



Appeal Decisions

Site visit made on 11 December 2024

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2025

Appeal A Ref: APP/L5240/X/23/3332881

16 Elgin Road, Croydon, CR0 6XA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) against the decision of the Council of the London Borough of Croydon.
 - The application ref 23/02776/LE, dated 17 July 2023, was refused by notice dated 31 October 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described in the application form as "Lawful development certificate to confirm the lawful use of both maisonettes as [sic] 16 Elgin Road as C4 Small Houses in multiple occupation".
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Appeal B Ref: APP/L5240/W/23/3333964

16 Elgin Road, Croydon, CR0 6XA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/02074/FUL.
 - The development proposed is change of use from 2 x C4 Small HMOs to single Sui Generis HMO housing 7 people.
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Appeal C Ref: APP/L5240/W/23/3334189

16 Elgin Road, Croydon, CR0 6XA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/02082/OUT.
 - The development proposed is conversion of building comprising 2 x C4 Small HMOs into 3 self contained 1 bedroom flats.
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Appeal D Ref: APP/L5240/W/24/3337606

16 Elgin Road, Croydon, CR0 6XA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) against the decision of the Council of the London Borough of Croydon.
 - The application Ref is 23/00996/OUT.
 - The development proposed is outline planning consent for scale only for the excavation of the existing basement across the entire footprint of the building; creation of new light-wells at the front and rear of the building; ground floor single storey side extension; single storey rear extension and [sic] the construction of a new small dormer window in the loft at the rear of the property to create 4 self contained flats.
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Appeal E Ref: APP/L5240/X/23/3333963

16 Upper Flat, Elgin Road, Croydon, CR0 6XA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) against the decision of the Council of the London Borough of Croydon.
 - The application ref 23/03003/LE, dated 3 August 2023, was refused by notice dated 4 October 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as: "The application seeks to affirm the lawfulness of installing and retaining interior fixtures, specifically cupboards, countertops, and sinks resembling kitchen installations, within the bedrooms of the first and second floor maisonettes at 16 Elgin Road, under the Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town and Country Planning Act 1990."
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Appeal F Ref: APP/L5240/X/24/3339944

16 Upper Flat, Elgin Road, Croydon, CR0 6XA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) against the decision of the Council of the London Borough of Croydon.
 - The application ref 23/04443/LE, dated 27 November 2023, was refused by notice dated 23 January 2024.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as "The application seeks to affirm the lawfulness of installing and retaining interior fixtures, specifically cupboards, countertops, and sinks resembling kitchen installations, within the bedrooms of the first and second floor maisonettes at 16 Elgin Road, under the Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town and Country Planning Act 1990."
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is allowed and outline planning permission is granted for the conversion of building comprising 2 x C4 Small HMOs into 3 self contained 1 bedroom flats, at 16 Elgin Road, Croydon, CR0 6XA in accordance with the terms of the application reference number 23/02082/OUT, dated 28 May 2023, subject to the conditions in the attached schedule.

Appeal D

4. The appeal is dismissed.

Appeal E

5. The appeal is dismissed.

Appeal F

6. The appeal is dismissed.

Applications for costs

7. Applications for costs in respect of Appeals A, C, D, E and F were made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) against the Council of the London Borough of Croydon. Those applications are the subject of separate decisions.

Preliminary Matters

Appeals B, C and D

8. Since the appeals were submitted, a revised version of the National Planning Policy Framework (the Framework) has been published (December 2024) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not materially alter the most relevant policies to the appeals, I have not reverted to the parties for comment.

Appeals A, E and F

9. An application under s191(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) seeks to establish whether, at the time of the application, any existing use of buildings or other land, and/or any operations which have been carried out, are lawful.
10. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. The burden of proof lies with the appellant to make his case and the relevant test is 'the balance of probabilities' (that it is more probable than not). If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated¹.

Appeal A

Preliminary Matters

11. The Council refer to the appellant's submission that irrespective of whether the property is deemed as two Class C4 HMOs or a single large sui generis HMO, it qualifies for a LDC due to its lawful use and immunity from enforcement action. The Council says this creates ambiguity as to what the application is seeking to address. Nevertheless, the description given in the application form is clear in that a LDC is sought to confirm the lawful use of both maisonettes as [Class] C4 small HMOs.
12. In any case, under s191(4) of the 1990 Act, any LDC granted must describe the existing use or development found to be lawful. That may not be exactly what was written on the application form, and so s191(5) enables a local planning authority to modify the description. An Inspector may exercise that power on appeal and is indeed obliged to issue a LDC for any existing use or development that is shown to be lawful on the facts and evidence.

¹ As reflected in appeal decision references APP/Y3615/X/23/3319131 and APP/Z4310/X/23/3315708, cited by the appellant

13. I note the submissions made by interested parties on matters including litter, anti-social behaviour and character and appearance. However, such matters, insofar as they relate to planning merits, can form no part of my assessment of an LDC, which must be considered in the light of the facts and the law.
14. Moreover, personal submissions made regarding the appellant and accusations of what he may or may not have said, are not matters for this appeal. Nor are matters relating to the management of the property, duty of care, issues relating to the roof structure or the number of HMO properties elsewhere in Elgin Road.

Main Issue

15. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on whether the use of the maisonettes as HMOs was lawful because it wasn't a material change from the previous lawful use, or whether the use of the maisonettes materially changed to HMOs:
 - when such a change was permitted development; or
 - ten or more years before the date of the application when such a change was not permitted development, and then continued without material interruption for a period of at least ten years thereafter, and not since supplanted by a further material change of use, so as to meet the immunity period from enforcement action under s171B(3) of the 1990 Act; and
 - the uses do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Reasons

16. The appeal relates to a large, three storey semi-detached property with basement. The appellant states that the basement and ground floor comprise one maisonette, whilst the first and second floors comprise the other.
17. S191(2) of the 1990 Act explains that uses are lawful if – (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
18. The Council did serve an enforcement notice in respect of the appeal property on 21 March 2023, prior to the date of the application, alleging a 'change of use of the ground floor flat into 3 self-contained flats and the change of use of the first and second floor maisonette into 5 self-contained flats.'
19. Although an appeal was submitted against the notice, it was not made within time and was not accepted by PINS. Consequently, the enforcement notice took effect on 27 April 2023, so was in force at the time of the application.
20. The first requirement of the enforcement notice is to remove works which facilitate the self-contained nature of three self-contained flats throughout the original ground floor flat and five self-contained flats on the original first and second floor maisonette flat, and to return the use back to a single ground floor flat and a single

first and second floor maisonette flat. In principle, complying with that requirement would not preclude use of the resultant flats for either Class C3 or C4 purposes.

21. The second main requirement is to remove all kitchens from the original ground floor flat and first and second floor maisonette apart from one kitchen to be retained in the ground floor flat and one kitchen to be retained in the first and second floor maisonette. Having only one shared kitchen is the norm for a HMO so again, complying with that requirement would not preclude a Class C4 use.
22. I am therefore satisfied that the LDC sought would not constitute a contravention of any of the requirements of the enforcement notice then in force.
23. Nevertheless, S285(1) of the 1990 Act states that “The validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.”
24. Although that precludes arguments over the enforceability of the notice, I do not consider it precludes arguments over the accuracy of everything stated within it. In any case, the appellant is not seeking to continue the use of the maisonettes as self-contained flats despite the notice. Moreover, even if I found that a change of use to flats hadn't occurred as alleged, and the maisonettes were being used for HMOs, the requirements of the notice would still be enforceable.
25. However, the enforcement notice is not an irrelevant matter as stated by the appellant because if there was a material change of use of the maisonettes as alleged, that would supplant any pre-existing use which may have gained immunity from enforcement action through the passage of time.
26. I note the appellant's arguments that in the event of a breach of planning control, the use of the property must revert to its previous lawful use prior to the breach, and that asserting that the property must return to an even earlier use introduces ambiguity as to which earlier use should be reinstated. However, the requirements of the enforcement notice to revert the use back to a single ground floor flat and a single first and second floor maisonette evidently reflects the Council's view of what those units could lawfully have been used for if the breach stated in the enforcement notice had not been carried out. The validity of that cannot now be questioned.
27. There is a potential scenario whereby if it weren't for the requirements of the notice, the property could have a nil use. That is because s57(4) of the 1990 Act does not provide for the resumption of a past lawful use when there has been one or more intervening unlawful use between that and the current unlawful use.
28. The appellant asserts that the two maisonettes have been used as separate small C4 HMOs since the late 1990's. However, that cannot be so as Class C4 HMOs were not introduced into the planning system until April 2010, via an amendment to the Use Classes Order². The amendment was made so that those HMOs became a separate class (Class C4) rather than a sui generis use.

² The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010

29. Permitted development rights to change from Class C3 to Class C4 came into force on 1 October 2010³ under Schedule 2, Part 3, Class L of the GPDO⁴. However, the Council introduced a borough-wide Article 4 Direction on 28 January 2020 to remove that permitted development right, so from that date planning permission would be required for a material change of use from C3 to C4.
30. The Council's reason for refusal is that insufficient evidence was provided to satisfy it that the use applied for was begun prior to the introduction of the Article 4 Direction. The appellant also categorically states that to dispel any misunderstanding or ambiguity, the LDC application rested solely on the premise of establishing the lawful use of the maisonettes as C4 HMOs prior to 28 January 2020. The appellant further states that the appeal does not need to prove four or ten years of continuous use to succeed. Rather, it only needs to prove that the two maisonettes were in use or functioned as C4 HMOs prior to that date.
31. However, that isn't necessarily so; planning permission would only be granted by the GPDO if a material change of use to Class C4 occurred between 1 October 2010, when the Class L permitted development right was introduced, and the date of the Article 4 direction (28 January 2020). In contradiction with the above timeline, the application form states that the uses began on 1 January 2010, when a material change of use would have required planning permission. That date also precedes the introduction of use Class C4.
32. The timeline stated therefore differentiates this case from the appeal referred to by the appellant in Chisholm Road, where it was argued that the HMO use commenced in August 2019, thereby falling within the above window when planning permission was not required for the change of use⁵.
33. There is discussion within the evidence over the relevant time limits for enforcement action set out in s171B of the 1990 Act. However, the four year limit of S171B(2)⁶ cannot be applicable as the LDC is not concerned with a change of use of the building to a use as a single dwelling house; flats are dwellinghouses for the purposes of the 1990 Act and the appellant states that No 16 was either built as two maisonettes or was converted into flats prior to the 1980s.
34. S171B(3) states that 'no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach'. For a breach of planning control to have occurred in this case, there must have been a material change of use, and it is only a material change of use which can have become immune from enforcement action. A change from Class C3 to a HMO on 1 January 2010 would not necessarily have amounted to a material change of use; it would be a question of fact and degree as to whether there was a fundamental change to the character of the use.
35. So, to succeed in the particular circumstances of this case, the appellant needs to demonstrate, to the required standard of proof, that there was a breach of planning control comprising a material change of use of the maisonettes from Class C3 to HMOs (rather than specifically Class C4 HMOs) ten or more years before the date of the application (when such a change was not permitted development), and then

³ The Town and Country Planning (General Permitted Development) (Amendment) (England) (No.2) Order 2010

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015

⁵ Appeal Ref: APP/L5240/X/21/3268559

⁶ Prior to the recent amendments which do not apply where the breach occurred before 25 April 2024

continued without material interruption for a period of at least ten years thereafter, and not since supplanted by another use, so as to meet the immunity period from enforcement action under s171B(3) of the 1990 Act.

36. As discussed below, the appeal is supported by three statutory declarations (SDs) from the property shareholders of Malpark 16 CR0 Ltd (Abbas Datto, Habib Datto and Qasim Gulamhusein). They are signed and witnessed by a solicitor, so are capable of attracting very significant weight, provided they are sufficiently precise and unambiguous on the pertinent matters.
37. The appellant also instructed National Private Investigators (NPI) to conduct an investigation to identify all residents of the appeal property for the decade spanning 2010 to 2020, with the view to corroborating simultaneous occupancy by multiple unrelated individuals from separate households.
38. The NPI report states that data from credit reference agencies and electoral roll records affirm that 18 unrelated individuals from separate households, resided at the property during the specified period between 2010-2020 (two of which are listed as continuing beyond those years into 2021 and 2022). The list shows overlapping, multiple occupation by eight persons in 2010 and 2012, seven in 2011 and 2013, six in 2016 and 2019, five in 2014 and 2017, four in 2015, three in 2020 and two in 2018.
39. A further 14 transient renters are identified for the same period (based on “a considerable amount of post”) who are expected to have had shorter term occupancies spanning 1-11 months. (That number should be 13 because A Gordon is likely to be the same person as Mr Andrew James Gordon.)
40. It is explained that transient renters often evade traditional tracking methodologies such as credit reference agency data or electoral roll databases due to their short-term residencies but that their occupancy leaves a trail of indirect evidence, often utilising facilities that do not necessitate credit checks and are frequently paid monthly in advance. Examples given include food delivery orders, gym memberships, online shopping, music and video streaming subscriptions, online courses and pre-paid/top up home utility bills.
41. It is further explained that the transient renters have been substantiated as former occupants by these non-credit sources, as well as through Companies House entries. Although their exact residency periods remain undefined, it is asserted that they were unequivocally occupants at the property over the past 15 years.
42. Taken at face value, the number/turnover of occupants with different surnames clearly points towards the use of the property for HMO purposes rather than either one or two Class C3 uses. The number of unconnected residents with very different patterns of usage and behaviour would likely have generated more noise and disturbance as individuals come and go separately from one another for work, shopping and other day-to-day activities, compared to occupants of two single household maisonettes who are more likely to carry out activities on a communal basis. Similarly, a greater number of unconnected individuals living within one property will in turn likely generate a greater number of separate visitors and deliveries to the property with associated noise and disturbance through the sound of voices, opening and closing of doors and vehicles.

43. Consequently, when the property began to be used for that level and type of occupation, it would likely have resulted in a significant difference in the character of the activities from what had gone on previously as a matter of fact and degree, thereby amounting to a material change of use and a breach of planning control.
44. However, the NPI report does not break occupancy down to individual maisonettes nor does it indicate when in 2010 individuals took up occupancy. That is important because the appellant states that the use began on 1 January of that year. The NPI explains that occupancy data is traditionally captured on an annual basis, typically collected during the final months of the preceding year, but I am unclear how that would work in this case if the use hadn't commenced in the latter part of 2009.
45. Moreover, whilst I refer to separate evidence later, despite identifying the various data sources for recorded occupancy and indirect evidence for transient renters, the NPI report surprisingly provides no corroborating evidence in support of its findings. I appreciate some evidence maybe sensitive or confidential but there is nothing, even in redacted form. I fail to see why providing such data, which is specifically referred to and relied upon, would "expose their methods of obtaining data" or "reveal trade secrets to competitors".
46. More significantly, the NPI report is clearly contradicted by the statutory declarations discussed below, which state that when the partners first looked at the property in 2019, both maisonettes had been vacant for a considerable period. That would preclude occupancy by a number of individuals identified for the timescales stated.
47. Therefore, whilst I have no reason to question the "credentials", "credibility", "methodology", "professionalism" or "integrity" of the private investigators, the lack of corroborating evidence and the contradictions in the appellant's evidence, do affect the weight I am able to attach to the report as a stand-alone piece of evidence.
48. The appellant states that he has been able to verify the occupancy of specific individuals named in the report and, as an example, three are shown on a 192.com screenshot. Although such evidence does assist in corroborating the NPI report, it is nonetheless limited to those few individuals, for the upper flat only and for a fairly limited snapshot within the required ten-year immunity period, and sometime after when the purported breach began.
49. The appellant has made contact with four previous tenants named in the NPI report and argues that these interactions have yielded unanimous confirmation from all four individuals, affirming their tenancy of individual rooms within No 16, during which time the building was configured as two separate maisonettes, housing entirely unrelated occupants.
50. In that regard, an additional SD has been provided by one of the partners, confirming the time, date and duration of the phone calls (further corroborated by an itemised phone bill), along with an explanation of the content of the conversations with those four former residents.
51. The partner states that Jennifer Lawrence confirmed that she lived in the property in 2012, renting a single room, with no connection with any of the other tenants

who also rented rooms. He asked her if she would be willing to make a SD confirming all that she told him, but no response was received. She did nonetheless provide the contact details for Sarah Dillon.

52. During the subsequent conversation with Ms Dillon, the partner says that she confirmed that the building comprised two flats and within each flat there were multiple individual letting rooms and that all tenants were unconnected. She subsequently provided the tenancy agreements and associated correspondence referred to elsewhere in this decision.
53. The SD goes on to state that Kevin Blakeborough confirmed that he lived in the property in the early 2010s but although unsure of the exact dates, was there during the years Ms Dillon lived at the property.
54. Mr Blakeborough confirmed that the building was operating as a HMO for all the years that he lived at the property and that being a property professional he was aware of the technical definition of the same. He also confirmed that there were two separate flats in the building and both had multiple, unconnected occupants renting individual rooms.
55. Finally, with reference to Sukver Dhillon, he confirmed that he lived in the building for a few years in the early 2010s and that during that time all other tenants rented individual rooms and had no connection with each other.
56. Although the additional SD does corroborate in part the report from NPI, I have no written confirmation from those individuals of the content of those phone calls. I appreciate the appellant's attempts to get those occupants to sign SDs in the terms sought but ultimately none have been forthcoming. Nevertheless, although the SD does not carry the same weight as that which would apply if given first hand by the individual residents, sanctions would apply to the partner making the SD, so I am able to attach significant weight to it. However, the additional SD does not assist in clarifying occupancy or use of the property for HMOs on 1 January 2010.
57. The appellant submits that the Council's electoral roll records provide further corroboration, evidencing the residence of Gemma Peach, Jennifer Lawrence, and Sarah Dillon within the upper maisonette in 2013. In that regard I note the reference to one of my own appeal decisions⁷ on how that should be interpreted, but again that timeline does not assist in clarifying occupancy or use on 1 January 2010.
58. Via the contact with Ms Dillon, two shorthold tenancy agreements have been provided. The earliest is from 1 October 2011 for a six-month period for the 'Upper Flat' at No 16. It lists three tenants, each with different surnames, in bedrooms 1, 2 and 3. Two of those names correspond with the list of occupants in the NPI report, although their occupation is shown as including the year before the date of the tenancy agreement. That may be explained by the recent email from Ms Dillon which refers to it as "one of our tenancy agreements" and by the email from the property management company which states "it's the same as the last one, but with names and dates changed". Nevertheless, the reference to changed names does create ambiguity and there is no information in terms of any earlier dates, more

⁷ Appeal Ref: APP/D1780/X/22/3299532

specifically, it does not corroborate a use commencing in January 2010. The third person isn't included in the list of transient renters either.

59. I also note that the three occupants have signed a single tenancy agreement, rather than individual agreements, which would normally be the case for a HMO use. Moreover, the agreement is not signed by a witness or by the landlord/landlord's agent.
60. The second tenancy agreement is dated 7 January 2012 and has been provided with an email from Ms Dillon which shows that it was sent to her for signing by a letting agent on 18 January 2012. Nevertheless, it is not signed by any party. One of the names has changed and although her name appears in the list of recorded occupancy in the NPI report, there is a four-year time discrepancy. That could suggest a cautious approach by NPI in only listing her as being in the property in 2016. Whilst again it is one tenancy agreement for three people, this agreement provides individual rights to two of the tenants to end their respective tenancies.
61. I appreciate that there could be practical reasons why the agreements sourced by the appellant are either partly signed or not signed at all, but that does adversely affect the weight I am able to attach to them, taken in isolation. I fail to see why highlighting the issue of missing signatures amounts to a suggestion on the Council's part that the evidence has been fabricated. In any event, whether signed or unsigned the agreements represent a very small snapshot in the relevant 10-year period and relate to the upper flat only, so there is no such corroborating evidence in relation to the ground floor flat. Moreover, whilst noting the appeal decision referred to by the appellant⁸, the tenancy agreements are from 2011 and 2012, so do not assist in corroborating the start of a breach in January 2010.
62. Turning to the SDs from the property shareholders, the declarations made in each are the same. They state that since purchase, the building continues to receive post addressed to approximately 40 different individuals, suggesting a long history of multiple households occupying each of the maisonettes.
63. Pictures of the post from mainly credible organisations have also been provided, although the number of different individuals is significantly less than 40. Most of the letters are addressed to No 16, some differentiate between the upper and lower flats, and one is addressed "1-2ND 16 Elgin Road, which could be construed as flat one on the second floor. Most of the names are included in the NPI report, thereby providing further corroboration to the same and the likelihood of multiple occupancy by unrelated tenants.
64. Moreover, on the basis that the vacancy period discussed below, those occupants are likely to have lived at the property before the Article 4 Direction came into force on 28 January 2020. Nevertheless, the post does not assist the appellant in demonstrating that the likely multi occupancy commenced in January 2010.
65. The Council state that its records show that only two households paid Council Tax in the building - the owner/occupier of the ground floor flat and the maisonette formed by the first and second floors. However, as recognised by the Inspector in the appeal decision referenced by the appellant⁹, "where rooms are let on an individual basis, as is the case in an HMO, it is the landlord who is liable to pay

⁸ Appeal Ref: APP/Z4310/X/23/3315708

⁹ Appeal Ref: APP/Z0116/X/22/3296703

Council Tax not the tenants". Moreover, in a different appeal¹⁰ the Inspector highlighted that Council Tax information does not clearly indicate how many people actually occupied the building. The Council Tax records could therefore relate to both a Class C3 or C4 use.

66. The Council further states that its Private Sector Housing Team has been licensing small C4 HMOs since 2010 and there were no previous HMO licences granted prior to the new owner buying the property in 2021. However, as per the appeal decisions referenced by the appellant¹¹, the LDC relates to the use of the building, not licences that were in place at the time. Moreover, the licensing regime for HMOs is separate to the planning use and the lack of licence is not therefore directly relevant to the planning position. Similarly, the lack of landlord licences would not preclude use of the maisonettes as flats. Nevertheless, as stated in that latter appeal, licenses clearly help in determining use on the balance of probabilities. Therefore, whilst the lack of a HMO license prior to 2021 is not determinative to my decision on the balance of probabilities, it does not assist the appellant's case either.
67. The HOME Residents Association (RA) take a contradictory position and assert that No 16 was neither a single HMO nor two HMOs before it was bought by the current owners. The RA refer to neighbours saying that a man called Andy was the sole resident of the entire house for a long period until about 2015 and that after that it was empty for a while before a couple moved in for a year or more around 2018. Then, they say, it was empty again. Reference is made to a signed letter from one neighbour to that effect and to an unsigned note from another. Those are not before me, so I can only attribute very limited weight to the hearsay submissions of the RA.
68. I note the representation from residents of a property in Elgin Road that assert that the Google historical Streetview images support their view that No 16 remained a two-maisonette property until sometime in October 2020. The image provided from 2012 shows only two wheelie bins outside the property. There are three in 2014 and 2015 and two in 2017 and 2018. Ordinarily, I would expect to see more bins if the property was being used for HMO purposes, at the level stated.
69. The appellant submits that a pivotal issue is the intended use of the property and in that regard has referred me to the case of *Impey*¹² and *Welwyn Hatfield BC*¹³, and to appeal decisions in which they are cited¹⁴. As highlighted, regard should be had to when the building was capable of being used for HMOs, as a matter of fact and degree, bearing in mind that it is possible to find that a change of use took place before the building was actually occupied. Actual use remains a factor, but it is necessary to look at the evidence in the round, with regard to the former use of the building, the physical state of the building at the relevant date, the actual use of the building at that date, the intended use and the whole chronology.
70. The SDs state that the partners first took an interest in the property in late 2019, when the property had been on the market for a number of months. They state that it was clear from the condition and set up of the maisonettes that their last use was

¹⁰ Appeal Ref: APP/W2465/X/20/3256215

¹¹ Appeal References: APP/Y3615/X/23/3319131 and APP/L5240/X/21/3268559

¹² *Impey v SSE & Lake District SPB* [1981] JPL 363; [1984] P&CR 157

¹³ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

¹⁴ Appeal References: APP/P4605/X/21/3268431, APP/Z4310/X/21/3289727 and APP/Z4310/X/22/3294852

as Class C4 HMOs. In that regard, reference is made to all rooms having their own door locks, personal wash facilities, door entry phone system and the main entrance door to the building having call buttons labelled for multiple rooms rather than two individual maisonettes.

71. Although not exhibited with the SDs, the appellant has submitted dated photographs showing some of the features referred to, including the wash facilities which, common to HMOs, are just sinks (rather than a shower room, for example). It is therefore more probable than not that the maisonettes were set up in 2019 for a HMO type use, rather than single household dwellings.
72. However, intended use should be considered objectively with regards to evidence of, for example, any active marketing of the dwelling for sale or let, but nothing of that nature is provided in this case to show that the maisonettes were capable of being used prior to the date in January 2010 when the appellant says the use commenced. It is not enough in this case just to show that, prior to the date of the Article 4 Direction in January 2020, the maisonettes were configured for HMO use and that the appellant's intention was to use them for that purpose.
73. Nevertheless, although the SDs offer only firsthand knowledge/observations of the property from the latter part of 2019 onwards and do not assist in demonstrating actual use prior to that time, taken with the additional SD, the NPI report and tenancy agreements evidence, it is more probable than not that the maisonettes were actually being used for HMO purposes prior to 2019. Crucially however, there is, as noted, limited evidence to show that the uses commenced in January 2010, as stated.
74. Moreover, according to the Council, the owners stated in writing that when they bought the property in 2020 it was vacant and had been for more than two years, and that Council Tax records substantiate this position. In that context I note the Council's email to the appellant on 21 January 2022 which states that since sometime in 2018 the whole building became vacant.
75. That is consistent with the appellant's SDs which state that when the owners first looked at the property, both maisonettes had been vacant for a considerable period. Furthermore, the appellant's email to the Council dated 11 January 2022 confirms that the building had not been in use for a period of time prior to acquisition in August 2020. The email later states that the building remained in excellent physical condition over the two year period that it was empty prior to acquisition.
76. It is therefore likely that even if there was a material change of use to HMOs in January 2010, the use likely ceased around August 2018. The appellant further states that the property was vacant at the time of the enforcement officers site visit, which is earlier clarified as being in November 2021. The appellant then states that "it is pertinent to note that the building's vacancy was not a transient state; it remained unoccupied until February 2022". Accordingly, the HMO uses did not continue without material interruption for a period of 10 years from the purported initial breach date. Consequently, the 10-year immunity period is not met.
77. The appellant seeks to argue that even if there were any residual doubts concerning the continuous use of the premises, such use, or the lack thereof, does not serve as a determinant in the context of this appeal. He hypothetically submits

that, even if the premises had been unoccupied from 2012 to 2020, that would not negate their status as C4 Small HMOs as the status, once established, remains extant unless there is a clear and unequivocal abandonment of use, which he says is not the case here.

78. However, that is clearly wrong in the circumstances of this case because the use could only become lawful if it continued throughout the relevant immunity period, such that the Council could have taken enforcement action at any time. In that regard it is not shown that lawfulness had been acquired before the vacancy periods referred to in the SDs, let alone in the hypotheses advanced by the appellant. When a use taking place in breach of planning control is ceased, the immunity “clock” starts again. Consequently, there was no lawfulness that could be lost through abandonment.
79. That therefore differentiates the case from the appeal decision referred to by the appellant where the Inspector found that the appeal property was last in lawful use as a HMO when it was vacated¹⁵.
80. The appellant refers to an email from the Council’s enforcement officer dated 21 January 2022 as acknowledging the use of the maisonettes as C4 Small HMOs up until 2018, prior to the enactment of the Article 4 Direction. However, the appellant has not drawn my attention to where that is actually stated, and my reading of the email does not reflect the appellant’s interpretation, which on the face of it, would appear to contradict the Council’s reason for refusal.
81. The email does say that the Council has records that suggest the maisonettes were tenanted until 2018. Although not particularly clear after that, it seems to me that the officer is explaining the consequences of vacating the premises and ceasing an unauthorised use. Even if I am wrong about that, the appellant’s own timeline of events confirms that when the purported HMO use commenced, permitted development rights to change from C3 to C4 didn’t exist, so it is incorrect to say that permission was not required on that basis.
82. Bringing the above together, based on the totality of the evidence provided, it is more probable than not that the maisonettes at No 16 were in use for HMOs for a period of time before being acquired by the appellant. However, there is little evidence to show that the HMO uses commenced on 1 January 2010. Moreover, even if I accepted that they did, having regard to the limited contradictory evidence, the use of the maisonettes for HMO purposes did not continue without material interruption for a period of at least ten years thereafter. Indeed, based on the evidence, it is likely that the maisonettes were unused between August 2018 and February 2022.
83. Consequently, the use of the maisonettes for HMOs did not gain immunity from enforcement action through the passage of time, by virtue of s171B(3) of the 1990 Act. It is not therefore necessary to consider whether lawfulness was subsequently lost by a material change of use of the maisonettes to self-contained flats, as stated in the enforcement notice, because lawfulness hadn’t been achieved so could not be lost. Moreover, even if what occurred was a resumption of HMO uses, planning permission would have been required by virtue of the Article 4 Direction then in force.

¹⁵ Appeal Ref: APP/Q3060/X/21/3281640

Conclusion

84. For the reasons given above I conclude that the Council's refusal to grant a LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

Preliminary Matters

85. The Council has, since refusal of the planning application, granted a LDC for the amalgamation of the two maisonettes (C3 use) to form a single dwelling house (C3 use)¹⁶.
86. As a result, the Council acknowledges that the appellant now has a fall-back position in as much as the approved amalgamation of the maisonettes would result in a single Class C3 dwellinghouse with a gross internal floor area of approximately 174m². Accordingly, the Council no longer objects to the currently proposed development on the grounds that the change of use would result in the net loss of a residential unit and the net loss of two residential units smaller than 130sqm, as set out in its first reason for refusal.
87. The second reason for refusal is that the proposed development, by virtue of inadequate outlook and internal light to the ground floor middle bedroom, would result in an oppressive living environment and sub-standard accommodation for its occupants.
88. In that regard, the appellant has acknowledged an error insofar as the floor plans show a solid rear facing wall whereas the elevations show fully glazed double doors. That has been corrected through the provision of updated layout plans which show the bedroom with the patio style double doors. The Council has confirmed that the doors would provide natural light and an outlook from the bedroom and that it no longer objects to the proposed development on living conditions grounds. I find no reason to take a contrary position.
89. Moreover, as the plans merely correct an inconsistency between the floor plans and the elevations, it clearly causes no unlawful procedural unfairness to anyone involved in the appeal for me to accept them and to proceed to determine the appeal on the basis of the same.

Main Issues

90. Given the above, the main remaining issue is the effect of the proposed development on car parking.

Reasons

Car parking

91. Elgin Road forms part of a controlled parking zone (CPZ) where the amount of on-street parking is also significantly restricted by the prevalence of dropped kerbs serving off-street forecourt parking. At the time of my morning site visit there was limited capacity within the marked parking bays. I appreciate that provides a

¹⁶ Ref: 24/02211/LP granted on 4 October 2024

limited snapshot but no evidence, such as a parking survey, has been provided to demonstrate that isn't the norm.

92. The application form states that the site has no parking spaces, but as highlighted by the Council, there is one parking space in the front of the property served by a dropped kerb. Despite the application form, the appellant now argues that there are two parking spaces at the property. However, it is not demonstrated that the forecourt area is large enough to safely accommodate more than one car.
93. Within the above context, it is likely that a seven person HMO, with seven unrelated households, would generate materially greater parking demands than two single household maisonettes or a large single dwelling. As a result, the development would increase demand for on-street car parking in an area which already experiences parking stress.
94. The development therefore falls to be considered against LP Policy DM30 which states that to promote sustainable growth new development must reduce the impact of car parking in any development located in areas of good public transport accessibility (Public Transport Accessibility Level¹⁷ (PTAL) rating of 4 or more) or areas of existing on-street parking stress.
95. It is proposed that the development would be car free and given that the site is within walking distance to local shops and bus and tram routes, the Council consider that to be acceptable.
96. Car-free developments can only be implemented effectively within a CPZ and in locations that are close to services and facilities and/or good alternative transport options. They are predicated on the premise that an owner/occupier should not need to own a vehicle, as there are other practical, convenient and attractive means of getting around. As no parking would be provided on the site, anyone choosing to own a car would either have to find an alternative space off-street, for example in a public car park where fees would be incurred, or pay for on-street parking. Parking within a CPZ without a residents' parking permit is usually time limited and/or expensive, therefore making it impractical. Development is therefore permitted on the basis that it will not increase demand for on-street parking because the occupants of the development will not be eligible for a resident's parking permit.
97. As well as being within a CPZ, the site also has a PTAL rating of 4, so occupiers would have good access to public transport and potentially less reliance on private car ownership. I therefore agree that a car free development is appropriate in this case. Indeed, London Plan Policy T6 states that car-free development should be the starting point for all development proposals in places that are well-connected by public transport.
98. To deliver a car-free development a mechanism is required to ensure that residents would not be eligible to apply for a residents parking permit. The Council's position is that to promote sustainable methods of transport, in line with LP Policies DM29 and SP8 and London Plan Policy T6, and to prevent an adverse impact on parking stress, a legal agreement is required to secure the development as parking permit free.

¹⁷ PTALS are a measure of the accessibility of a point to the public transport network. Each area is graded between 0 and 6b, where a score of 0 is very poor access to public transport, and 6b is excellent access to public transport

99. The appellant has stated his willingness to submit a unilateral undertaking (UU) to that end and explains that once signed and completed it will be submitted to PINS. However, the only UU before me is in draft form so is incapable of taking effect and being enforced. It therefore carries no weight.
100. Moreover, as per the appeal decision for No 110 Lodge Road¹⁸, I do not consider this to be a matter capable of being addressed by a planning condition, either in respect of securing the development as car free, or by way of a negatively worded condition requiring the appellant to enter into a planning obligation in the terms described, prior to commencement of development. On the latter point, there is no evidence of exceptional circumstances for such an approach, as envisaged by the Planning Practice Guidance¹⁹ (PPG).
101. The appellant has drawn my attention to an appeal decision concerning No 2A Addiscombe Avenue in Croydon where the Inspector found that a legal agreement to restrict access to parking permits was not necessary²⁰. Although less than a kilometre from the appeal site, Addiscombe Avenue is very close to a tram stop and bus services, more so than the appeal site. Moreover, the Inspector noted that even if the submitted UU was complete, it “would only prevent parking in resident’s bays, which do not include those unrestricted areas closest to the appeal site”.
102. The situation is therefore materially different to the appeal site, where the closest parking is restricted resident’s parking. The Inspector for the Addiscombe Avenue appeal also highlighted that LP Policy DM30 pre-dates the London Plan [Policy T6], which states that an absence of on-street parking controls should not be a barrier to new development, and that boroughs should look to implement these controls wherever necessary to allow existing residents to maintain safe and efficient use of their streets. That again is not applicable to the current appeal site which is within a CPZ.
103. The appellant has also drawn my attention to the appeal decisions concerning No 275 Addiscombe Road²¹. However, those proposals were supported by parking surveys which demonstrated that overnight on-street parking demand could be acceptably accommodated. As noted, no such information is provided in support of this appeal, demonstrating that such capacity exists.
104. With regards to the daytime, the Inspector noted that local parking restrictions would mean that any parking within the CPZ during its hours of operation would be subject to enforcement, so too would be the use of short stay ‘red route’ bays unless vehicles were moved at regular intervals, which would be highly inconvenient. The Inspector for No 275 therefore found that even without any mechanism to secure car-free developments, the proposals would, in effect, self-regulate.
105. However, Elgin Road is not part of a red route and there are resident’s parking bays very close to the site, so it is likely, if the option was available, that future occupants would seek to obtain a parking permit to park close to their home, on that road.

¹⁸ APP/L5240/W/21/3268266

¹⁹ Paragraph: 010 Reference ID: 21a-010-20190723

²⁰ Appeal Ref: APP/L5240/W/23/3316328

²¹ Appeal References APP/L5240/W/23/3326610 and APP/L5240/W/23/3322433

106. In the circumstances relevant to the appeal site, the proposal is likely to materially increase parking demand and it is not shown that there is sufficient capacity for any additional vehicles to be parked on the highway. The development is more likely to result in an increase in parking stress and associated annoyance and inconvenience for existing residents in the area.
107. A legal agreement is therefore necessary to mitigate the effects of the development on parking by ensuring residents are precluded from applying for permits and to ensure the development is car-free in accordance with the intentions of London Plan Policy T6. A car-free development would reduce the impact of the development and better manage the limited amount of space available for on-street parking. It would promote the use of sustainable transport and healthier lifestyles, as well as contributing to a reduction in traffic congestion and pollution.
108. Having regard to the above, I therefore conclude that in the absence of an appropriate mechanism to ensure the development is car-free, the appeal scheme fails to mitigate the adverse effects on car parking, contrary to London Plan Policies T4 and T6 and LP Policies SP8, DM29 and DM30. That is consistent with the case referred to by the Council in Lodge Road where the Inspector concluded that in the absence of a feasible means of securing the development as permit-free, the proposal would harm the parking environment through the additional demand arising from the development.

Other Matters

109. The appeal site falls within the East India Estate Conservation Area (EIECA). I therefore have a statutory duty under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
110. As the external alterations are limited to the insertion of a new side door in the rear outrigger, the appearance of the building would not be materially affected. It follows that the appearance of the EIECA would also be preserved.
111. The appellant states that he possesses the legal prerogative to revert the use of the building to a single dwelling house and then apply again for the use of the building as a seven person HMO. He says that dismissing this appeal would simply delay obtaining planning permission for the same and would serve no practical planning purpose. It is argued as more efficient and reasonable to allow the current appeal in alignment with the principles of good planning practice and judicial efficiency.
112. However, that ignores the fact that what is before me is not acceptable in planning terms, and whilst it may be more expedient for the appellant, that does not obviate the need to address the issue of car parking. Indeed, for appeals following the written representations procedure, the “Procedural Guide: Planning Appeals England” states that the appellant must ensure that an executed and certified copy of the planning obligation is received at the time of making their appeal²². That guidance has not been followed.

²² Paragraph 18.2.2

113. The appellant confirms that he has not made an application for costs against the Council but has suggested that I should issue such an award if I consider reference to unrelated matters to be unreasonable. However, reference by the Council to an extant enforcement notice does not amount to unreasonable behaviour; it is part of the site's relevant planning history.
114. The appellant further raises the issues of costs post final comments stage, stating that the Council should be given one final opportunity to concede on the living conditions issue and to accept that the legal agreement provided fully addresses the Council's third reason for refusal. It is stated that if the Council fails to acknowledge these points, the appellant should be awarded costs on the basis of unreasonable behaviour.
115. On the issue of living conditions, the Council withdrew its objection once it had received the appellant's corrected plans. In terms of the legal agreement, that which has been provided is in draft form so cannot be given weight for the reasons explained. Accordingly, there is no basis to initiate an award of costs against the Council post final comments stage.

Conclusion

116. For the reasons given above, and having considered all other matters raised, I conclude that the proposal would be contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The appeal should be dismissed.

Appeal C

Preliminary Matters

117. The application was made in outline (dealing with layout) with matters relating to access, appearance, landscaping and scale reserved for future consideration.
118. I've corrected the minor typo given in the application form in the banner heading above²³.

Main Issues

119. The main issues are:
- the effect on the character and appearance of the locally listed building and the EIECA;
 - whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to the provision of internal and external living space; and
 - the effect on car parking.

²³ 'Small' rather than 'Smal'

Reasons

Character and appearance

120. The special character of the EIECA is largely defined by its concentration of historic buildings of a high architectural quality and by its spatial quality and formal layout, in particular the strong urban 'ladder' structure made up from six parallel roads.
121. Elgin Road holds the largest collection of buildings of historic and architectural significance, many of which are locally listed. The EIECA Appraisal and Management Plan Supplementary Planning Document (CAAMP) identifies the appeal property within Nos 12 – 22 (even) as locally listed and distinguished examples of three storey, semi-detached buildings with well-preserved original architectural detailing, layout and setting.
122. Within that group, Nos 12 to 18 Elgin Road comprise two pairs of symmetrical, three storey, semi-detached properties, constructed from stock facing brick with contrasting stucco architectural features, including double height bay windows and adjoining decorative entrance surrounds to recessed porches. The SPD highlights that where houses have recessed porches, they are part of the original design and add interest to the character and appearance of the conservation area. The CAAMP states that recessed entrances should not be enclosed by modern doors.
123. Although appearance is reserved for future consideration, the Council correctly recognise that, contrary to the CAAMP, the proposed layout would result in the enclosure of the porch and the loss of the recessed main entrance door. That in turn would harm the architectural integrity of No 16 and would unacceptably compromise the existing symmetry of this pair of semi-detached properties, as well as erode the consistency and group value of Nos 12 to 18.
124. Approval of the proposed layout would therefore result in the direct and unacceptable loss of a notable architectural feature, which in turn would establish the acceptability of how that loss would affect the appearance of the property. It would not be possible to resist that consequential harm when considering appearance as a reserved matter, because of that overlap. That is clear and the Council has not deviated from the proper application of planning law and principles relating to reserved matters as argued.
125. In any case, the appellant has requested that I consider revised plans which show the recessed porch being retained. Applying the tests in *Holborn Studios Ltd*²⁴, that would result in a minor amendment to the scheme as a whole, which would essentially remain that which was considered by the Council, and on which interested people's views were sought. The Council has also had opportunity to comment on the plans. I am therefore satisfied that it would cause no unlawful procedural unfairness to anyone involved in the appeal to accept the revised plans and consider the appeal on the basis of the same. As the revised plans show the harm identified would be avoided, the appearance of the EIECA and the locally listed building would be preserved.
126. The Council rightly highlights that the revised elevation shows the light above the door being bricked up, which would be harmful to the character and appearance of

²⁴ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

the property, but I am satisfied that could be resolved as part of the reserved matters relating to appearance.

127. Whilst deep gardens contribute towards the spaciousness of the EIECA, a sensitive approach at reserved matters stage to the nature of the subdivision of the rear garden would ensure that the character and appearance of the area would be preserved. In any case, a relatively deep communal area would remain.
128. Although glimpsed views of the additional windows at the rear of the property would be available from the pavement in Havelock Road, the elevation would only be seen in part and I am satisfied that, subject to an appropriate design at reserved matters stage, the character and appearance of the EIECA would be preserved.
129. For the reasons explained, I do not find conflict with London Plan Policies D3, D4 and HC1, LP Policies SP4, DM10 and DM18, the CAAMP or the Framework. Those policies state, amongst other things, that development affecting heritage assets will only be permitted if their significance is preserved or enhanced.

Living conditions

130. London Plan Policy D6 and the Technical Housing Standards – Nationally Described Space Standard²⁵ set out requirements for the gross internal floor area (GIA) of new dwellings at a defined level of occupancy, as well as floor areas and dimensions for key parts of the home. For a one bedroom, one person dwelling the minimum GIA is 39m² but that can be reduced to 37m² where the unit has a shower room instead of a bathroom.
131. The Council's concerns relate to the proposed single bedroom flat on the second floor, which is annotated as having a bathroom and a GIA totalling 37m². Whilst its assessment is understandable, by comparing how a bath is depicted in the first floor bathroom, I am satisfied that what is intended is a shower room. Accordingly, the minimum GIA standards would be achieved.
132. I note that the Council states that it would have sought clarification regarding the layout of the basement to ensure an acceptable standard of accommodation would be provided for the ground floor flat. However, the layout plans do not show utilisation of the basement level as part of the proposed scheme.
133. LP Policy DM10.4 requires residential developments to provide a minimum amount of private amenity space of 5m² for a 1-2 person unit and an extra 1m² per extra occupant thereafter. LP Policy DM10.4 also states that all flatted development must provide a minimum of 10m² per child of new play space as calculated using the Mayor of London's population yield calculator and Table 6.2 of the Croydon Local Plan. In addition to the provision of private amenity space, Policy DM10.5 requires proposals for new flatted development will also need to incorporate high quality communal outdoor amenity space that is designed to be flexible, multifunctional, accessible and inclusive.
134. I note the appellant argues that landscaping is a reserved matter but there is overlap here with layout and it is not unreasonable to require that the appellant demonstrates that those requirements are capable of being met. Indeed, layout is

²⁵ Department for Communities and Local Government (March 2015)

defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) as “the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development”.

135. Nevertheless, it is likely, at least in quantitative terms, that the space requirements would be achieved, given the nature of the accommodation and the size of the rear garden. However, the acceptability of the layout of the provision is a matter which should be considered.
136. In that regard, the revised/updated layout plan shows the rear garden subdivided to provide private amenity space for each flat, as well as a communal amenity space/child’s play area. The Council confirm that arrangement meets the quantitative requirements of LP Policy DM10, and I find no reason to disagree.
137. I appreciate that access to the private amenity space for flats 2 and 3 would be somewhat convoluted but that would not be unacceptably so. I am also satisfied that the privacy levels of the ground floor flat positioned immediately adjacent to the access to the rear garden could be adequately protected at reserved matters stage by measures such as high-level windows. Such measures would also resolve any concerns over loss of privacy to the neighbouring property arising from the introduction of new side windows. Privacy levels at the front of the ground floor flat would be no different to the existing situation and would be acceptable.
138. The Council highlight that the doors to the private amenity space of flat 1 shown on the layout plan, are not shown on the elevation plans. Again, however, I am satisfied that can be addressed at reserved matters stage.
139. I therefore find that the development would provide acceptable living conditions for future occupants, in terms of privacy and the provision of internal and external living space. Accordingly, I do not find conflict with LP Policies DM10 and SP2, London Plan Policies D3 and D6 or the Technical Housing Standards.

Parking

140. As noted, Elgin Road forms part of a CPZ where the amount of on-street parking is also significantly restricted by the prevalence of dropped kerbs serving off-street forecourt parking. At the time of my morning site visit I observed limited capacity within the marked parking bays and no evidence, such as a parking survey, has been provided to demonstrate that isn’t the norm.
141. The development therefore falls to be considered against LP Policy DM30 which states that to promote sustainable growth and reduce the impact of car parking, new development must reduce the impact of car parking in any development located in areas of good public transport accessibility or areas of existing on-street parking stress.
142. It is proposed that the development would be car free. Given the site’s PTAL rating of 4 and is within walking distance to local shops and public transport routes, the Council consider that to be acceptable. I find no reason to disagree. Indeed, London Plan Policy T6 states that car-free development should be the starting point for all development proposals in places that are well-connected by public transport.

143. As explained above, to deliver car-free development a mechanism is required to ensure that residents would not be eligible to apply for a residents parking permit. Although the appellant has stated his willingness to enter into a legal agreement to that end, that which has been provided is unsigned and undated so is essentially a draft that is legally unsound and incapable of being enforced. I am therefore unable to attach any weight to it.
144. In support of the appeal, the appellant has again referred me to the appeal decision concerning No 2A Addiscombe Avenue in Croydon where the Inspector found that a legal agreement to restrict access to parking permits was not necessary. However, for the reasons explained under Appeal B and D, the considerations applicable to Addiscombe Avenue are materially different to the appeal site.
145. Nevertheless, whilst access is not before me, layout is and the plans provided do not show that the development would impinge upon the existing off-street, forecourt parking space. Indeed, despite stating the development would be car free, the application also states that a parking space would be provided with electric car charging facilities. The development would not therefore exceed the maximum parking standards of up to 0.5 - 0.75 spaces per dwelling in outer London PTAL 4, as set out in Table 10.3 to Policy T6.1.
146. Whilst the proposal would increase the number of residential units from two to three, the new units are all one bedroom, including one, which is for a single person. The existing configuration is a matter of contention between the parties; the appellant says it is lawfully arranged to provide two Class C4 HMOs, whereas the Council say its lawful use is as two Class C3 flats/maisonettes.
147. Even if under Appeal A I had not found in favour of the Council's position, the overall number of bedrooms and likely occupancy arising from either scenario would be reduced by the proposal. The development would not therefore increase the demand for car parking and would not adversely affect existing levels of parking stress in the area. That materially differentiates the proposal from the appeal decision referred to by the Council concerning No 110 Lodge Road.
148. I note the submission from an interested party that the property has been converted to 8 bedsits, but even if that were so, my above conclusions would not be altered.
149. Accordingly, a planning obligation is not necessary to mitigate the effects of the development on parking and to make the development acceptable in planning terms. I do not therefore find conflict with London Plan Policies T4 and T6 or LP Policies SP8, DM29 and DM30, insofar as they seek to reduce the impacts of car parking and to restrict car parking and promote more sustainable means of transport.

Other Matters

150. Although the number of windows in the rear elevation are shown to be increased, the effect on privacy levels would not be unacceptably harmed having regard to the existing degree of mutual overlooking, which is typically found in an established residential locations such as this.

151. Given the size of the property, its use as three separate, one bedroom flats would not result in an over development of the site.

152. In response to the appellant's revised plans showing the subdivision of the rear garden, the Council has raised concern over the potential effects of the proposed fencing on the large, mature tree positioned at the end of the garden, which has a high amenity value and makes a positive contribution to the character and appearance of the area and the EIECA.

153. I am however satisfied that potential harm could be avoided through appropriate non-intrusive delineation at reserved matters stage. In the circumstances, an arboricultural impact assessment is not necessary and no conflict with LP Policy DM28, which seeks to protect and enhance the borough's trees, would arise.

154. Personal submissions made regarding the appellant are not matters for this appeal, nor are issues relating to the roof structure or HMO licenses.

Conditions

155. I have attached conditions relating to the submission of reserved matters and the time limits associated with this, which are broadly the same as those suggested by the Council. I have also included a condition specifying the approved layout plans, as this provides certainty.

156. Conditions are imposed to ensure adequate provision of refuse storage and cycle parking, and to ensure that the development incorporates the necessary fire safety measures.

157. I have not included the Council's suggested conditions relating to landscaping, external facing materials and detailed drawings, as they should properly be addressed when dealing with appearance and landscaping at reserved matters stage. I have however provided additional clarification on the expectation that the landscaping details shall address matters relating to the subdivision of the rear garden and the protection of the mature tree therein.

Conclusion

158. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Appeal D

Preliminary Matters

159. Planning permission is sought for four self-contained flats and:

- the excavation of the existing basement across the entire footprint of the building;
- the creation of new light-wells at the front and rear of the building;
- a ground floor single storey side extension;
- a single storey rear extension; and
- a dormer window in the loft at the rear of the property.

160. The application was made in outline (dealing with scale) with matters relating to access, appearance, landscaping and layout reserved for future consideration. I have determined the appeal on the same basis and have treated the illustrative layout and appearance drawings accordingly.

Main Issues

161. The main issues are:

- the effect on the character and appearance of the locally listed building and the EIECA;
- whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to outlook, light and the provision of internal and external living space;
- the effect on car parking; and
- the effect on trees within the site.

Reasons

Character and appearance

162. As noted, the appeal site is locally listed and makes a positive contribution to the special character and appearance of the EIECA of which it forms part. The Council's concerns relate to the effect of the proposed front lightwell and alterations to the front entrance porch.

163. As explained, scale is the only matter for approval and that, as per the DMPO, means the height, width and length of each building proposed within the development in relation to its surroundings.

164. Whilst taken in isolation, a lightwell may be considered an engineering operation, in this case it would likely be completed as part of the same building works to the basement, creating a single continuous structure/building operation. Although only indicative, the layout plans show the basement level opening out onto the front and rear lightwell spaces. The correct approach is therefore to consider the development as a whole, rather than its component parts, such that basement and lightwells constitute a single act of development falling within the scope of considerations relating to scale, amounting to a substantial enlargement of the existing building.

165. Indeed, outline planning permission can only be granted for a building. As defined in the DMPO, "outline planning permission" means a planning permission for the erection of a building, which is granted subject to a condition requiring the subsequent approval of the LPA with respect to one or more reserved matters.

166. I note the argument that the lightwells pertain to layout and appearance and I do not disagree. Nevertheless, for the reasons explained, they also fall within the scope of scale and allowing the appeal would therefore grant planning permission for the basement with front and rear lightwells to the size shown in the plans.

167. The appellant further argues that it is entirely plausible that a reserved matters application might not have included a lightwell in front of the building. However,

that would be inconsistent with the description of development which specifically includes the “creation of new light-wells at the front and rear of the building”. As the outline permission is the planning permission, it will permit whatever is contained in the description of development. In any event, the appellant relies on the extent of the lightwells for outlook and daylighting considerations.

168. Moreover, even if no lightwell was included at the front, the indicative alternative design utilising high-level windows, does not demonstrate that the scheme is capable of avoiding unacceptable harm through loss of symmetry as part of the reserved matters considerations relating to appearance.
169. As explained above, the CAAMP identifies the appeal property within a group of distinguished examples of three storey, semi detached buildings with well-preserved original architectural detailing, layout and setting. The CAAMP identifies alterations to individual buildings disrupting the consistency of architectural groupings as a threat to the EIECA.
170. Although there are similarities, Nos 20 and 22 differ in scale and articulation from Nos 12 to 18, in which the appeal site forms part. The latter comprises a coherent group of two symmetrical pairs of three storey, semi-detached buildings constructed from stock facing brick with contrasting stucco architectural features including double height bay windows and adjoining decorative entrance surrounds to recessed porches. That grouping has significant value within the context of Elgin Road and makes an important contribution to the character and appearance of the conservation area as a whole.
171. All four properties have open frontages thereby fully exposing their front elevations to the street scene. Consequently, the base of the buildings can clearly be seen to terminate at ground floor level. In that context, the introduction of a basement running across the majority of the front elevation and projecting forward of it to the extent proposed would clearly be seen as an obvious and discordant form of development.
172. The depth of the lightwell would also expose views of the proposed basement. Whilst appearance is a reserved matter, it is very unlikely that there would be no articulation to that new storey, as windows would be required for light and outlook purposes. If not, there would be no point to the lightwell. In that context, the illustrative elevation does not demonstrate that the harm to the architectural composition of the pair of semis, arising from an elongation of the principal elevation of one property could be avoided. Rather, the combined effects of the lightwell and basement would significantly unbalance the existing and attractive degree of symmetry presented with the adjoining property.
173. Whilst lightwells may be fairly common in the area they are not part of the original design of this particular group. It is in that context that the acceptability of the scheme should be judged.
174. I accept that the basement could be largely screened by 1.2m high evergreen vegetation, as shown in the indicative layout drawing. However, that by reason of its alignment would appear as an odd and contrived feature, designed to mask unacceptable harm.

175. Clearly, 2m or 2.5m high evergreen trees planted along the site frontage would largely screen the effects of the front basement (and 1.2m high bushes around it) but that too would look out of place along Elgin Road and the physical harms would still arise. Indeed, I am mindful that such proposals could be repeated all too often, with developments that physically harm the character and appearance of the area being justified by screening, to the overall detriment of the EIECA. The illustrative plans do not therefore demonstrate that the harms described are capable of being acceptably overcome by way of landscaping.
176. I note the reference to the case of *Kazalbash*²⁶, which the appellant states establishes that elements not visible in the public domain cannot impact on the area's character. I have not been provided with a copy of that case, so I am unaware of the context in which that was considered, other than it involved internal changes, which did not alter the external appearance of an extension, and the subdivision of a garden. That is clearly incomparable to that which is before me where there would be clear and harmful changes within the public domain to the composition of a locally listed building situated within a conservation area, where I have a statutory duty to pay special attention to the desirability of preserving or enhancing its character or appearance.
177. I actually have significant concerns over the appropriateness of an outline application for considering such development in a conservation area, particularly where appearance is a reserved matter.
178. The appellant has referred me to the planting in front of the basement at No 20 and the lack of such planting at No 22 Elgin Road. However, they are materially different as they are part of a run of properties which include original basement features, so the unbalancing effects do not arise.
179. The extent of the landscaping in front of No 6 Elgin Road²⁷ would clearly screen anything behind it but something comparable would take a considerable period of time to achieve and in any case is not a good example to follow, being largely uncharacteristic of the street scene.
180. I recognise that the appellant could plant a new 2m front boundary anyway, but he is unlikely to do so in the event this appeal is dismissed, not least because it would preclude use of the existing parking space in front of the property.
181. I have no evidence to show that if I were to allow the appeal, the owners of the adjoining property would also seek planning permission for a basement with lightwell. The appellant refers to being constrained by a "chicken and egg scenario", but it is common and accepted practice for such schemes to be considered and controlled concurrently. It is far from an untenable position that fails to consider the logical progression of property development. The acceptability of a joint approach would be a matter for the Council.
182. In this case, the Council's position is not therefore unreasonable or contrary to the principles of an outline planning application. It is not a premature assumption, but rather a clear cause and effect arising from the scale of the basement with lightwells.

²⁶ *Kazalbash v Secretary of State for Levelling Up, Housing and Communities* [2023] EWCA Civ

²⁷ It is likely that the actual address is No 8 Elgin Road.

183. However, as appearance and layout are reserved matters, I am satisfied that the additional harm arising from the loss of the original porch could have been avoided by way of condition requiring it be maintained as part of the reserved matters submissions. Indeed, the amended plans submitted in support of the appeal demonstrate that to be feasible.
184. Nevertheless, the scale of the lightwells would unacceptably diminish the architectural integrity and symmetry of the locally listed semi-detached pair and would be harmful to the character and appearance of the area. It follows that the EIEAA would not be preserved and that the development would be contrary to LP Policies SP4, DM10 and DM18, London Plan Policies D3, D4 and HC1 and the CAAMP.

Living conditions

185. The supporting Planning Statement and the description of development given in the application form describe works to create four self-contained flats. Neither say 'up to 4 flats' or imply flexibility on the number of units proposed. Therefore, whilst only layout is before me, the proposal needs to demonstrate that the property is capable of accommodating four flats whilst achieving acceptable living conditions for future occupants.
186. As explained, the Nationally Described Space Standard sets out requirements for the GIA of new dwellings at a defined level of occupancy, as well as floor areas and dimensions for key parts of the home. It includes a minimum floor to ceiling height of 2.3m for at least 75% of the GIA.
187. The Council's concerns in that regard relate to the unit shown in the basement and the unit in the second floor, which would utilise an enlarged loft space. However, based on the plans submitted with the appeal, the Council is now satisfied that both could meet the minimum space standards. Based on the same evidence, I find no reason to disagree.
188. In terms of outlook, all flats, including the basement, are capable of being dual aspect. Nevertheless, whilst layout is a reserved matter, it is somewhat inevitable that occupants of the basement flat would have a restricted outlook, largely focused on the retaining walls to the front and rear lightwells.
189. However, the lightwells are large enough to avoid an undue sense of physical and visual enclosure. Moreover, the indicative floor plan shows that the main living space could be designed to provide both a side and rear facing aspect. The main bedroom is also shown to have a greater degree of separation to the rear retaining wall. Combined with measures such as wall planting and maximising the degree of glazing, an acceptable outlook is capable of being achieved to the rear.
190. I am nonetheless mindful that some form of screen is likely to be required along the perimeter of the rear lightwell to protect the privacy of occupants from other residents using or accessing the rear garden. That has potential to further restrict above ground views and to exacerbate the overall sense of enclosure unless appropriately designed and positioned at reserved matters stage.
191. The outlook from the front would be more restricted but could be designed to maximise above ground views and to have one bedroom with a greater amount of front facing glazing. The front elevation is also orientated to the west.

192. In overall terms, having regard to the constraints typically found for basement accommodation in an urban area, I am satisfied that the basement flat is capable of being designed to achieve an acceptable outlook for future residents.
193. As noted, the outline application specifically sought planning permission for both front and rear lightwells. Although layout is not before me, scale is. Allowing the appeal would therefore grant planning permission for the basement building with front and rear lightwells to the size shown in the plans. It is not therefore unreasonable for the Council to request a daylight and sunlight analysis at this stage to demonstrate adequate levels would be achieved. Nevertheless, I accept that layout and appearance will be critical factors.
194. The appellant makes reference to the 25-degree rule in the Building Research Establishment (BRE) guidance on daylight and sunlight²⁸ and states that the lightwell dimensions are specifically designed to comply with the same.
195. The 25-degree line can be used to assess windows opposite new development. Light would be blocked if a 25-degree line drawn from the centre of the lowest window were obstructed. The appellant contends that the basement meets the 25-degree rule, however, that isn't demonstrated in plan and the proposed section does not include the front lightwell. Nevertheless, in the absence of evidence to the contrary, I agree that compliance would likely be achieved and, subject to designing an appropriate degree of glazing, daylight penetration would be sufficient for the front facing bedrooms and rear facing lounge/dining room and bedroom – based on the indicative floor plan provided.
196. However, the BRE guidelines are intended for use for rooms where daylight is required, including living rooms, bedrooms and kitchens. Based on the indicative plans provided, the basement kitchen would receive no direct light and little or no opportunity for light penetration from the front or rear of the building. That would make for an unacceptably oppressive and gloomy living environment, having to rely on artificial light at all times of the day.
197. Nevertheless, layout is reserved for future consideration and the appellant has shown an alternative one-bedroom arrangement whereby all rooms requiring daylight are either at the front or the back of the basement, so that they would be adequately served by a lightwell.
198. I'm therefore satisfied that it has been demonstrated that it is possible to configure a basement flat with acceptable levels of daylight where required. However, it would be incorrect to speculate that a scheme could be submitted at reserved matters stage which did not necessitate a front lightwell (such as a store to the front and a studio flat to the rear), because planning permission is specifically sought for the inclusion of the same.
199. I am also mindful that paragraph 129(c) of the Framework states that when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).

²⁸ BRE Site layout planning for daylight and sunlight – A guide to good practice – Third edition 2022

200. The Council highlights that the drawings submitted in support of the appeal show the proposed rear dormer window repositioned to serve a staircase, whereas the application plans show it serving a bedroom. The Council's concerns are that it has not been demonstrated that the third-floor bedroom would as a result receive adequate internal light and have an acceptable outlook. However, I am satisfied that both aspects could be acceptably addressed at reserved matters stage (layout and appearance), on the basis of the plans submitted with the application, along with supplementary measures such as roof lights, if required.
201. The Council acknowledge that the basement flat would have direct access to lightwells for private amenity space but raise concerns that it has not been demonstrated that the ground, first, and second floor flats would, or that children's play and communal amenity space could be provided in accordance with the requirements of LP Policy DM10.
202. However, the appeal property benefits from a large garden and based on the indicative occupancy of each of the flats, the illustrative layout plan provided in support of the appeal shows that it is capable of being apportioned so that those standards are met.
203. As highlighted by the CAAMP, deep gardens contribute towards the spaciousness of the EIECA and its resultant lower density character. I note the Council's concerns over the subdivision of the rear garden, but doing so would not introduce significant built form such that the space between the rear of the building and the buildings in Havelock Road would be compromised. A sensitive approach to the nature of the subdivision at reserved matters stage would ensure that the character and appearance of the EIECA would be preserved in that regard. Moreover, the appellant has evidenced that the Council has approved a similar subdivision elsewhere within the EIECA.
204. I have noted the appeal decisions²⁹ and planning application approvals in the Borough of Croydon as referred to by the appellant, but, having assessed the proposal on its own merits I have found that the development is capable of being designed to provide acceptable living conditions for future occupants, in terms of outlook, light and the provision of internal and external living space. Accordingly, I do not find conflict with LP Policies DM10 and SP2, London Plan Policies D3 and D6 or the Technical Housing Standards, which, as noted, set out the minimum standards for all self-contained residential development.

Car parking

205. Elgin Road forms part of a CPZ where the amount of on-street parking is also significantly restricted by the prevalence of dropped kerbs serving off-street forecourt parking. At the time of my morning site visit I observed limited capacity within the marked parking bays and no evidence, such as a parking survey, has been provided to demonstrate that isn't the norm.
206. The development therefore falls to be considered against LP Policy DM30, which states that to promote sustainable growth and reduce the impact of car parking,

²⁹ Appeal References: APP/L5240/W/23/3322248, APP/U5360/W/20/3257998, APP/A5840/W/18/3214086, APP/C5690/W/18/3215194, APP/X5210/W/20/3264186, APP/C5690/W/19/3233626, APP/N5660/A/12/2175591, APP/V5570/A/13/2193726, APP/U5360/A/13/2198597; APP/Y5420/W/17/3191397, APP/L5240/W/23/3316205, APP/L5240/W/21/3271159

new development must reduce the impact of car parking in any development located in areas of good public transport accessibility or areas of existing on-street parking stress.

207. It is proposed that the development is car-free. Given the site's PTAL rating of 4 and its location within walking distance to local shops and public transport routes, the Council consider that approach to be acceptable.
208. Although access and layout are not matters before me, it is unlikely, based on the indicative plans, that the existing single off-street parking space could be retained. The proposal would also increase the number of flats from two to four. The development would not exceed the maximum parking standards of up to 0.5 - 0.75 spaces per dwelling in outer London PTAL 4, as set out in Table 10.3 to Policy T6.1.
209. However, the uplift in the number of units is likely to materially increase parking demand and it is not shown that there is sufficient capacity for any additional vehicles to be parked on the highway. I therefore find that the development is more likely to result in an increase in parking stress and associated annoyance and inconvenience for existing residents in the area, compared to the existing configuration of two maisonettes.
210. I therefore see no reason in this case why the development should not be car-free in accordance with the intentions of London Plan Policy T6, which, as noted, states that should be the starting point for all development proposals in places that are well-connected by public transport. A car-free development would reduce the harms identified and better manage the limited amount of space available for on-street parking. It would also promote the use of sustainable transport and healthier lifestyles, as well as contributing to a reduction in traffic congestion and pollution.
211. As explained above, to deliver a car-free development a mechanism is required to ensure that residents would not be eligible to apply for a residents parking permit. To that end the appellant has provided what is purported to be a UU. That covenants (amongst other things) that the owner shall not apply for a parking permit in connection with the occupation of the site or any residential unit nor knowingly permit any owner or occupier of a residential unit to apply for a parking permit. Similar provisions are also included for every lease and every licence to occupy that is issued.
212. The case of *Khodari*³⁰ confirms that s16 of the Greater London Council (General Powers) Act 1974 is a legally valid and enforceable power to secure car-free development. As the site is within the area covered by the 1974 Act and the UU includes s16 powers, I am able to rely on it in that regard.
213. However, whilst referring to "Planning Application" and "Planning Application Site", neither are defined and no reference is made to the relevant planning application or appeal reference number. Moreover, the term "Development" relies on the development subject to the "Planning Application". I also have concerns that "Property" isn't clearly defined either and the site is not identified by way of a plan. Furthermore, the mortgagee is referred to but is not party to the deed. Consequently, if the property were repossessed, they could implement any extant

³⁰ *R (oao Khodari) v Royal Borough of Kensington and Chelsea & Cedarpark Holdings Inc* [2017] EWCA Civ 333

planning permission without being bound by the deed. There is therefore a question mark as to whether all relevant parties have entered into it.

214. I therefore have very significant concerns over the soundness and enforceability of the UU, so attach very limited weight to it, regardless of the numerous other deficiencies highlighted by the Council.
215. Again, the appellant has referred me to an appeal decision concerning No 2A Addiscombe Avenue in Croydon where the Inspector found that a legal agreement to restrict access to parking permits was not necessary. Although less than a kilometre from the appeal site, Addiscombe Avenue is very close to a tram stop and bus services, more so than the appeal site. Moreover, the Inspector noted that even if the submitted UU was complete, it “would only prevent parking in resident’s bays, which do not include those unrestricted areas closest to the appeal site”.
216. The situation is therefore materially different to this appeal site, where the closest parking is restricted resident’s parking. The Inspector for the Addiscombe Avenue appeal also highlighted that LP Policy DM30 pre-dates the London Plan [Policy T6], which states that an absence of on-street parking controls should not be a barrier to new development, and that boroughs should look to implement these controls wherever necessary to allow existing residents to maintain safe and efficient use of their streets. For the same reasons, that again is not applicable to this appeal, where a mechanism is required to ensure that residents would not be eligible to apply for a residents parking permit to mitigate the effects of the development.
217. Moreover, I do not consider this to be a matter capable of being addressed by a planning condition either in respect of securing the development as car free, or by way of a negatively worded condition requiring the appellant to enter into a planning obligation in the terms described prior to commencement of development. Indeed, there is no evidence of exceptional circumstances for such an approach, as envisaged by the PPG.
218. I therefore conclude that it is necessary to mitigate the effects of the development on parking and that in the absence of an appropriate mechanism to do so the proposed development is contrary to London Plan Policies T4 and T6 and LP Policies SP8, DM29 and DM30.

Trees

219. The Council’s fourth reason for refusal is that it has not been demonstrated that the proposed extensions would not result in harm to the existing trees within the site.
220. The only tree of notable value within the site is situated in the far end corner of the rear garden. Even when not in leaf, this mature tree has a high amenity value and makes a positive contribution to the character and appearance of the area and the EIECA.
221. The appeal drawings plot the position of the tree as well as its root protection area (RPA). That demonstrates that the proposed extensions would fall well outside of the RPA. The proposed rear lightwell would also fall outside of the RPA but would likely require works or activities towards its outer extent. I am however satisfied that potential harm could be avoided by a condition requiring a tree protection plan

and the implementation of appropriate working methods in accordance with British Standard BS 5837:2012 - Trees in relation to design, demolition and construction - Recommendations. I am also satisfied that the effect of any fencing which may be required for the sub-division of the garden, and the position of the cycle storage, could be similarly resolved through reserved matters considerations relating to layout and landscaping.

222. Subject to the imposition of conditions and future layout considerations, the development would not conflict with London Plan Policy G7, or with LP Policy DM28. Those policies state, amongst other things, that the Council will seek to protect and enhance the borough's trees by ensuring that all development proposals accord with the recommendations of BS 5837:2012.

223. The appellant questions the relevance of LP Policies SP4, SP7 and DM10 and London Plan Policy D3, as cited in the Council's reason for refusal, but I do not find conflict with them on this main issue in any case.

Heritage Balance

224. The Framework expects that great weight is given to the conservation of designated heritage assets irrespective of whether that harm is substantial or less than substantial. In this case I conclude that the development leads to less than substantial harm to the EIECA as a whole. In such circumstances the Framework requires that any identified harm is weighed against any public benefits the development might secure.

225. The appellant asserts that the correct determination of the building's existing use is crucial for evaluating the proposed changes in the context of local planning policies and regulations. To substantiate the existing use of the building, the appellant has referred to the LDC application subject to Appeal A. However, it will be evident from my decision that I have not found the use of the building for two Class C4 HMOs to be lawful.

226. The Council's view is that the 'existing' floor plans do not reflect that of its August 2023 site visit and that the property is being used for eight self-contained flats. An enforcement notice was served on that basis and requires the use to revert to a flat on the ground floor and a maisonette on the first and second floor.

227. In this case, the illustrative plans show a three bedroom basement flat, a two bedroom ground floor flat and two, one bedroom flats on the upper floors. However, it is only demonstrated that the basement flat is capable of delivering acceptable living conditions if it is arranged to provide a one bedroom flat, rather than three.

228. Therefore, whilst the proposal would increase the number of units from two to four, that would be at the cost of losing two larger units to provide three single bedroom flats and one two bedroom flat. There is therefore limited support from London Plan Policy H10 which states that schemes should generally consist of a range of unit sizes, and it is not shown that there is a more pressing need for the type of housing proposed over that which would be lost.

229. The appellant has referred me to the support of London Plan Policy H2 which states that boroughs should pro-actively support well-designed new homes on small sites through planning decisions in order to significantly increase the

contribution of small sites to meeting housing need. However, I have found the proposal to be harmful to the character and appearance of the area and the EIECA, so does not amount to a well-designed scheme attracting that policy support. For the same reasons, the development would not optimise site capacity through a design-led approach, as envisaged by London Plan Policy D3.

230. Nevertheless, in principle the development makes more efficient use of the land by increasing the number of units from two to four. That is a modest public benefit which can be afforded a modest degree of weight in favour of the scheme.

231. The development would further provide short term economic benefits derived from the associated building works, although such benefits attract limited weight. Similarly, the potential biodiversity benefits from fairly limited frontage planting are likely to be low. Accordingly, any associated public benefit is only capable of attracting limited weight.

232. I therefore find that the public benefits advanced in favour of the development do not outweigh the great weight that should be given to the conservation of the designated heritage asset.

Conclusion

233. For the reasons given above, and having considered all other matters raised, I conclude that the proposal would be contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The appeal should be dismissed.

Appeal E

Preliminary Matters

234. The PPG explains that a LDC application needs to describe precisely what is being applied for and the land to which the application relates, and that without sufficient or precise information, a LPA may be justified in refusing a certificate³¹.

235. In this case, the application sought to affirm the lawfulness of installing and retaining interior fixtures, specifically cupboards, countertops, and sinks resembling kitchen installations, within the bedrooms of the first and second floor maisonette at the appeal property, under the GPDO and the 1990 Act.

236. The Council refused to grant a LDC for the following reason:

“A certificate of existing lawful use cannot be granted as the application is ambiguous and insufficiently clear as to what the applicant is seeking the council to confirm is lawful, and then depending on that answer, clear evidence to define and support that claim. The application form filled out is to confirm the existing (planning) use. Although the submission appears to focuses [sic] on just installation (a physical internal alteration/building operation) and a theoretical use of just a limited number/type internal features in the future (rather than existing use), which a judgement of an overall existing (planning) use cannot reasonably be made on.”

³¹ Paragraph: 005 Reference ID: 17c-005-20140306

237. The appellant's agent concedes that a clerical error was made in selecting 'An Existing Use' instead of 'Existing Building Works' in the application form and that the Council rightly point out the contradiction between that selection and the application statement, which sought a LDC in respect of existing works. Nevertheless, the appellant is critical of the Council for not seeking clarification on this issue and primarily refusing the application on that unintended discrepancy, and in the general manner of its determination.
238. There is further ambiguity insofar as the application description refers to 'installing and retaining interior fixtures'. However, the appellant has clarified that the application was made in respect of existing works, so there are no proposed installation works. The appellant also seeks to stress that an LDC was sought for retaining the cabinets installed within the bedrooms without any of the appliances. Nevertheless, it is evidently more than that as the description also refers to countertops and sinks.
239. In any event, s191(4) of the 1990 Act allows the local planning authority to modify the description of the existing use, operation or other matter and I may exercise this power on appeal. Indeed, I am obliged to issue an LDC for any use or development that is shown to be lawful on the facts and evidence.
240. It is also appropriate that I consider any relevant fresh evidence submitted at appeal because the LDC provisions are to enable the making of an objective decision based on the best facts and evidence available when the decision is taken. In any event, it would serve no public purpose to refuse a LDC strictly on the basis of the evidence submitted with the application, because it would always be open to the appellant to make a fresh application on the basis of evidence that came to light after the Council's refusal.
241. I have therefore considered the appeal on the basis that the application was made under s191(1)(b) relating to existing operations, rather than S191(1)(a), relating to any existing use of buildings or other land. It is not therefore necessary to consider the appellant's pleadings in the alternative.

Main Issue

242. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on whether the interior fixtures amount to development and whether they constitute a contravention of any of the requirements of any enforcement notice then in force.

Reasons

243. The appellant contends that the installation of the fixtures within the bedrooms aligns with the provisions of Schedule 2, Part 1, Class A of the GPDO. However, Class A covers the enlargement, improvement or alterations to a house such as rear or side extensions, as well as general alterations such as new windows and doors.
244. Nevertheless, s55(2)(a)(i) excludes from the definition of development set out in s55(1), works for the maintenance, improvement, or other alteration of any building which affect only the interior of the building. Installing and retaining interior fixtures, specifically cupboards, countertops, and sinks resembling kitchen installations,

within the bedrooms of the first and second floor maisonette clearly fall within that exclusion and thus do not amount to development requiring planning permission.

245. However, as explained above, the Council served an enforcement notice in respect of the appeal property on 21 March 2023, prior to the date of the application, alleging a 'change of use of the ground floor flat into 3 self-contained flats and the change of use of the first and second floor maisonette into 5 self-contained flats.'
246. Although an appeal was submitted against the enforcement notice, it was not made within time and was not accepted by PINS. Consequently, the notice took effect on 27 April 2023, so was in force at the time of the application.
247. The second requirement of the enforcement notice includes removing all kitchens, including sinks, kitchen cupboards and cookers from the first and second floor maisonette, apart from one kitchen.
248. The appellant submits that such extensive measures were unwarranted and the removal of the 2-burner hob and microwave from the cabinets would suffice to reclassify these units from 'kitchen cabinets' to 'storage cabinets'. He says this approach is grounded in the principle that the character of a fixture is determined by its use rather than its mere physical form or original intent. It is further stated that in seeking the LDC, the appellant aimed to avert the unnecessary expense and disruption of removing fixtures that, once divested of certain elements, would seamlessly conform to the legally permissible standards of either a Class C3 or C4 residential unit.
249. However, those are arguments applicable to an appeal against the enforcement notice under ground (f)– that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the breach. I appreciate that a clerical error may have resulted in the appellant making an invalid appeal but the opportunity to make those submissions has now passed.
250. Moreover, s285(1) of the 1990 Act states that “The validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.” Consequently, whether the inclusion of micro-kitchenettes within the maisonette bedrooms constitutes the formation of self-contained flats, is not a matter for this appeal.
251. The Council's site visit photographs from 24 August 2023 show three bedroom kitchens, each with a sink, kitchen cabinets, worktops, hobs and microwaves. Although it may have been explained at the visit that the kitchen appliances were to be removed following vacancy of the property by Council tenants, they were there at the time of the application, when the LDC was to be determined.
252. In any case, as explained, requirement 2 of the enforcement notice requires the removal of all kitchens, including sinks, kitchen cupboards and cookers from the first and second floor maisonette apart from one kitchen. There is no ambiguity in that requirement, and it is abundantly clear that retaining the sinks and cupboards, which resemble kitchen cupboards because that is what they are, is in contravention of the requirements of a notice then in force, so cannot be lawful. It

is clearly not enough to remove the kitchen appliances to comply with the notice. Moreover, the cabinets were installed as kitchen cabinets and are not effectively removed by removing the kitchen appliances.

253. I understand the submission that cupboards can be used to store other items unrelated to a kitchen use, however, those are again arguments more applicable to an appeal against an enforcement notice under ground (f). Moreover, even if they are used as standard storage units, that does not change the fact that they very likely remain the units which the enforcement notice requires removal of. They have not “undergone a fundamental transformation” in that context. The kitchen has not been divested of its kitchen attributes as the kitchen sink, kitchen countertops and kitchen cupboards remain. It would only need a microwave to be plugged in to become largely functional.
254. I note the analogies made by the appellant, but it cannot be lawful to use the cabinets for any other purpose because the enforcement notice requires that they be removed. In any case, the appeal is not concerned with use and there is no evidence that the fixtures are used for other purposes.
255. The appellant refers to retaining certain fixtures within the property, which, following adherence to the enforcement notice, no longer serve as components of a kitchen. However, that argument is fundamentally flawed because there is no evidence of compliance with the requirements of the enforcement notice which require the removal of the very same fixtures the appellant is seeking to retain.
256. The appellant seeks to argue that the focus of the application is on the lawfulness of the property’s current condition, especially the non-kitchen use of the storage cabinets installed in response to the enforcement notice. That is opaque and could be deemed to infer that the cabinets were installed after serving the enforcement notice. In any event, there is no evidence to that effect and the focus of the submissions is on the retention of the cabinets.
257. I appreciate that the Council did not refer to the enforcement notice in its decision notice and that it may only have raised it in response to PINS’ query over its effect on the LDC sought. Nevertheless, it is before me and as explained in the preliminary matters above, it is appropriate that I consider any relevant fresh evidence advanced at the appeal, including where this evidence was not advanced at application stage, because the LDC provisions are to enable the making of an objective decision based on the best facts and evidence available when the decision is taken.
258. The appellant argues that the appeal does not seek to contravene the statutory provisions of sections 191(2)(b), 191(3)(b), or 285(1) of the 1990 Act. However, for the reasons explained, the interior fixtures contravene the requirements of a notice in force at the time of the application, so cannot be lawful under the terms of s191(2)(b). S191(3) relates to a failure to comply with any condition or limitation subject to which planning permission has been granted, so is not relevant. Moreover, the arguments made in relation to the requirements of the notice effectively question the validity of the same, in contravention of s285(1) of the Act.
259. The appellant argues that the Council should have granted the LDC in the absence of any contradictory evidence. I do not agree. The appellant’s own version of events is sufficient to withhold granting a LDC.

260. I therefore find that retaining the interior fixtures, specifically cupboards, countertops, and sinks resembling kitchen installations, within the bedrooms of the first and second floor maisonette, was not lawful at the time of the application, on the balance of probabilities.

Conclusion

261. For the reasons given above I conclude that the Council's refusal to grant a LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal F

Main Issue

262. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on:

- whether sufficient information has been provided to decide the appeal; and
- whether enforcement action may be taken in respect of installing and retaining the interior fixtures (whether because they did not involve development or require planning permission), and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Reasons

263. The LDC seeks to affirm the lawfulness of installing and retaining interior fixtures, specifically cupboards, countertops, and sinks resembling kitchen installations, within the bedrooms of the first and second floor maisonette of the appeal property, under the GPDO and the 1990 Act.

264. In response to issues raised by the Council and to dispel any ambiguity, the appellant's statement confirms the specific fixtures and provides plans highlighting their precise location, as well as dimensioned CGIs and photographs.

265. Based on that clarification, I am satisfied that sufficient information has been provided to understand the precise nature of the LDC sought and to make a fully informed judgement on it.

266. There are four bedrooms within the maisonette. The fixtures in bedroom 1 on the first floor, and bedroom 3 on the second floor are the same. They are described as comprising a tall cupboard resembling fridge/freezer housing, three wall storage cupboards resembling kitchen wall units, three base storage cupboards resembling kitchen base units and a worktop with a sink.

267. The fixtures in bedroom 2 on the first floor and bedroom 4 on the second floor are described as comprising a tall unit with shelves and cupboards, two wall storage cupboards resembling kitchen wall units, two base storage cupboards resembling kitchen base units and a worktop with a sink.

268. As with Appeal E, I note the appellant's references to Schedule 2, Part 1, Class A of the GPDO, but those provisions cover the enlargement, improvement or alterations to a house such as extensions and general alterations such as new windows and doors. Nevertheless, the internal fixtures are clearly excluded from

being development requiring planning permission by virtue of s55(2)(a)(i) of the 1990 Act.

269. However, as explained, the Council served an enforcement notice in respect of the appeal property on 21 March 2023, prior to the date of the application, alleging a “change of use of the ground floor flat into 3 self-contained flats and the change of use of the first and second floor maisonette into 5 self-contained flats”. That notice took effect on 27 April 2023, so was in force at the time of the application. Moreover, the appellant confirms that the original kitchens were installed on 1 January 2022, so were in place when the notice was served.
270. The second requirement of the enforcement notice requires the removal of all kitchens, including sinks, kitchen cupboards and cookers from the first and second floor maisonette, apart from one kitchen. There is no ambiguity in that requirement, and it is abundantly clear that retaining the sinks and cupboards, which resemble kitchen cupboards and kitchen sinks, because that is what they are, is in contravention of the requirements of a notice then in force, so cannot be lawful.
271. It is clearly not enough to remove the kitchen appliances and to “effectively” remove the cabinets, but actually retain them, so as to comply with the requirement of the notice. For the purposes of this appeal, the fixtures, despite protestations to the contrary, are not “standard items of domestic furniture” or “harmless storage cabinets”, they are, very clearly, fixtures specifically targeted in the enforcement notice requirements.
272. The appellant states that it is critical to highlight that any kitchen appliances present during the Council's visit in August 2023 had been removed at the time of submitting the application in November 2023 and that the units previously installed as kitchen cabinets had since been removed, repurposed and reinstalled as storage cabinets. The appellant asserts that these changes in the property's internal configuration, since the August planning officer site visit, were a critical facet of the application which has essentially been ignored.
273. Whether or not the Council should have investigated compliance with the notice is somewhat moot because, for the purposes of this LDC, the onus lies firmly with the appellant to make his case, and I have no evidence to support the appellant's assertion, that the sink and cupboards were removed in accordance with the requirements of the notice.
274. I wouldn't necessarily expect an LDC to be provided to that effect, but had that work transpired, it is not unreasonable to expect the appellant to have sought confirmation from the Council that the requirements of the notice had been complied with. At the very least, the appellant could have retained evidence of compliance before reinstating the fixtures, probably as they were, save for cooking appliances, particularly if the intention was to submit a fresh LDC application partly based on compliance.
275. Instead, without any supporting evidence, the appellant is seeking to argue that between August 2023 and November 2023, the units previously installed as kitchen cabinets were removed, repurposed and reinstated as bedroom storage units, with no indication that they look any different, or are in a different position. Then, as part of that reinstatement/repurposing, a sink was replumbed in the same location, as part of the bedroom storage units. I note the appellant now refers to

the sinks as a bedroom sink, but that lacks credibility as the rooms already have sinks conventionally positioned within the ensuite bathrooms.

276. Whilst I have no evidence which contradicts the above version of events, without any corroborative evidence, or even a SD or equivalent, I find that whole scenario to be highly improbable. An LDC should not therefore be granted effectively confirming compliance with the enforcement notice as the evidential burden has not been met.
277. As noted, the enforcement notice took effect on 27 April 2023. A compliance period of six months equates to 27 October 2023. The application was submitted in November 2023, by which time the appellant states that the kitchen units had been removed and reinstalled as storage units without cooking facilities. Therefore, even if the Council investigated compliance at the time of the application, as suggested, the only physical change they would likely have seen is the absence of cooking facilities. It is not explained how the Council would have been able to discern that the other fixtures had been removed and then reinstated to look exactly how they did before. It would have undoubtedly appeared to the Council, that the enforcement notice had not been complied with, insofar as the fixtures that should have been removed, appeared to remain.
278. It would have been obvious to the appellant that to argue that he had complied with the notice in the terms described would appear highly improbable and that evidence would need to be collated to prove that he did, particularly given he was shortly going to rely on that version of events for the purposes of the LDC application. Of course, it is not compulsory that he collate such evidence, but that would clearly be the sensible and logical thing to do in the circumstances, not least because the evidential burden rests with him to make his case on the balance of probabilities.
279. In any event, s181(1) of the 1990 Act provides that compliance with any of the requirements contained in an enforcement notice shall not discharge the notice. Under s181(3), if any development is carried out on land by way of reinstating or restoring buildings or works which have been altered in compliance with an enforcement notice, the notice shall be deemed to apply to the buildings or works as it applied before they were reinstated or restored. The requirements of an enforcement notice thus have an enduring effect. If it is complied with but there is a later breach of the requirements, s181(1) and (3) mean that remains enforceable under s179. Consequently, reinstating kitchen cupboards and a sink cannot be lawful as enforcement action may be taken in respect of them.
280. The appellant may wish to repurpose them, but they likely remain the same fixtures specifically referred to in the enforcement notice requirements, regardless of whether they include cooking facilities. Indeed, the removal of cookers is one of a list of fixtures required to be removed. Whether fixtures are capable of being used as kitchens is irrelevant.
281. I understand that cupboards can be used to store other items unrelated to a kitchen use, however, those are arguments more applicable to a ground (f) appeal against the enforcement notice (that the requirements of the enforcement notice are excessive).

282. In that regard, s285(1) of the 1990 Act states that “The validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.” Clearly therefore, it would not be appropriate to rehearse ground (f) type arguments here. That opportunity has been lost.
283. In any event, I wouldn’t expect the requirements of the notice to “address or make any stipulations regarding the repurposing of these fixtures in a non-kitchen capacity and their reinstallation as mere storage or utility facilities.” The notice does not need to because it clearly requires them to be removed. Whether or not that is excessive, is now irrelevant.
284. Putting cupboards back in their place needn’t contravene the requirements of the notice but what is sought still looks like a kitchen and retains part of the facilities of a kitchen. Whilst they may have been stripped of some kitchen appliances, as a matter of fact and degree, the fixtures remain a kitchen installation. At best, they amount to a part reinstatement of the kitchens, but more probably are the parts of the kitchen which were not removed in accordance with the requirements of the notice.
285. The appellant argues that the Council’s obligation was to address the principle of repurposing the units previously used as kitchen cabinets to bedroom storage units. He says a key legal contention is the transformation of what was once a kitchen cabinet into a mere storage cabinet. He states that this metamorphosis is rooted in the principle that the character of an installation is determined by its use and function rather than its mere physical form or original intent.
286. However, that ignores the very fundamental issue at the heart of this case, which is that it cannot be lawful to repurpose/transform/metamorphose the units because the enforcement notice requires them to be removed. I note the analogies made by the appellant, but you can’t repurpose something that shouldn’t be there.
287. The appellant also refers to current function and use but there is no evidence of a repurposed use and the application is concerned with existing operations, not existing or proposed use. The Council also denies that conversations took place about the units being repurposed during its site visit in August 2023.
288. The appellant argues that for the appeal to conflict with s191(2)(b), s191(3)(b) and s285(1) of the 1990 Act, it would necessitate proposing the lawfulness of retaining 'kitchen cabinets', rather, than as sought, confirmation of the lawfulness of retaining storage cabinets not to be used in the context of a kitchen, which falls outside the scope of the enforcement notice and the specified sections of the Act. However, that ignores that the storage cabinets *are* the kitchen cupboards which the notice requires removal of, on the balance of probabilities, so cannot be lawful.
289. The notice does allow one kitchen to be retained in the maisonette. That will be a decision for the appellant, but the application in this case is focused on the kitchens in the bedrooms, rather than a main kitchen.
290. I therefore find that, on the balance of probabilities, retaining interior fixtures, specifically cupboards, countertops, and sinks resembling kitchen installations, within the bedrooms of the first and second floor maisonette at the appeal property

constitutes a contravention of the requirements of an enforcement notice then in force and thus would not have been lawful at the time of the application.

Conclusion

291. For the reasons given above I conclude that the Council's refusal to grant a LDC was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Richard S Jones

INSPECTOR

Appeal C

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, and scale, "the reserved matters", shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved. The landscaping reserved matters shall include details of the boundary treatments within the rear garden and an arboricultural assessment to ensure protection of the mature tree at the rear of the garden.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with drawing Nos: G101 Rev 3; G102 Rev 3; G103 Rev 3; G104 Rev 3; G105 Rev 3; G106 Rev 3; G107 Rev 3; G108 Rev 3 and G117 Rev 3.
- 5) Prior to the occupation of the development hereby permitted, the following shall be submitted to and approved in writing by the local planning authority:
 - a) Full details of cycle parking provision (comprising no less than 4 long stay spaces), including the type of cycle stands.
 - b) Full details of the refuse stores, including the size and number of bins, as well as a dedicated area for the storage of bulky waste.

The cycle parking provision and refuse stores shall be completed as approved prior to the first occupation of the development and maintained for the lifetime of the development.

- 6) The development hereby permitted shall be carried out in accordance with the Fire Statement contained within the Design & Access, Planning and Fire Statement, dated 17 May 2023.