

Proof of Evidence of Lisa Cheung BSc (Hons), MA MRTPI

Appeal by Maurice Nixon

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

PINS References: APP/K5600/X/15/3136227 and APP/K5600/C/16/3143934

Proof of Evidence of Lisa Cheung

My name is Lisa Cheung and I am a chartered town planner. My current position is as Assistant Head of Development Management and Conservation at the Royal Borough of Kensington and Chelsea. I have worked as a Planning Officer in development management at the Royal Borough of Kensington and Chelsea for 3 years. Prior to my employment with the Royal Borough I worked at the London Borough of Barnet as a Planning Officer for 5 years.

I hold a Bachelor of Science (Honours) degree in Geography from the University of London: King's College and a Master of Arts in Planning Policy and Practice from South Bank University.

I am familiar with the appeal site and the surrounding area. I have been involved with the proposals since February 2016. I consider that the Council's position is well founded and I agree with the reasons for refusal of the application and the basis on which the enforcement notice was served.

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1.0 INTRODUCTION

1.1 This statement sets out my evidence on behalf of the Royal Borough of Kensington and Chelsea (the Council) in respect of the appeal submitted by Maurice Nixon against the Council's refusal of a Certificate of Lawfulness (reference: CL/15/04119) (Appeal A) and the decision to issue an Enforcement Notice (reference E/15/00578) (Appeal B). The appellant submitted an appeal against each decision which have now been linked. This proof of evidence will deal with both appeals.

1.2 The certificate of lawfulness received by the Council on 2 July 2015 and made valid on 6 July 2015, sought confirmation that the following works were lawful:

Internal alterations involving amalgamation of two residential units into one.

1.3 The certificate of lawfulness was determined under delegated powers and refused on 28 August 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.

1.4 The decision notice was issued on 28 August 2015.

1.5 On 9 September 2015, following the refusal of the certificate of lawfulness, the appellant submitted a planning application. The description of the proposal was:

'Amalgamation of two residential units on second and third floors into one two bed unit and internal alterations'

1.6 This application was determined under delegated powers and refused on 17 December 2015 for the following reason:

The development involves the loss of a residential unit which reduces the supply and choice of housing available within the Borough and does not contribute to meeting housing targets and housing needs for the Borough and London as a whole through

ensuring a net increase in residential accommodation. This is contrary to the aims of the development plan, in particular policies CH1, CH2 and CH3 of the Consolidated Local Plan and policies 3.3, 3.9 and 3.14 of the Consolidated London Plan.

- 1.7 This decision is not the subject of this appeal however it was following this decision that an Enforcement Notice was served. This was served on 5 January 2016 and came into effect on 9 February 2016. The Notice requires the following:

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.

- 1.8 The period for compliance was three calendar months after the notice took effect.

- 1.9 As part of the investigation into the alleged breach of planning control, a Planning Contravention Notice was issued on 25 June 2015. The responses to this stated that the works to amalgamate the two residential units commenced on 1 May 2015.

- 1.10 In accordance with Annexe J of the Procedural Guide March 2016, my evidence focuses on the issues of dispute. My evidence will summarise the planning policies relevant to this appeal, and will provide evidence relating to the following:

- the amalgamation of the two residential units into one is a material change of use constituting development as defined by section 55 of the Act which would require planning permission (reason for refusal for CL/15/04119)
- planning permission would not be granted (ground A of Appeal B)
- the matters stated in the enforcement notice do constitute a breach of planning control because planning permission is required and would not be granted (ground C of Appeal B)

I will also set out a reasoned justification for why the period for compliance is reasonable.

- 1.11 I will provide the overall planning assessment and will consider whether there are relevant circumstances that outweigh the appeal proposal's non-compliance with planning policy, and the degree to which the benefits of the appeal proposal may

offset the harm the proposed scheme would cause.

2.0 APPEAL PROPOSAL

- 2.1 The description of the development is set out in paragraph 1.2.
- 2.2 The proposal entailed the amalgamation of two residential units into a single residential unit with associated internal alterations. The existing two residential units were 1 bedroom units. The proposed single residential unit would be a three bedroom unit (the third bedroom being shown as a study on the proposed drawings).
- 2.3 Works have been carried out to the property to implement the proposed development and whilst the layout is now as a single residential unit, works have not been completed and the property is currently empty.

3.0 SITE AND SURROUNDINGS

- 3.1 The appeal property is a three storey plus lower ground floor and roof level accommodation end of terrace property located on the north-eastern side of Drayton Gardens. It occupies a corner position at the junction of Drayton Gardens with Holly Mews.
- 3.2 The property is sub-divided into five residential units, as evidenced on site and through Council tax records, one on each floor. This appeal concerns the residential units on the 2nd and 3rd floors only. No other changes are proposed.
- 3.3 Whilst the appeal site itself is not within a conservation area, nor is the building listed, the land and buildings immediately 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. Essentially, with the exception of the group of buildings between the junctions with Holly Mews and Priory Walk, the rest of Drayton Gardens is within a conservation area.
- 3.4 Drayton Gardens is predominantly residential in character with a wide variety in its townscape. Terraced buildings, such as the appeal property sit alongside mansion blocks, later post war developments and individual properties of varying design and scale.

3.5 To the rear of the site is Holly Mews which is comprised of mews properties. 6 Holly Mews physically adjoins the appeal property.

4.0 PLANNING HISTORY

4.1 On 23 April 1970, planning permission was granted for the conversion of the ground, first, second and third floors to 4 self contained flats and the formation of a new entrance doorway. The layout of the building prior to this was a self contained basement flat and House of Multiple Occupation (HMO) accommodation in the remainder of the building. It is the HMO accommodation which was to be converted into self contained units. The basement was to remain as a self contained residential unit.

4.2 Correspondence issued from the Council's Planning Department in 1988 suggests that the planning permission was implemented and indeed the building, prior to the unauthorised works was laid out as five self contained units. There is however some differences in respect of the residential unit at third floor between the approved layouts from the 1970 permission to how the unit was laid out prior to the unauthorised works. The 1970 drawings indicate that this unit was to be a two bedroom unit however until 1 May 2015, assuming the date on which the works to amalgamate the two properties commenced is correct; this unit was a one bedroom unit. It is not known if this unit was initially implemented in accordance with the approved drawings and if so, when these changes took place in the intervening period.

4.3 Pre application advice for a rear extension at third floor level and other roof extensions was sought in August 2014 (reference AR/14/00920). As part of the proposals, whilst not explicitly referred to within the description of the proposal, the amalgamation of the two 1 bedroom units on the second and third floors was proposed. As part of that pre application advice the planning officer confirmed that the proposed amalgamation of the two units into one unit would be resisted upon application because it would result in the net loss of a residential unit. The written advice note was issued to the planning agent on 2 October 2014. A copy of it is attached as Appendix A.

4.4 Other relevant planning history relates to the planning application which was submitted on 9 September 2015 and refused on 17 December 2015 as detailed in

paragraphs 1.5 and 1.6. Those details will not be repeated here.

5.0 RELEVANT CHANGES SINCE THE DECISION TO REFUSE

5.1 I am not aware of any significant changes to the site's physical context since the decisions were made.

5.2 People have however become more and more aware of the difficulties one can be faced with finding adequate accommodation in the Borough. The shortage of housing for people of a certain age and economic status is notoriously obvious and well documented.

5.3 The following changes have been made to the relevant legislation, policy and guidance:

- The Mayor's Housing SPG was published in March 2016

5.4 The Council is in the process of consulting on Issues and Options for the Housing Policies for the Local Plan Partial Review. Given the early stage in the preparation process, the Council has not yet identified a preferred policy approach. However, the consultation material demonstrates that given the potential scale of the impact of amalgamations on housing supply, it is an issue for which a reviewed policy approach will be required. Options currently being consulted on include:

- Option 2:

Introduce a presumption against the loss of residential units subject to specific exemptions. Possible exemptions to include:

- Restoration of a house to its original use as a single dwelling subject to a maximum of two dwellings being combined and an overall floor space limit.
- Where the existing accommodation is substandard in terms of floor space standard, daylight and layout which could only be remedied through an amalgamation.

- Option 3:

Resist the loss of all residential units unless it can be demonstrate that the de-

conversion is required to create a decent standard of accommodation.

Once the Issues and Options consultation has concluded the Local Plan Partial Review will be subject to further consultation in 2016, with the new policies timetabled for adoption in 2017 subject to an Examination in Public.

6.0 LEGISLATION, POLICY AND GUIDANCE

6.1 The following sections outline the relevant legislative and policy framework as well as relevant national and local planning guidance.

Legislation

Town and Country Planning Act 1990 (the Act)

6.2 Sections 38, 55 and 192 of the Act are relevant to the consideration of this appeal.

Development Plan

6.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.'

6.4 For the purposes of Section 38(6) the development plan comprises:

- The Royal Borough of Kensington and Chelsea's Consolidated Local Plan (2015);
- The saved policies from the Unitary Development Plan (UDP) (adopted in 2002 and a number of policies saved in 2007);
- Further Alterations to the London Plan (2015).

6.5 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) are material considerations.

National Planning Policies and Guidance

National Planning Policy Framework (NPPF)

- 6.6 The NPPF sets out the Government's overarching planning policies on the delivery of sustainable development through the planning system. The NPPF recognises that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system (paragraph 8). It states that at the heart of the NPPF is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan-making and decision making (paragraph 14). In its list of core land-use planning principles set out at paragraph 17, the NPPF confirms that planning should proactively drive and support sustainable economic development to deliver the homes that the country needs, should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings, should take into account the different character of different areas, and should encourage the effective use of land by reusing land that has been previously developed.
- 6.7 The NPPF recognises that Local Plans are key to delivering sustainable development that reflects the vision and aspirations of local communities (paragraph 150). It states that local planning authorities "should approach decision-taking in a positive way to foster the delivery of sustainable development, not to hinder or prevent development" (paragraph 186). It reiterates that the planning system is planned and that applications must be determined in accordance with the development plan unless material considerations indicate otherwise (paragraphs 2, 11, 150 and 196).
- 6.8 The objective set out in paragraph 47 is to *boost significantly* the supply of housing (emphasis added).

National Planning Practice Guidance (PPG)

- 6.9 Since March 2014 planning practice guidance for England has been published online.

- 6.10 Sections relating to ‘Ensuring effective enforcement’, ‘Housing and economic development needs assessments’, ‘Lawful development certificates’ and ‘When is permission required?’ are relevant to this appeal.

Regional Planning Policies and Guidance

Further Alterations to the London Plan

- 6.11 The London Plan is the strategic plan for the future development of Greater London and provides the London-wide context within which boroughs set their own local planning policies.
- 6.12 Chapter 3 is applicable to the consideration of this appeal.

Supplementary Planning Guidance/Documents

- 6.13 The Mayor’s Housing SPG 2016 provides guidance on the implementation of the London Plan’s housing policies described above.

Local Planning Policies and Guidance

The Royal Borough of Kensington and Chelsea’s Consolidated Local Plan 2015

- 6.14 The Consolidated Local Plan combines alterations since the Core Strategy adoption in December 2010. Alterations have included the Pubs and Local Character Review (2013), Miscellaneous Matters (2014) Conservation and Design Review (December 2014) and Basement Review (January 2015).
- 6.15 The following Chapters and policies are of relevance:

Chapter 2: Issues and Patterns: Our Spatial Portrait

Chapter 3: Building on Success: Our Vision and Strategic Objectives

CV1 Vision for the Royal Borough: Building on Success

CO6 Strategic objective 6: Diversity of Housing

Chapter 4: Delivering Success: Our Spatial Strategy

CP1 Quanta of Development

Chapter 35: Diversity of Housing

CH1 Housing Targets

CH2 Housing Diversity

CH3 Protection of Residential Uses

Emerging Local Plan policy

- 6.16 As set out in 5.4, the Council is currently undertaking a partial review of the Local Plan in respect of the Housing Policies.

7.0 EVALUATION

7.1 The matters which this proof of evidence addresses are:

- the amalgamation of the two residential units into one is a material change of use constituting development as defined by section 55 of the Act which would require planning permission (reason for refusal for CL/15/04119)
- the amalgamation of the two residential units into one in this Borough is a material change use constituting development as defined by section 55 of the Act for which planning permission would be required
- planning permission would not be granted (ground A of Appeal B)
- the matters stated in the enforcement notice do constitute a breach of planning control because planning permission is required and would not be granted (ground C of Appeal B)

I will also explain why the period for compliance is reasonable.

7.2 My proof of evidence addresses each of these matters in turn. The sections below set out policy and background information relevant to each matter and then sets out the Council's detailed evidence.

Material change of use

7.3 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.

7.4 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'

7.5 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

7.6 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'

7.7 There is no statutory definition of material change of use. It is not defined by the Act. It can be anything which has consequences or is in some way relevant to planning. It is however wide reaching. What might be material in one situation may not be material in another.

7.8 Given Section 55(3)(a), the subdivision of a building is therefore recognised as having planning consequences. So, even though the use of the building remains residential, the fact that one residential unit has become two or more is regarded as having planning consequences and therefore constitutes a material change of use.

7.9 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. The 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.

7.10 The key ruling on this matter was *LB Richmond Upon Thames v Secretary of State for Environment, Transport and the Regions and Richmond Housing Trust (2000)*. In this case the High Court held that since the change of use gave rise to planning considerations, such as the loss of a particular type of housing accommodation, and had an effect on planning policy, these were material considerations which

should be taken into account in determining whether a material change of use had arisen.

- 7.11 Amalgamations can involve the displacement of people through the loss of units who need to find accommodation elsewhere. These people may not be able to afford to continue living in the borough but may work here and so may find themselves commuting further distances in order to find affordable accommodation. Amalgamations can involve the creation of larger units which can be occupied differently, for instance by families. Changes in occupation types can have an impact on local infrastructure such as schools, health facilities and open spaces.
- 7.12 Amalgamations result in the loss of housing units which then contributes to the highly publicised shortage of housing, particularly in London. Losing units only exacerbates the shortage of housing and would mean that even more housing would need to be built in order to meet the identified need for additional housing.
- 7.13 Not only is there a shortage of housing in terms of the number of units but the reduction in the range of residential accommodation on offer is also an issue. The loss of smaller units and creation of larger units through amalgamation makes it harder for people, particularly young people, to live and work in London. The knock on effect of this includes unsustainable commuting because people are forced to live outside London and travel in. There is also the issue of unacceptable living conditions as people have less choice in the type of accommodation they can afford and may end up in accommodation which is substandard in both size and quality and possible subsequent overcrowding as people share accommodation, as a result of relying on a very uneven private rented sector. Home ownership remains elusive to most however private sector renting is fast becoming unattainable as a result of the housing crisis and the knock on impact of this on private sector rents. As property prices continue to rise, high rents are necessary to generate the returns which investors require.
- 7.14 These consequences are material and are directly relevant to planning. The amalgamation of residential units therefore has planning consequences. Such consequences have fed into the development of planning policies for areas identifying need and demand, affecting the way places can change over time.

However even if such matters were not written into policy it does not mean that they do not have planning consequences. Amalgamations can therefore constitute a material change of use.

Material change of use in Kensington and Chelsea

- 7.15 Moving on, it is important to also consider whether the amalgamation of units in Kensington and Chelsea is capable of being a material change of use.
- 7.16 The planning consequences stemming from amalgamations previously discussed also apply to amalgamations in this borough. If anything, those consequences are perhaps more significant and exaggerated in Kensington and Chelsea because of the unique nature of the area.
- 7.17 The Strategic Housing Market Assessment for the Royal Borough of Kensington and Chelsea (SHMA), published in December 2015 identifies that the volume of dwellings in this borough has only grown very slowly since 2009, by 1%, at significantly lower rates than neighbouring authorities. This reflects the difficulty of developing in the area but also justifies the concerns surrounding housing targets and shortfalls.
- 7.18 In terms of tenure, the private rented sector is now just larger than the owner-occupier sector and has grown at a faster rate than the London average, fuelled by the recession and the unaffordability of owner-occupation.
- 7.19 This borough has a notorious reputation for its lack of affordability. In recent years, it has become an exclusive enclave of expensive homes for the wealthy with a particular emphasis on creating “super prime” homes. It has the potential to become polarised into an area inhabited only by the very rich or the very poor. These issues have been well publicised.
- 7.20 Not surprisingly, median house prices in this borough are the highest when compared against other London authorities including Westminster, City of London, Hammersmith and Fulham and Camden. The SHMA identifies that in 2014, the median sale price was £1,198,500 and since 2008 prices have risen by 72% in this borough, compared to the national average of 15%. London overall has seen an

increase in sale prices however this borough is in a league of its own, set apart from the others when it comes to sale values.

7.21 Table 4.2.1 in the Affordable Housing Target Viability Report prepared by BNP Paribas in June 2015 (Appendix B) sets out average sales values per square metre in October 2012 and November 2014. Table 1 below sets out the average sales values for Earls Court SW5 and SW10, which the appeal site falls within using the November 2014 sales values and the nationally described technical space standards for 1 bed and 3 bed units. I have based the sales values on the size of the units which existed at the appeal site prior to the amalgamation being carried out, that being 2 x 1 bed 2 person units and the new unit which is a 3 bed 5 person unit, arranged over two storeys.

| Area | Average values per sq m – November 2014 | Average Value of a 1 bed flat of 50 sq m (using the nationally described space standards for a 1 bed 2 person home, 1 storey dwelling – March 2015 figures | Average Value of a 3 bed flat of 74 sq m (using the nationally described space standard for a 3 bed 5 person home, 2 storey dwelling – March 2015 figures |
|--------------------------|--|---|--|
| Earls Court SW5 and SW10 | £14,168 | £708,400 | £1,402,632 |

Table 1: Average Sales Value in the Earls Court area

Source: Affordable Housing Target Viability Study, June 2015, BNP Paribas for RBKC and the Technical housing standards – nationally described space standard, March 2015, Department for Communities and Local Government.

7.22 As you can see from this, there is a large difference between the sales values of a 1 bed unit versus a 3 bed unit. Should people be displaced from a 1 bed unit, it would not be wrong to assume that a larger unit may well be out of their reach financially. These figures demonstrate the lack of affordability for those wishing to

buy a home in this borough. Even a small 1 bed unit would not be considered low cost. The loss of these smaller units through amalgamations compounds this affordability problem further by reducing the range of accommodation available, pushing those on lower incomes out of the borough.

7.23 The median rents within this borough are also very high when compared to other boroughs. Table 7.1 in the SHMA sets out the rents in May 2015, sourced from the Valuation Office Agency (VOA). The rents for different types of properties, whilst similar to Westminster are significantly higher than the rest of London and the South East. This is not surprising because house prices are high and high rents are necessary to generate the returns which investors require. However because house prices have steadily increased over recent years, so have rental prices. Table 7.3 in the SHMA goes into more detail in respect of rents in and around the borough. The data is from August 2015 and sets out that in the South Kensington area, which is the closest reference to the appeal site, the rent for a one bedroom unit was £2,383 and for a three bedroom unit £7,150. Whilst these rents may not necessarily directly apply to the appeal site or indeed Drayton Gardens as a whole, it is a clear indicator of the significant difference between the rents commanded for a 1 bed unit versus that for a 3 bed unit and this difference would render the larger unit out of reach for innumerable people. Looking on Zoopla ¹ at properties on Drayton Gardens which are currently available to rent, the average price of a 1 bed unit is £2,300 and for a 3 bed unit £4,752. Again, the difference between the average prices of a 1 bed unit versus a 3 bed unit is significant. The relevant extracts of the SHMA are attached as Appendix C.

7.24 The rise in foreign investment and resultant increase in buy to let which has taken place in the borough in recent years has in part driven up property prices along with private sector rents and has forced people out because they can no longer afford to live here or has prevented people from moving into the area or being able to move from the private sector rental market to home ownership. It is recognised that even those on very high incomes find it difficult to buy in the borough. Amalgamations contribute to this through the loss of smaller units, the resultant creation of larger units, some of which are “super prime” driving up prices and displacing those who cannot afford to continue living in the borough. Those people may work in the borough and in having to move further out, they then have to travel

¹ Zoopla.co.uk accessed 23-05-16.

further to work, commuting from all over whilst large amounts of housing sit empty in the borough leading to a polarised borough within which there are clearly defined areas where the very rich live and the very poor live. The borough would not be mixed or balanced by tenure and household income. Social exclusion would occur as a result of people not being able to afford to live here and through the concentration of wealth in certain areas around the borough.

- 7.25 The industry profile of this borough which relates to the occupations and industries of residents within the borough shows that RBKC has a greater proportion of managers and directors living in its borders than Westminster, Hammersmith and Fulham and the rest of London, with the exception of the City of London. Lower paid elementary occupations, service, leisure and caring occupations are largely absent. In order to fill these roles, a large amount of in-commuting must take place, which is not surprising given that the pay received for such roles would not be sufficient to cover rent or a mortgage to live in this borough.
- 7.26 Buy to leave has been discussed over recent years across London. A study carried out by the Department of Communities and Local Government (CLG) in 2006 concluded that this was a feature of housing markets in northern cities and did not find evidence of it as an issue in London with the exception of some isolated incidents. However over the intervening years, buy to leave has been referenced increasingly as an issue for some London boroughs including Kensington and Chelsea.
- 7.27 On 14th October 2015, a report prepared by the Housing and Property Scrutiny Committee into buy to leave was presented at a Full Council meeting (Appendix D). The premise of the study is that it is damaging to the vitality of the borough if houses are left empty rather than being used. The report has three main arms; define buy to leave, develop evidence and to identify possible policy responses should the Council be minded to take action.
- 7.28 With regards to the third arm in respect of possible policy responses should the Council be minded to take action, a number of options were explored including charging higher council tax rates on empty homes, lobbying for amendments to the Regulations of the Housing Act 2004 in respect of the criteria for obtaining Empty Dwellings Management Orders (EDMOs) and controlling occupancy by way

of planning obligations to be secured by Section 106 Agreements.

- 7.29 Amalgamations can contribute to a reduction in the number of households through the overall loss of units. If we take the appeal scheme as an example, there were previously 2 1 bed units resulting in two households. Amalgamating the two units into one has resulted in the loss of one unit and one household. A reduction in the overall number of households can be damaging. It can lead to the desertification of the borough especially if concentrated in particular areas with consequential effects on local services.
- 7.30 Since August 2014, the Council has taken the view that all amalgamations are a form of development requiring planning permission, in that the loss of unit(s) constitutes a material change of use because it has planning consequences. This view is partly based upon a legal opinion received from Timothy Straker QC in 2003 (see Appendix E) which has since been updated in March 2016 (Appendix F). This had regard to the Richmond case (2000) and also confirmed that the nature of the planning policies in place and any evidence of need will also be relevant. This is not a change in policy and therefore no consultation or examination of the existing policies within the development plan was required.
- 7.31 This view is also a response to the consequences of amalgamations on the Council's ability to meet its housing targets over the years. The annual housing supply target (net additional units) set out in the Council's Development Plan and in the London Plan has increased from an annual requirement of a net increase in 350 units in 2010 when the Local Plan was first adopted (as the Core Strategy); to 600 units between 2011 and 2015 and a current target of 733 units. However, due to a record of persistent under-delivery in terms of completions (not permissions) over recent years, national guidance requires the Borough to increase its target for the first five years by 20%. The 25% buffer over and above the housing target of 733 units takes the Council's housing target in the first five years to 880 dwellings per annum.
- 7.32 The Council has collated evidence to demonstrate the impact of amalgamations on achieving the Borough's housing supply targets. Table 2 below sets out the Council's housing approvals and completions since the adoption of the Core Strategy in 2010. This shows completions have largely fallen short of the target in

this time period.

| | 2009/10 | 2010/11 | 2011/12 | 2012/13 | 2013/14 | 2014/15 |
|-----------------------------|---------|---------|---------|---------|---------|---------|
| Net Residential Approvals | 540 | 783 | 860 | 244 | 1292 | 1303 |
| Net Residential Completions | 324 | 175 | 102 | 65 | 264 | 982 |
| Target | 350 | 600 | 600 | 600 | 600 | 600 |

Table 2: The Council's housing approvals and completions since the adoption of the Core Strategy in 2010

Source: RBKC

7.33 Quantifying the total loss of units that has occurred through amalgamations prior to August 2014 is difficult given that planning permission was not required. However, lawful development certificates have been used as an indicator subject to the caveat that as there is no compulsion to submit a certificate this does not give the whole picture. For the 2014-2015 financial year, units lost through planning permissions have been used. Between 2009-2015, the number of units lost through amalgamations recorded from these sources add up to nearly 400 dwellings as shown below:

| | 2009/2010 | 2010/11 | 2011/12 | 2012/13 | 2013/14 | 2014/15 |
|------------------------|-----------|---------|---------|---------|---------|---------|
| Net residential losses | -47 | -58 | -72 | -80 | -40 | -112 |

Table 3: Net residential losses 2009-2015

Source: RBKC

7.34 The 2014/2015 Annual Monitoring Report (Appendix G) shows that the Borough's five year housing supply requirement (1 April 2015 to 31st March 2020) is 4,398 dwellings (the target of 733 units plus a 20% buffer). The current supply from deliverable sites during this period is estimated to be 4,416 dwellings. This

demonstrates that although the Borough is able to meet its housing supply targets, this is only very marginal with a buffer of less than 20 units. Given the negative impact of amalgamations is yet to be factored into the small sites estimate element of the trajectory (due to planning permission only being required since August 2014 and the small sites data being drawn from approvals between 2004 and 2012) it is anticipated that this will reduce supply over the five year period by approximately 50 units per annum. Such a reduction in supply will result in the Borough being unable to meet its supply targets.

7.35 These matters are all consequences of amalgamations in this borough. They are material and directly relevant to planning. The ongoing loss of units through amalgamation in this borough has important planning considerations and planning consequences and can therefore be considered a material change of use and therefore development for which planning permission would be required.

7.36 Note should be taken of the following recent appeal decisions issued by the Planning Inspectorate for appeals against the Council's decisions to refuse Certificate of Lawfulness applications for amalgamations of residential units:

- APP/K5600/X/15/3049304 (9 Vicarage Gate) against the Council's decision to refuse CL/15/01206 for the "conversion of the building from four flats to a single dwellinghouse". The Inspector found that that:

"issues of the accord with local and national planning policy on housing strategy; whether there is a material loss of housing units and the effect on the local housing stock; together with the effect on local character; are fundamental considerations in the planning judgement of such a proposal to reduce the number of units by three"

"I conclude that the Council's refusal to grant a Certificate of Lawful Use or Development in respect of the conversion of the building from 4 flats to a single dwellinghouse was well-founded and that this appeal should fail".

- APP/K5600/X/15/3051160 (Flats 1 and 2, 211 Ladbrooke Grove) against the Council's decision to refuse CL/14/07891 for the "amalgamation of two flats" where the Inspector found that:

“The conversion of two dwellings into one reduces the number of available dwellinghouses and this would be material”.

“I therefore consider that the need for different types and sizes of houses is a material consideration. The need to control residential unit numbers (and size) fulfils a legitimate and recognised planning purpose and the loss of even one unit here, in the light of national and local policy, is a matter to be addressed in a planning application”.

“I conclude that as a matter of fact and degree and on the evidence presented that the change of use from two dwellinghouses to one dwellinghouse is a material change of use for the purposes of Section 55 of the 1990 Act”.

- APP/K5600/X/15/3006157 (14 St Charles Square) against the Council's decision to refuse CL/15/00325 for “internal alterations only to amalgamate flat A which has 2 bedrooms (one single, one double) and Flat B, which has two bedrooms (one single, one double) into one 4 bedroom flat (three double and one single)”. The Inspector in determining this appeal found that:

“I am satisfied that the use of 14 St Charles Square as four flats rather than as three flats fulfils a legitimate and recognised planning purpose of sufficient significance to make the proposed amalgamation a material change of use within the meaning of section 55”.

7.37 The full appeal decisions are appended at Appendices H-J.

7.38 APP/K5600/X/15/3028049 (Flats 1 and 3, 44 Stanhope Gardens) against the Council's decision to refuse CL/14/07295 was allowed by the Planning Inspector in November 2015. This decision is currently being challenged by the Council with the court hearing scheduled for 14 June 2016.

Would planning permission for the amalgamation of two units into one be given?

7.39 As set out in paragraph 4.4, a planning application was submitted to the Council on 9 September 2015 for the amalgamation of two units into one. This application was refused on 17 December 2015. The appellant has not appealed this decision.

7.40 Taking the approach that all proposals for amalgamations will be regarded as material change of use for which planning permission would be required ensures that all such proposals are subject to scrutiny against the adopted policies in the development plan, particularly those which relate to the loss of particular types of residential units and the retention of existing residential floorspace.

7.41 Within the Consolidated Local Plan (CLP) policy CO6 is the Strategic Objective for the Diversity of Housing. It states:

Our strategic objective to have a diversity of housing is that at a local level, it will cater for a variety of housing needs, and is built for adaptability and to a high quality.

7.42 Paragraph 35.2.1 of the CLP states that “*The strategic objective means that there will be a better mix of housing types and tenures throughout the Royal Borough, and more housing overall*”.

7.43 Specifically, policies CH1, CH2 and CH3 are relevant.

7.44 Policy CH1 (Housing targets) states:

The Council will ensure that sufficient housing sites are allocated in order to ensure the housing targets are met.

To deliver this the Council will:

- a. *make provision for a minimum of 350 new additional dwellings a year until the London Plan is replaced (estimated as 2011/12) based on the overall ten year housing target of 3,500 net additional units. From adoption of the London Plan the Council is planning to make provision for a minimum of 600 net additional dwellings a year, until 2027/28,*

based on the ten year housing target of 6,000 net additional units. The exact target will be set through the London Plan process.

- b. make provision for the maximum amount of affordable housing with a target of a minimum of 200 units per annum from 2011/12 until 2027/28 from all sources, the exact target will be set through the London Plan process.*
- c. require affordable housing tenures to be provided such that they work towards a Borough-wide target of 85% social rented housing and 15% Intermediate housing.*

7.45 Paragraph 35.3.1 of the CLP notes ‘*A minimum of 3,500 homes should be provided between 2007/8 and 2016/7 (350 units per year). This housing target is based on evidence of the housing capacity in the Borough, which formed the basis of the London Plan target.*’

7.46 This paragraph was written before the adoption of the Local Plan in 2010 and is caveated ‘*This target is awaiting confirmation through the revised London Plan, however, the Borough will be planning for 600 net additional units per annum once the London Plan is adopted.*’

7.47 Policy CH2 (Housing Diversity) states:

The Council will ensure new housing development is provided so as to further refine the grain of the mix of housing across the borough. To deliver this the Council will (inter alia):

a. require new residential developments to include a mix of types, tenures and sizes of homes to reflect the varying needs of the borough, taking into account the characteristics of the site, and current evidence in relation to housing need;

f. resist development which results in the net loss of five or more residential units;

7.48 Policy CH3 (Protection of residential uses) states:

The Council will ensure a net increase in residential accommodation. To deliver this the Council will (inter alia):

a. protect market residential use and floorspace

- 7.49 Paragraph 35.3.34 of the Consolidated Local Plan (within the reasoned justification for policy CH3) states that the *“loss of housing through deconversion (...) can reduce the overall provision of housing stock”*. 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.
- 7.50 Saved UDP Policy H17 resists *“the loss of existing, small, self contained flats of one or two habitable rooms”*. It is relevant where a proposed amalgamation results in the loss of smaller units of one or two habitable rooms which are identified as making an important contribution to the overall housing mix of the Borough.
- 7.51 Paragraph 5.5.1 of the UDP in the reasoned justification for policy H17 states *‘The mix of accommodation in the Borough should be related to the range in household types existing or likely to exist and to deficiencies in the range of accommodation’*.
- 7.52 Moving onto the London Plan, Chapter 3, in particular through policies 3.3 (Increasing Housing Supply) and 3.14 (Existing housing), recognises the *“pressing need for more homes in London in order to promote opportunity and provide a real choice for all Londoners in ways that meet their needs at a price they can afford”*.
- 7.53 Policy 3.14 (Existing Housing) states that the *“loss of housing should be resisted unless the housing is replaced at existing or higher densities”*. As residential density is generally counted in units, policy 3.14 should be interpreted as requiring the re-provision of at least the existing number of units, although ideally an increased density i.e. a higher number of units should be sought, with at least the equivalent amount of residential floorspace.
- 7.54 Paragraph 1.2.38 of the Mayor’s adopted Housing SPG (2016) states that *‘In some neighbourhoods, especially in parts of central London, de-conversion of a number of smaller units into larger dwellings can reduce capacity to meet the requirements of small households. Where there is local evidence that the amalgamation of*

separate flats into larger units is leading to the sustained loss of homes, boroughs are encourage to resist this process in line with London Plan policy 3.14’.

- 7.55 The complete wording of these policies and the relevant parts of the Housing SPG are appended at Appendices K-M.
- 7.56 At national level, paragraph 47 of the National Planning Policy Framework (NPPF) notes that *‘to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework’.*
- 7.57 The ‘Housing and economic development needs assessments’ guidance within the National Planning Practice Guidance (NPPG) supports local planning authorities in objectively assessing and evidencing development needs for housing (both market and affordable); and economic development. The assessment of housing and economic development needs includes the Strategic Housing Market Assessment requirement as set out in the NPPF. The primary objective to identifying need is to:
- identify the future quantity of housing needed, including a breakdown by type, tenure and size;
 - identify the future quantity of land or floorspace required for economic development uses including both the quantitative and qualitative needs for new development; and
 - provide a breakdown of that analysis in terms of quality and location, and to provide an indication of gaps in current land supply.
- 7.58 Running alongside these policies are the permitted development rights in respect of changes of use of buildings in various uses to residential. The driver behind these rights is to increase housing supply. In 2013, temporary permitted development rights for office to residential conversions were initially introduced for a three year period which was due to expire in May 2016. In March 2016, the government confirmed that these rights will be made permanent despite some controversy surrounding the loss of office accommodation, introduction of poor quality new housing and the impact on office rents. This borough currently has an exemption against these rights which will be in effect until May 2019.

- 7.59 On 15 April 2015, permitted development rights were further widened to allow for the change of use of buildings in use as retail, betting office or pay day loan shop to dwellinghouses. Again this was driven by the desire to increase housing supply.
- 7.60 Current planning policies and legislation recognises the need for new housing and sets out a clear framework as to how housing supply can be increased, by amongst other things, resisting the loss of housing. The loss of a residential unit through amalgamation would run counter to this and would serve to reduce the supply and choice of housing available within the borough and not contribute to meeting housing targets and housing needs for the borough and London as a whole through ensuring a net increase in residential accommodation.
- 7.61 As set out in paragraph 7.34, the loss of residential units through amalgamations will reduce housing supply over the five year period (1 April 2015 – 31 March 2020) by 50 units per annum. Such a reduction in supply will result in the borough being unable to meet its housing supply targets.
- 7.62 As set out in paragraph 7.47, Local Plan Policy CH2(f) resists development which results in the net loss of five or more residential units. The purpose of this policy was to strike an appropriate balance between the loss of residential units and the need for larger family dwellings. However it should be noted that part (f) of policy CH2 is not worded in a manner to automatically allow or justify a loss of less than five residential units. Whilst this policy is clear on larger amalgamations, it is silent on those which result in a net loss of four units or less. It does not confirm that these would be acceptable and the general principles set out in policy 3.14 of the London Plan and policy CH3 of the CLP equally imply there is no presumption in other policies of the development plan that such amalgamations would be acceptable. Proposals of this nature should accord with other development plan policies and not generate any harmful material impacts.
- 7.63 It is clear from the evidence presented that the rising scale of amalgamations which have taken place in recent years can no longer be sustained in the face of the higher housing targets imposed by the London Plan.
- 7.64 Whilst the loss of one unit in the appeal property on its own would not have a

significant impact on the borough's housing targets or housing supply in the borough the cumulative impact of sustained losses through amalgamations would have a significant impact on the Council's ability to meet its housing targets and the range of accommodation on offer in this borough.

- 7.65 It is important to highlight that since policy CH2(f) was adopted in 2010; there has been new evidence on the dwelling size requirements for the Borough as published in the recently prepared SHMA. As table 4 below shows, there is a 50/50 split between the need for smaller (1-2 bedrooms) and larger units (3-4+ bedrooms). This shows local needs have changed significantly since the Local Plan was adopted, when, as stated in paragraph 35.3.10 of the CLP the need was for 80% three and four beds. In line with policy CH2(a) regard should therefore be had to the most recent evidence in relation to housing need which shows that there is no greater need for family sized units than other types of dwellings.

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

Table 4: Dwelling size requirements
Source: RBKC SHMA December 2015

- 7.66 The amalgamation of two 1 bed units into a 3 bed unit and the subsequent loss of smaller units would therefore not meet an identified need for such housing in this borough as evidenced by the SHMA.
- 7.67 The 1 bed units each had two habitable rooms and therefore saved UDP policy H17 is relevant. This policy recognises the important contribution smaller units make to the borough's housing provision. The loss of the smaller units would be contrary to the thrust of this policy.
- 7.68 Whilst there is a policy presumption against the loss of residential units, there may be other material considerations that could be taken into account in determining whether an exception to policy may be justified.
- 7.69 The appellant makes reference to the existing units being substandard in terms of

floor size with particular reference to individual room sizes. The 1 bed unit on the second floor had a floor area of 44.72 square metres and the unit on the third floor had a floor area of 56.6 square metres. Assuming these units were occupied as 1 bedroom 2 person units then the second floor flat would not accord with the current minimum recommended floor area for new developments. Notwithstanding that the flat is existing (or existed prior to the unauthorised amalgamation works taking place) and are not part of a new development; many historically subdivided buildings are often smaller in terms of area. Furthermore, during a site visit undertaken on 14 April 2016, after works had taken place to amalgamate the two units into one, I could clearly make out the original layout of both units. The flats had independent access and would have been light and airy. There are no particular features of the flats that would lead to the conclusion that they were of an unsatisfactory quality to justify the loss of one and that the amalgamation is required to improve the quality of the accommodation being provided. The minor shortfall in floor space does not justify the loss of one residential unit.

7.70 Taking the development plan as a whole, the need to increase housing supply overall outweighs the benefits of providing a larger residential unit through the amalgamation of two units, particularly when there is no identified need for 3 bedroom units more so than 1 or 2 bedroom units. There are no other factors or benefits which would outweigh the clear conflict with the development plan to resist the loss of existing housing stock and to increase housing supply.

7.71 In recent months there have been a number of appeal decisions in respect of planning applications seeking planning permission for amalgamations. The following section will discuss these in more detail.

7.72 APP/K5600/W/15/3010078 - 62 Palace Gardens Terrace.
Appeal dismissed 4 August 2015

Appeal against the Council's decision to refuse planning permission for the 'amalgamation of two residential units (house at ground and upper floors, and a basement (flat) into a single family dwelling house, internal alterations including reinstatement of an internal connecting stair between the basement and the ground floor'.

In dismissing the appeal, the Inspector noted

'Some net loss of units is to be expected, and it is permitted in certain circumstances in accordance with CS Policy CH 3(a). However, the cumulative effect of loss of dwellings through amalgamations has potential to have a significant effect on the delivery of much-needed housing in the Borough'

'the loss of a dwelling at the appeal building would add to an unacceptable cumulative impact on net housing supply in the Borough by reducing the overall housing stock contrary to development plan objectives'

7.73 APP/K5600/W/15/3030628 – 18 Chepstow Crescent
Appeal dismissed 8 October 2015

Appeal against the Council's decision to refuse planning permission for 'amalgamation of Flat B (first floor) and Flat C (second floor) to form a single flat'.

As part of their evidence, the appellant contended that the two flats could not be considered as self-contained because of on-going noise and disturbance issues in respect of an adjoining flat and the lack of a kitchen in one of the units.

In reaching a decision, the Inspector noted:

'I am therefore not persuaded, given that this building is in residential occupation, that the failure/lack of sound proofing to the compartment floor/ceiling or the lack of a fitted kitchen in flat B is sufficient reason to conclude that the flats could not be occupied as self-contained units as designed'

'assuming flats B and C were to be occupied as 1-bedroom 2-person units, then they would not accord with the current minimum recommended floor area for new developments. Notwithstanding that the flats are existing and not to be part of a new development, many historically subdivided buildings often have smaller floor areas. Further, as I saw, these flats have independent access, are dual aspect and appeared light and airy. Accordingly, in my judgement, they could not, in terms of floor area, be considered so substandard as not to provide an acceptable level of accommodation'

*'if the proposal were to be allowed, it would serve to reduce the supply and **choice of housing** available within the Borough and not contribute to meeting housing targets and housing needs for the Borough and not contribute to meeting housing targets and housing needs for the Borough and London as a whole through ensuring a net increase in residential accommodation'. (emphasis added)*

7.74 APP/K5600/W/15/3006728 – Flats 2.6 and 2.9 Cheyne Gardens
Appeal dismissed 11 November 2015

Appeal against the Council's decision to refuse planning permission for 'amalgamation of Flats 2.6 and 2.9 to form a single dwelling unit, with new glazing throughout and a discreet external heating and cooling unit to the rear elevation'.

In dismissing the appeal, the Inspector commented:

'I have already commented that none of the particular exceptions cited by Policies 3.14 (b) and CH3... seem to me to be applicable here. Nor should a number of the arguments put forward by the appellant carry significant weight, including that the proposal would not lead to any reduction in residential floorspace – the policies cite the loss of residential units – that there would be a higher density of occupation – not necessarily a permanent arrangement – or that it would raise the standard of residential accommodation that is already satisfactory'.

7.75 APP/K5600/W/15/3133918 – 164 Lancaster Road
Appeal dismissed 8 January 2016

Appeal against the Council's decision to refuse planning permission for 'amalgamation of two residential apartments (one x 1 bedroom and one x 2 bedrooms) into a single three bedroom residential apartment with the creation of a private recessed terrace'.

In determining the appeal, the Inspector noted:

'Although both the existing flats fall short of these standards by around 10%, I agree with the Council that the deficiency is marginal and can be set aside where

existing accommodation, as opposed to new development is being considered. I therefore give no significant weight to the shortfalls in floorspace found in the existing flats’.

‘.. I am not convinced that Policy CH2, on which the appellant principally relies, necessarily implies that the Council will not resist developments which result in the loss of less than five residential units. Whilst Policy CH2 is absolutely clear as to larger amalgamations, it is silent on those which result in a net loss of four units or less. It makes no statement that these would be acceptable and the general principles set out in Policy 3.14 of the London Plan and Policy CH3 of the Core Strategy as well as in the Mayor’s Housing SPG, equally imply that there is no presumption in other policies of the development plan that these amalgamations would be acceptable’.

7.76 APP/K5600/W/15/3049301 – 9 Vicarage Gate
Appeal dismissed 3 February 2016

Appeal against the Council’s decision to refuse planning permission for ‘the use of the building as a single dwelling house (Class C3)...’

The Inspector commented:

‘Policy 3.14 indicates in (b) that the loss of housing should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace. Neither, the policy nor the supporting text make clear whether the reference to ‘housing’ is in respect of the number of units or general floorspace but as the policy makes reference to existing or higher densities, I agree with the Council that the policy concerns itself with housing units, otherwise densities could not be monitored, retained or increased’.

‘...it appears to me that the proposed change of use on its own would not have a significant effect on the present or future local housing stock, but would set a precedent for further amalgamation of flats which would contribute to a cumulative material reduction in the housing stock. Further, while there is evidence of a continuing demand for a ‘super-prime’ single dwellings, the present lawful use of four residential units of mixed sizes are more likely to meet the more pressing

identified local housing needs'.

7.77 APP/K5600/W/15/3134675 – Flat 1 and Flat 2, 12 Egerton Gardens

Appeal dismissed 29 February 2016

Appeal against the Council's decision to refuse planning permission for 'amalgamation of two residential units to create 1 family maisonette '

The Inspector, in dismissing the appeal noted:

'..the increase in amalgamations can no longer be sustained'.

'.. the loss of a dwelling at the appeal property would add to an unacceptable cumulative impact on net housing supply in the borough by reducing the overall housing stock..'

'Whilst there would be some benefits of the proposal in terms of creating a family home, this would not outweigh the public policy disadvantages of the loss of a unit of residential accommodation'.

7.78 APP/K5600/W/15/3137970 – Flats 6 and 7, 58 Cadogan Square

Appeal dismissed 29 February 2016

Appeal against the Council's decision to refuse planning permission for 'amalgamation of 4th floor flats 6 and 7 along with internal changes to turn the two flats into one apartment'.

In dismissing the appeal, the Inspector noted

'.. the loss of a dwelling at the appeal property would add to an unacceptable cumulative impact on net housing supply in the borough by reducing the overall housing stock..'

'Whilst there would be some benefits of the proposal in terms of creating a family home, this would not outweigh the public policy disadvantages of the loss of a unit of residential accommodation'.

- 7.79 APP/K5600/W/15/3141343 – Chelsea Lodge, 58 Tite Street
Appeal dismissed 30 March 2016

Appeal against the Council's decision to refuse planning permission for 'formation of a 4-bedroom apartment on the lower and ground floors...'

As part of their evidence, the appellants placed great weight on the sub-standard quality of the existing units and that subsequently their proposal would achieve improvements in housing quality.

In dismissing the appeal, the Inspector noted:

'...I am not convinced that the current state of the lower ground floor flat sufficiently justifies the proposed development. If the rationalisation of machinery space on the lower ground floor is to take place – and I appreciate how there are advantages totally separate from the proposed development in doing so – there would be opportunities to improve the quality of the accommodation on the lower ground floor, bringing it up to modern standards whilst retaining it as a separate residential unit. I therefore do not accept that bringing together the ground and lower ground floor residential units is the only means to achieve a good standard of accommodation.'

'...Policy H17 is clearly directed at the loss of small units and I am of the view that the proposal before me that would replace two one-bedroomed flats with a single four-bedroomed apartment is contrary to the thrust of that policy.'

- 7.80 The Appellant refers to an appeal decision for Flat 6, 7 and 8, 32-34 Evelyn Gardens against the Council's decision to refuse planning permission for 'the amalgamation of flats 6, 7 and 8' (APP/K5600/W/15/3007959) with particular reference to "a different conclusion on the relevant policy considerations on amalgamation was reached".

- 7.81 I agree that a different conclusion on the relevant policy considerations was reached. As part of his consideration, the Inspector noted:

'...there would be a significant increase the overall amount of residential floor space as a result of the appeal scheme. As there would be no loss of housing if the new development were to proceed, I find no material conflict with LP Policy 3.14 (B).'

'It is likely that a maisonette with space for 4-bedrooms, a study/library and 2 roof terraces to provide private amenity space (PAS) would be better suited to families than the existing flats, which are smaller and appear from the plan to have no PAS. Coupled with other alterations to the buildings, these aspects of the proposal would improve the condition and the quality of the residential accommodation available to future occupiers and enhance their appeal as a place to live. Consequently, the proposal is consistent with the strategy outlined in LP Policy 3.14(A), which is to support the maintenance and enhancement of the condition and quality of London's existing homes.'

'According to the appellant, Policy CH 2 (f) of the Council's Core Strategy (CS) seeks to resist development that results in the net loss of 5 or more dwellings. As the proposal would fall significantly below this threshold, it would not be at odds with this policy.'

7.82 The Inspector's comments indicate a very different position and consideration of the development plan from the Council. Whilst I agree that a different conclusion on the relevant policy considerations was reached, I do not agree that it was the correct conclusion or interpretation of the relevant policies as set out in my considerations above.

7.83 These appeal decisions are appended at Appendices N-U (including Appendix H – 9 Vicarage Gate).

Conclusion

7.84 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. I have shown that the development does not comply with the development plan. The loss of one residential unit reduces the supply and choice of housing available within the

Borough. Not only does it not comply with development plan policies but it also undermines the strategic objectives of the development, which seek to significantly boost the supply of housing in the Borough and in London as a whole.

- 7.85 The Appellant has not provided any information to suggest a decision should be made except in accordance with the development plan. Therefore I conclude there are no material considerations which outweigh the conflict with the development plan.

8.0 ENFORCEMENT NOTICE

- 8.1 As demonstrated in section 7, the amalgamation of two residential units into one residential unit at the appeal site is a material change of use and therefore is development requiring planning permission. As works have been carried out to amalgamate the two units into one without the benefit of planning permission, a breach of planning permission has occurred. There are therefore no reasonable grounds on which to allow the appeal on ground C.

- 8.2 Given that the works to amalgamate the two residential units into one have not been fully carried out, the works required to restore the land to its former condition are not considered to be so extensive as to require more than three calendar months in which to complete them.

9.0 PLANNING BALANCE

- 9.1 It is my view that the amalgamation of residential units is capable of being a material change of use and is therefore development requiring planning permission.

- 9.2 It is my view that the amalgamation of two residential units into one residential unit at the appeal site is a material change of use and is therefore development which requires planning permission.

- 9.3 The NPPF clearly states that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development (paragraph 197) and that proposals should also be

determined in accordance with the development plan unless material considerations indicate otherwise (paragraph 11).

9.4 The determination of the appeal in respect of Ground A rests in balancing the harm that would be caused by the proposals against the benefits that might arise.

9.5 It is my view that the development does not comprise any significant benefits which would justify granting planning permission given the lack of conformity with the development plan and the harm arising through the loss of a residential unit at the site. The appeal proposals do not comply with the development plan and would cause clear demonstrable harm. I am aware of no further material considerations that would outweigh this harm and the lack of compliance with the development plan. For these reasons I respectfully submit that the appeals should be dismissed.

10.0 Declaration

10.1 The evidence which I have prepared and provided is true to the best of my knowledge. I confirm that the points and arguments expressed in this proof of evidence are my true and professional opinions.