

Summary 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

- 1.1 My name is Lisa Cheung and I am employed as the Assistant Head of Development Management and Conservation by the Royal Borough of Kensington and Chelsea. I have been involved in the proposals since February 2016 and I am familiar with the appeal site and the surrounding area.
- 1.2 I have made my own assessment of the consideration of the proposed development and its planning merits and I agree, in my professional judgement, with the Council's reasons for refusal in relation to Appeal A and the reasons in issuing the Enforcement Notice and its requirements.
- 1.3 My evidence relates to the issues in dispute, namely:
- The amalgamation of the two residential units into one is a material change of use constituting development 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 of use constituting development which would require planning permission (reason for refusal for CL/15/04119)
 - Planning permission for the amalgamation of two residential units into one 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)

Material change of use

- 1.4 As part of my evidence I provide a detailed analysis of the relevant parts of the Act, looking at the meaning of development and material change of use and what could be considered material.
- 1.5 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'*

- 1.6 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.
- 1.7 Section 55(3)(a) of the Act sets out that the use of any building previously used as a dwellinghouse as two or more separate dwellinghouses involves a material change of use. 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.
- 1.8 As part of my evidence I set out a case for why the amalgamation of two units into one (as in the case with the appeal scheme) is capable of being a material change of use. I discuss the consequences that stem from amalgamations including a shortage of housing, reduction in the range of accommodation on offer, impact on local infrastructure as a result of changes in occupation types and unsustainable commuting.
- 1.9 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.
- 1.10 I also set out a case for why the amalgamation of two units into one in the Royal Borough of Kensington and Chelsea is capable of being a material change of use. The consequences already highlighted along with others are more significant and exaggerated in this borough because of the unique nature of the area.
- 1.11 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.
- 1.12 I have identified that median house prices are the highest when compared to other

London authorities. There are significant differences in the sales values between a 1 bedroom unit and a 3 bedroom unit. The rise in foreign investment and buy to let has contributed to driving up property prices along with private sector rents. The loss of smaller units and creation of larger units through amalgamations contributes to this which in turn results in people having to move further out in order to be able to afford somewhere to live resulting in unsustainable commuting patterns as people have to travel further in to work.

- 1.13 My evidence shows that amalgamations have had consequences on the Council's ability to meet its housing targets over the years.

Planning permission would not be granted

- 1.14 As part of my evidence I set out why the amalgamation of two units into one would clearly conflict with the development plan and that there are no 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.
- 1.15 There is a clear drive to provide more housing in local, regional and national policy to address the well publicised housing shortage crisis. In recent years, the Council's housing targets, set by the London Plan have increased from 350 units in 2010 to 600 units between 2011 and 2015 and a current target of 733 units. Part of my evidence sets out the negative impact that amalgamations will have on housing supply over the next five years.
- 1.16 My evidence shows that the creation of a 3 bedroom unit through amalgamation would not meet an identified need in terms of dwelling size.
- 1.17 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. The appellant makes reference to the substandard size of the units. Whilst one of the units falls slightly short of the national space standards for new developments, this unit is existing (or existed prior to the unauthorised development taking place) and is not part of a new development. Furthermore both flats were of a satisfactory quality with independent access and good internal layouts. There are no particular features of these flats which would suggest that the loss of one was required to improve the quality of the accommodation on offer.

Enforcement Notice

- 1.18 I have set out why the amalgamation of two units into one is capable of being a material change of use and that such works in this borough is capable of being a material change of use. I have also set out why planning permission would not be granted for these works. There has therefore been a breach of planning control and the reasons for issuing the enforcement notice are well founded and justified. Consequently there are no reasonable grounds on which to allow the appeal on the grounds that there has not been a breach of planning control.

Overall Conclusions

- 1.19 My assessment of the appeal scheme is supported by reference to the Act, national, regional and local planning policies and guidance that would not be complied with.
- 1.20 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.
- 1.21 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.
- 1.22 It is my view that the scheme 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 scheme does 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.