting to the communal staircase and hallway. This is necessary to safeguard neighbours' living conditions.

Ground (g)

86. Given my conclusion on ground (a), I will quash the enforcement notice and ground (g) does not fall to be considered.

Decision

Appeal A: APP/K5600/C/16/3143934

87. The enforcement notice is corrected by deleting the heading "(Operational Development)" and substituting "(Material Change of Use)".

88. Subject to that correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land involving the amalgamation of two separate self-contained residential units on the second and third floors of the property at 77 Drayton Gardens, London, SW10 9QZ as shown on the plan attached to the notice, subject to the following conditions:

[72] Inquiry document 11.

1) The development hereby permitted shall not be carried out except in accordance with the details shown on submitted plans 653/A3/103, 653/A3/150, 653/A3/151, 653/A3/350 and 653/A3/351.

2) Prior to first occupation of the residential unit hereby permitted, a scheme for the provision of light to the communal staircase and hallway in the building shall be submitted for the approval of the local planning authority and the scheme as approved by the local planning authority or, as the case may be on appeal, shall be implemented and it shall thereafter be maintained.

Appeal B: APP/K5600/X/16/3136227

89. The appeal is dismissed.

J A Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Christopher Lockhart-Mummery QC

He called

Michael Burroughs BA
MRTPI FRSA

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Straker QC

He called

Lisa Cheung BSc(Hons)
MA MRTPI, Assistant
Head of Development
Management and
Conservation, Royal
Borough of Kensington
and Chelsea

INTERESTED PERSONS:

Helen Parkinson – Neighbouring resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Appellant's opening submissions

2 Council's opening submissions

3 Chapter 3 of the London Plan (Lisa Cheung's missing appendix L)

4 Suggested plans condition

5 Briefing Note re the Local Plan partial review

6 Appeal decision Ref APP/K5600/W/16/3149276 re 62 Oxford Gardens

7 Letter from the Council to the Planning Inspectorate dated 21.9.16 concerning the Oxford Gardens appeal and the judgement in R (oao) The Royal Borough of Kensington and Chelsea v (1) Secretary of State for Communities and Local Government (2)

David Reis (3) Gianna Tong [2016] EWHC 1785 (Admin) (See Mr Burroughs' appendix7)

8 Comparison of net residential completion figures produced by the Council and those published by the Department for Communities and Local Government

9 Council's briefing note re housing statistics produced for the inquiry on 12.10.16

10 Schedule of residential schemes granted planning permission from 1.4.15 to 31.3.16 (pages 1 – 19) and residential schemes completed in that period (pages 20 – 41)

11 Suggested condition concerning the provision of light to the communal staircase

12 Council's closing submissions

13 Appellant's closing submissions

14 Appellant's costs application