

Planning and Borough Development

Kensington Town Hall, Hornton Street, LONDON, W8 7NX

Executive Director Planning and Borough Development

Mr Graham Stallwood

The Planning Inspectorate
Room 3/23
Temple Quay House
2 The Square
Bristol
BS1 6PN

19 November 2015

My reference: CL/15/04119

Your reference: APP/K5600/X/15/3136227

Please ask for: Mrs Sarah Madyausiku

Dear Sir or Madam,

Town and Country Planning Act 1990

Appeal by Mr Maurice Nixon

Site Address: 77 Drayton Gardens, LONDON, SW10 9QZ

- 1.1 The Case Officer's report sent with the appeal questionnaire provides details of the planning history, site and surroundings and an analysis of the proposal and it is not the Local Planning Authority's (LPA) intention to repeat those details here.

Amplification of the LPA's case

- 2.1 The appeal is made under section 192 of the Town and Country Planning Act 1990 (as amended). The above appeals have arisen from the LPA's decisions to refuse to grant a lawful development certificate (LDC) for internal alterations to amalgamate two flats located at second and third floor levels in order to create 1 x two bedroom flat (Certificate of Proposed Development).
- 2.2 The certificate of lawfulness was refused under delegated powers on 28/08/2015 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.

- 2.3 For the avoidance of doubt, the planning merits of the proposed use of property are not relevant and have not been considered by the LPA. The LPA's decision has been made on the facts of the case and on relevant planning law and judicial authority.

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2.4 The appeal proposal is to convert two flats into one dwelling and would involve some internal works.

2.5 Section 55 of the Act sets out what constitutes development, which essentially is the carrying out of building operations or making a material change in the use of the building or land. Subsection 55 (2) of the Act clarifies that the carrying out of improvements or other alterations which only affect the interior of the building or do not materially affect the external appearance of the building, do not involve development.

2.6 The meaning of 'development' is set out in Section 55(1) of the Town and Country Planning Act 1990 (TCPA) as:

'the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any building or other land'

2.7 Section 55(2)(f) provides that:

'The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land...

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.'

2.8 Section 55(3)(a) provides that:

'For the avoidance of doubt it is hereby declared that for the purposes of this section...

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'

2.9 The Act is silent on whether the reverse, i.e. the use of two or more dwellinghouses as a single dwellinghouse, constitutes a material change of use of a building. This question has been considered by the courts, where it has been established that whether or not a material change of use has occurred is a question of fact and degree.

2.10 The proposal to amalgamate the units would only affect the interior of the two flats and would not materially affect the external appearance of either flat. Therefore the reason for refusal relates only to the material change of use involved.

2.11 As the nature of the housing market changes, the Council has seen a gradual but steady erosion of the Borough's housing stock as existing flats have been joined together to create a smaller number of larger units, either as larger flats or single houses. Whilst the newly created larger unit will serve a need, the level of loss has implications on the ability of the Council to meet its increased

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housing targets. To address this issue, this authority reconsidered its position regarding the level of loss of residential units carried out through the process of amalgamation without the need for planning permission.

- 2.12 This authority has asserted for some time that the loss of units through amalgamation can amount to development within the context of s.55 of the Town and Country Planning Act 1990, and requires planning permission. This view is supported by a legal opinion received from Leading Counsel (Appendix A). This opinion had regard to the Richmond case (2000) [*London Borough of Richmond V SSETR and Richmond upon Thames Churches Housing Trust, QBD, 28.3.2000*] which confirmed that whether planning permission is required for amalgamation of housing units should be a matter of fact and degree. The nature of the planning policies in place, and any evidence of need, will also be relevant.
- 2.13 In summary, Leading Counsel's opinion supports the view that if the loss of units associated with the amalgamation had important planning considerations and effects then it should be considered to be a material change of use, and consequently that planning permission will be required. This has been confirmed by a number of decisions in Westminster City Council where the Council refused to issue a Certificate of Proposed Lawful Use for an amalgamation, and where the decisions were upheld at appeal (Appendices B and C).
- 2.14 As such the LPA has taken the view that having policies on housing is enough to demonstrate an important planning consideration and effect, and to render the loss of units as a material change of use. This was (and remains) a view shared by a number of other Local Authorities across London. The relevant Consolidated Local Plan policies (Appendix D) are:
- CH1 (Housing Targets) i.e. meeting housing targets through "net additional dwellings"
 - CH2(f) (Housing Diversity) which states that the Council will, "resist development which results in the net loss of five or more residential units".
 - CH3 (Protection of Residential Uses) "The Council will ensure a net increase in residential accommodation" and (b) "resist the loss of both social rented and intermediate affordable housing floorspace and units throughout the Borough"
- 2.15 Until August 2014 the LPA took the view that amalgamation that results in the loss of five or more units requires planning permission, but that the loss of four or less does not. This approach derived from the Richmond case, and is reflected in the housing policies within the Consolidated Local Plan.
- 2.16 Where planning permission is required, there is a general presumption against the loss of existing residential units, although as yet there is no policy specifically resisting amalgamation where no more than four units would be lost. Whilst the two parts of the policy may appear to be contrary, the ambition was to strike an appropriate balance between the loss of residential

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units and the need for larger family dwellings. Where planning permission was required (loss of five or more units) then it would generally not have been granted.

- 2.17 The Council's housing policies were tested at the examination in 2010 and were found to be sound. Whilst the more permissive approach to amalgamation would impact upon the total housing stock, there was no reason to believe that the Borough's housing targets at that time (350 units pa) could not be met.
- 2.18 In August 2014 the Council changed its interpretation as to how much amalgamation could occur without planning permission being required. It is important to note that this was not a change in development plan policy (i.e. in the Consolidated Local Plan), and as such no consultation/examination was necessary, or indeed appropriate. The Council now takes the view that any amalgamation which includes the loss of a unit will be development which requires planning permission. This reflects increasing housing targets and the impact that amalgamation is having upon progress on achieving these.

Housing Targets

- 2.19 It is quite clear that Government policy, set out in the National Planning Policy Framework, is to ensure the delivery of housing to meet an identified need to boost significantly the supply of housing. The London Plan and the Council's Consolidated Local Plan (forming the Development Plan for the area) make provision for an increased housing supply within this Borough (and London wide), with an overall housing target of 5,850 net additional dwellings at a minimum of 585 net additional dwellings per year. In this context the pressing need for housing is a material consideration and furthermore, it must be concluded that any proposal which has an impact upon the ability to deliver a net increase in housing supply (by reducing the overall housing stock) gives rise to planning considerations which should be taken into account when considering whether a material change of use would occur.
- 2.20 Ongoing amalgamation is harming the Council's ability to meet its housing targets. This concern is particularly acute give the Government's increasing emphasis on the delivery of additional housing since the adoption of the Consolidated Local Plan. This has been reflected by the ever ambitious housing targets imposed on Councils by the Greater London Authority (GLA). This has increased from a requirement of a net increase in 350 units in 2010; to 600 units between 2011 and 2014; and a current target of 733 units a year with the recent publication of the consolidated London Plan (2015).

Housing Delivery

- 2.21 Table 1 sets out the Borough's housing approval and completions since the adoption of the Core Strategy in 2010. This shows that completions have consistently been falling below the target in this time. Whilst the figures are looking more positive for the future, with some 2,500 additional units in the pipeline, the continued loss through amalgamation is not helpful.

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	2009/10	2010/11	2011/12	2012/13	2013/14
Net Residential Approvals	540	783	860	244	1292
Net Residential Completions	324	175	102	65	264
Target	350	600	600	600	600

Table 1: Residential approvals and completion 2009/10 to 2013/14

- 2.22 It is difficult to quantify the total loss of units that has occurred through amalgamation over time given that until August 2014 the LPA did not seek planning permission for such changes. Table 2 sets out the number of lost units at that point in time where the Council took the view that planning permission was not required for the amalgamation, as confirmed through a Certificate of Lawful Existing Use (CLEUD).

	2010	2011	2012	2013	2014
Net residential losses	-47	-58	-72	-80	-34

Table 2: Net residential loss through CLEUDs

- 2.23 Table 2 demonstrates that the loss of units amounts to nearly 300 dwellings. Considering the built typology of the Borough, it is difficult to find sites for this number of homes. There is no compulsion for the applicant to seek this confirmation through a CLEUD and the number of units lost based on CLEUDs is likely to be a serious underestimate of the true figures. Even taking a conservative line, if the Borough allows the constant process of amalgamation to continue uncontrolled, the Borough's housing targets would increase from a highly challenging 733 units per annum as set out in the London Plan to virtually impossible 800-900 units per annum.
- 2.24 As a result, the former approach whereby amalgamation which resulted in the loss of four or less units was not considered to be development which required planning permission is no longer considered to be appropriate. Such loss will have important planning considerations and effects.

Comments on the appellant's grounds of appeal

- 3.1 The appellant claims that the amalgamation of the two flats does not involve a material change of use. The Council disputes this view and the amplification of the Council's case above sets out the relevant justification for this view. As such, no further comments on the appellant's grounds of appeal are considered necessary.

Conclusion

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- 4.1 The Statement of Case (submitted by Michael Burroughs Associates) does not contain any matters or considerations that were not brought to the LPA's attention when considering the application for the certificate of lawfulness.
- 4.2 The Inspector is respectfully requested to dismiss the appeal and refuse the certificate of lawfulness.

Sian Saadeh
Acting Central Team Leader
For the Executive Director of Planning and Borough Development

Direct Line: 020 7361 2321
Web: www.rbkc.gov.uk

APPENDICES

**APPENDIX A
LEGAL OPION REFERRED TO IN SECTION 2.12**

**APPENDIX B
APPEAL DECISION NOTICE 12/00691/CLOPUD WESTMINSTER CITY COUNCIL**

**APPENDIX C
APPEAL DECISION NOTICE 12/01395/CLOPUD WESTMINSTER CITY COUNCIL**

**APPENDIX D
CONSOLIDATED LOCAL PLAN POLICIES CH1, CH2 and CH3**