

**APP/K5600/W/25/3367853 (APPLICATION PP/24/05920)**

**UNIT 9 LATIMER ROAD W10 - REPRESENTATION TO THE PLANNING INSPECTORATE  
FROM THE ST QUINTIN AND WOODLANDS NEIGHBOURHOOD FORUM**

The detailed background to our objections to this application are set out in two representations submitted to RBKC in December 2024 (10 pages) and April 2025 (8 pages). The second of these was sent to members of the Council's Planning Applications Committee on 27th April 2025 following publication of the officer report recommending a grant of consent. We asked the committee to defer a decision, on the basis that officer recommendations missed some key context. This second representation is not published on the RBKC planning file and a copy is therefore attached.

We are now making this further representation to the Inspectorate, in support of the RBKC Planning Applications Committee decision to refuse the application. We are not repeating below all the detailed background information previously covered. The status of the St Quintin and Woodlands Neighbourhood Forum and of the adopted 2018 neighbourhood plan is explained in these earlier documents.

The grounds for refusal by the committee are as below. This representation focuses on the **significance of StQW Policy LR5 in the refusal decision**. For reasons unclear to us, the applicants/appellants appear to **have failed to understand the status and weight of this NP policy**, despite the content of our December 2024 representation.

**Grounds for RBKC refusal**

*The proposed development, by reason of the number and size of balconies on the front elevation, would result in a harmful increase in overlooking and noise that would be generated by users of the balconies, and as a result would lead to a loss of visual privacy and disturbance for neighbouring occupiers and this harm would not be outweighed by the benefit of providing new homes.*

*The proposals would therefore be unacceptable and would result in material harm to the living conditions of neighbouring occupiers and is contrary to policy CD9 of the Local Plan 2024 and policy LR5 of the St Quintin and Woodlands Neighbourhood Plan 2018.*

Set out below are factors we ask the Inspector to take into account in considering this appeal. More generally, it should be noted that the applicants made little effort to engage with the StQW Neighbourhood Forum. One brief meeting was held on site on 16th May 2024, attended by three of our management committee members, at which we were shown early drawings and images on a mobile phone. No subsequent approaches for meetings were made despite the content of our December 2024 objection

**History and status of StQW Policy LR5**

Page 2 of our December 2024 representation explains clearly that *The SPD Design Code for the street offers 'guidance' on massing and building heights, but such guidance takes second place to StQW policies. StQW Policy LR5 'takes precedence'*. We cited

NPPF paragraph 31 as below, and explained that this had not been superseded by the 2024 RBKC Local Plan.

*NPPF 31 states Once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where they are in conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.*

By way of additional context we ask the Inspector to note that in the pre-submission version of the StQW Neighbourhood Plan, Draft Policy LR5 was worded *To allow increases in building heights on the western side of Latimer Road to a guideline maximum overall height of 14m, taking into account the position within the street in terms of immediately neighbouring buildings and any buildings which have received planning approval from LB Hammersmith & Fulham.*

This height figure was based on the tallest building on the western side of the street and was chosen to avoid problems of loss of daylight/sunlight and ‘sense of enclosure’ for a mixed use street.

The history of the Council’s attitude towards the consultation version of the StQW Draft Plan is set out in detail in the Basic Conditions Statement as provided to the independent Examiner John Parmiter in 2015. We provided this level of detail to the Examiner because (at that time) there were strong differences of view between the Forum and RBKC planning officers, up to Director level, on the scope for neighbourhood plans to refine or vary ‘non-strategic’ local plan policies.

We had engaged (via the NPIERS system) Christopher Lockhart Mummery QC to carry out a ‘health check’ of our draft plan. We followed his advice on what could be achieved through a neighbourhood plan, and what might fail to meet the Basic Conditions test of ‘general conformity’.

The RBKC officer response to the consultation draft neighbourhood plan raised objections to numerous draft NP policies. The exchange of correspondence on these differences of view is set out at pages 48 onwards of the StQW Basic Conditions Statement (see under StQW Neighbourhood Plan on the RBKC website for a copy of this document).

RBKC’s response to StQW Draft Policy 8e (later LR5) on building heights and sense of enclosure in Latimer Road was that a maximum guideline height of 14m on the western side of the street was ‘arbitrary’ and unacceptable. We did not share this view, but accepted that some change to policy wording was advisable in the circumstances. At an open meeting of the Forum held on 15th February 2015 it was agreed to vary the wording of this policy to the version that was subsequently included in the adopted NP in 2018 (see [presentation slides](#) from this 2015 meeting).

Our membership felt at the time that this varied policy wording would prove sufficiently robust in limiting building heights on the western side of Latimer Road to those which avoided problems of loss of daylight/sunlight and harmful impacts on ‘sense of

enclosure’. However, events have moved on subsequently, with RBKC planning officers accepting an option of five storey as well as four storey buildings on the western side of the street (see further below).

#### **Four storeys or five at this position within the street?**

The clear intention of StQW Policy LR5 is that building heights should taper downwards from the southern end (now dominated by Imperial College buildings in LBHF) towards the two storey cottages at the northern end of the street.

#### **The Design Code for Units 1-14 Latimer Road**

This was embarked on as an exercise in ‘co-production’ of a set of ‘policy guidance’. But as is often the case with such initiatives, it was the local planning authority which had the final say on the content of the document.

Paragraph 4.1.4 of the Design Code SPD states: *The total building height for a four storey proposal should not exceed 14.3 metres from ground to roof level. This maximum dimensions are illustrated in diagram 4.1.* This figure reflected what the Forum members on the RBKC working group argued for, as being appropriate for the street based on existing heights and a limit needed to achieve the sightlines of an ‘urban’ street built originally as 2 and 3 storey terraced housing with workshops at ground floor level.

In the course of the four ‘project group’ meetings convened by RBKC to discuss the drafting the Design Code SPD, RBKC planning officers introduced the option of ‘four storeys and a setback fifth subject to a daylight/sunlight study’. The impacts of a setback fifth storey are explored at paragraph 2.6 of the Design Code in terms of daylight/sunlight, but not the question of ‘sense of enclosure’ - this being an important RBKC planning policy dating back many years in a densely built Borough.

#### **The appellant’s case statement**

This case statement refers to the Latimer Road Design Code at paragraph 2.6 and comments *This is a key document for the determination of this appeal and reference is made to the approach and policies of the SPD throughout this Statement.*

**This reflects a fundamental misconception on the part of the applicants.** As set out in our December 2024 objection and rehearsed at the start of this representation, the Design Code SPD is not the ‘key document’. It is policy guidance only and carries less material weight than policies in the development plan documents (the RBKC Local Plan and the StQW Neighbourhood Plan.)

At the Planning Applications Committee meeting on 1st May 2025, this point was made by a member of the public speaking as an objector. It was not addressed in the response from the appellants.

#### **Misstatement of Policy Hierarchy and Legal Status of the Neighbourhood Plan**

The appellant’s case (particularly at Sections 6.50–6.53) wrongly implies that the Latimer Road Design Code SPD (2021) somehow supersedes or “completes” Policy LR5 of the StQW Neighbourhood Plan (2018).

This is legally incorrect. Under Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications must be determined *in accordance with the development plan* unless material considerations clearly indicate otherwise. The Neighbourhood Plan is part of the statutory development plan, and Paragraph 31 of the National Planning Policy Framework (NPPF) applies as stated above.

The SPD is not part of the statutory development plan. It is only a material consideration as guidance and cannot override or displace a policy within a neighbourhood plan. This principle has been confirmed in the courts:

- *R (Skipton Properties Ltd) v Craven DC [2017] EWHC 534 (Admin)* — which held that SPDs cannot create new policy or override existing development plan policies.

The legal status of the Latimer Road Design Code SPD has been misunderstood by the appellant. As held in *R (Skipton Properties Ltd) v Craven DC [2017] EWHC 534 (Admin)*, an SPD cannot introduce new policy or override the statutory development plan. LR5 remains the development plan policy most relevant to proposals for Unit 9. Compliance with the SPD, even if demonstrated, does not discharge the requirement to meet all of LR5's cumulative tests. The SPD is a tool to help interpret LR5, not to circumvent it.

- *Woodcock Holdings Ltd v SSCLG [2015] EWHC 1173 (Admin)* — confirming that neighbourhood plans must be given full development plan weight in decisions.

The High Court in *Woodcock Holdings Ltd v Secretary of State for Communities and Local Government [2015] EWHC 1173 (Admin)* affirmed that neighbourhood plans, once made, carry full statutory weight as part of the development plan under section 38(6) of the Planning and Compulsory Purchase Act 2004. Importantly, Mr Justice Dove confirmed that a neighbourhood plan may legitimately include policies that constrain the scale or form of development in line with local priorities, even where there is a housing shortfall or national growth pressure. In the case of Unit 9 Latimer Road, the appellant's argument that the 2021 SPD or housing delivery context should override Policy LR5 is legally flawed. LR5 forms part of the adopted development plan and was democratically endorsed through a local referendum with 92% support on a 23% turnout of registered electors. It sets conditions for increased heights, including protection of residential amenity, daylight, and privacy. As *Woodcock Holdings* makes clear, such policies must be respected unless compelling material considerations dictate otherwise, none of which have been demonstrated in this appeal.

Accordingly, the appellant's claim that the SPD "completes" LR5 is not only misleading, but legally baseless.

### **Planning committee entitled to take a different view**

The Planning Committee's refusal of Unit 9, despite an officer recommendation and the prior approval of Unit 10, reflects a legitimate exercise of planning judgment. As confirmed

in *R (Watkins) v Gedling BC* [2012] EWHC 2315 (Admin), elected members are not required to follow officer recommendations or previous decisions, provided their reasoning is rational and based on the development plan. In this case, the committee clearly judged that the cumulative impact of height, balconies, and loss of amenity crossed a threshold not justified under current policy.

### **Incorrect Application of the ‘Substantial Harm’ Test**

In Paragraph 6.11 of the appeal statement, the appellant argues that the proposed scheme should not have been refused because it does not give rise to "substantial harm", referring to terminology found in the NPPF.

This argument is fundamentally flawed both legally and in planning terms.

The “substantial harm” test in the NPPF applies exclusively to the assessment of proposals affecting designated heritage assets, as set out in Paragraphs 200 to 207. It has no relevance to the consideration of residential amenity impacts such as overlooking, loss of privacy, or a sense of enclosure.

The correct legal and policy framework for assessing residential amenity is found in Policy CD9 of the RBKC Local Plan and Policy LR5 of the StQW Neighbourhood Plan. These policies require that development proposals maintain acceptable levels of privacy, outlook, and overall amenity for neighbouring occupiers. The suggestion that a proposal should be considered acceptable unless it causes "substantial harm" misrepresents national policy and introduces a test that does not apply.

The appellant’s use of the “substantial harm” test in this context is therefore legally irrelevant and risks misleading the decision-maker. The appropriate tests under local policy must be applied.

### **Implications of precedent of RBKC consent granted on Unit 10**

This decision features in the appellants case statement.

It is well established in case law that previous planning decisions do not set binding precedent, even when they relate to similar or adjacent sites. In *North Wiltshire DC v Secretary of State for the Environment* [1993] 65 P & CR 137, the court clarified that while consistency in decision-making is important, each application must be assessed on its own facts and merits. This was reinforced in *Dover DC v CPRE Kent* [2017] UKSC 79, where the Supreme Court confirmed that local planning authorities and Inspectors must apply fresh judgment to each proposal, particularly where policy context or impacts differ.

Therefore, the consent at Unit 10 does not override or negate the statutory requirement to determine the Unit 9 application in accordance with the development plan, as required by Section 38(6) of the Planning and Compulsory Purchase Act 2004.

### **False chain of precedent**

Relying on Unit 10 to justify a decision on Unit 9 effectively creates a false chain of precedent, where each successive scheme escalates form and massing under the assumption that the last one justifies the next. That approach is explicitly discouraged in planning law and practice.

Even if Unit 10 is deemed a material consideration, it does not override a live conflict with adopted development plan policy. If the Unit 9 proposal fails the tests set out in Policy LR5 or Policy CD9, then that conflict must carry determinative weight unless compelling material considerations clearly outweigh it.

The Inspector is not bound to replicate or reinforce any policy breaches that may have occurred at Unit 10. Indeed, if Unit 10 did not meet all criteria of LR5, that is a reason for caution and restraint, not for further erosion of policy safeguards. As held in *R (Midcounties Co-operative) v Wyre Forest DC* [2009] EWHC 964 (Admin), decision-makers must be careful not to let cumulative errors crystallise into a de facto policy override.

In this particular case, as explained in our December 2024 objection on Unit 9, **RBKC officer advice changed during the pre-application stage on the Unit 10 application.**

As noted there were two sets of pre-app advice on proposals for Unit 10, the first dated 30/12/2021 and the second dated 22/11/2022. The first stated that *The Appeal decision for Unit 11 scheme PP/20/05721 dated 17/12/2021 means that four storeys plus set back fifth storey would no longer be acceptable due to the impact on townscape and the sense of enclosure. This overrides the earlier allowance in the Design Code for this height if supported by a light report. As such the proposed preapplication scheme is too high by one storey and proposals should be for a maximum of three above ground storeys plus set back fourth storey, as shown in the Model Plot diagram in the Design Guide.*

A second set of RBKC advice in November 2022 took a different view, stating at paragraph 4.2 *The Latimer Road Design Code prescribes a total of 4 storeys (3 storeys with a set back fourth storey). It further notes that 5 storeys in total (4 storeys with a set back 5th storeys) will be acceptable, provided the applicant can evidence there would be no adverse impact to the sunlight/daylight of neighbouring properties. The proposal shows 3 base storeys with 2 set back upper storeys.*

This second set of pre-app advice continued *“While this is not the form that is advised in the design code, there is merit in setting back the fourth storey as this reduces the height presented directly onto Latimer Road and provides a parapet datum that relates relatively well with the residential properties on the east side of the street. However, the applicant is advised to explore how the massing to the 5 storey can be sculpted to reduce the impact of its height and to avoid top-heaviness”.*

We take this as evidence that RBKC planning officers in 2022 were in two minds as to how to interpret Local Plan and StQW policies on building heights and sense of enclosure in Latimer Road. This reinforces our view that **the decision of the Planning Applications Committee on 1st May 2025 in relation to application PP/24/05920 should be allowed to stand.**

### **Key Material Differences Between Unit 9 and Unit 10**

The planning approval for Unit 10 cannot be treated as a directly comparable precedent for the proposed development at Unit 9, for several compelling reasons:

- **Unimplemented and Unverified Impact:** Unit 10 has not yet been constructed or occupied, meaning its real-world impacts on neighbouring amenity, particularly in relation to privacy, daylight, enclosure, and noise, remain entirely untested. Until those impacts are realised and evaluated, any assumption of acceptability is speculative and cannot be relied upon to justify further intensification at Unit 9.
- **Increased Amenity Harm at Unit 9:** The proposed scheme at Unit 9 includes a significantly number of front-facing balconies, stacked vertically, which heightens the potential for overlooking, acoustic disturbance, and perceived surveillance. These impacts are materially more intrusive than those associated with Unit 10 and cumulatively intensify harm to residential amenity.
- **Material Differences in Site Context:** The orientation, siting, and immediate context of Unit 9 differ materially from Unit 10. In particular, Unit 9 faces a denser cluster of two-storey residential properties along the western side of Latimer Road, and the scheme's massing and viewing angles are likely to generate a more pronounced sense of enclosure and visual dominance compared to Unit 10.
- **Unit 10 Precedent Cannot Be Treated as Settled:** The planning permission for Unit 10 was granted despite substantial and continuing local opposition, and without the benefit of reconsideration in light of the Secretary of State's earlier refusal of a similarly scaled scheme at Unit 11, and the Royal Borough of Kensington and Chelsea's refusal of the application for Unit 9. Importantly, the Unit 10 permission is now the subject of a formal request to the Secretary of State under sections 77 and 100 of the Town and Country Planning Act 1990, seeking both a call-in for redetermination and the revocation or modification of the consent. As such, the status of that permission remains unresolved and cannot be treated as a settled or reliable precedent.

Savills' recent update to the property listing for Unit 10, which now states that "planning permission has been granted, but is currently under consideration," reflects this ongoing legal uncertainty. Until the Secretary of State has reached a decision on whether to exercise these statutory powers, the planning position of Unit 10 remains subject to change. Any reliance on this approval as precedent for the Unit 9 appeal is therefore premature, procedurally inappropriate, and materially unsound. Its weight as a material consideration must be treated with caution. See at <https://search.savills.com/property-detail/cbd2a05e-5b08-460d-a8ab-cb81c9ede036>

### **Lack of Community Benefit**

Any reliance on the "presumption in favour of sustainable development" under paragraph 11(d) of the NPPF, citing the borough's housing shortfall as justification for granting permission, is misplaced. This presumption does not amount to an automatic approval mechanism. Paragraph 11(d)(ii) expressly states that permission should be refused where the adverse impacts of a development would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole. In this case, the identified harm to

residential amenity and local character clearly outweighs the modest private housing benefit claimed by the appellant.

The housing benefit is, in any event, limited. The proposal would deliver only seven market units and no affordable housing contribution, despite the well-documented and pressing need for affordable homes in both RBKC and across London. The absence of affordable provision substantially diminishes the weight that can be attached to housing delivery as a public benefit in the planning balance.

The appellant compounds this by dismissing the environmental value of the site. Their own statement describes the existing trees as having “low amenity value” and claims their removal “does not warrant significant replacement planting.” This framing appears calculated to minimise mitigation or off-site planting contributions normally required under RBKC policy. At the same time, the proposed landscaping is confined to private courtyards for future residents, with no enhancements to the wider public realm or Latimer Road streetscape. This approach runs contrary to the Planning Contributions SPD, which expects mixed-use schemes to deliver publicly accessible urban greening and streetscape improvements to compensate for loss of natural assets and uplift the neighbourhood as a whole.

By simultaneously downplaying the value of what is being removed and restricting any compensatory measures to private areas, the proposal fails to deliver even basic community benefit. This is not sustainable development in the sense envisaged by the NPPF. Questioning even a modest £20,000 highways payment only highlights the scheme’s absence of wider public benefit

## **Conclusion**

For all the above reasons we ask the Inspectorate to uphold the decision of the RBKC Planning Applications Committee and to refuse the appeal.

Local residents invested a huge amount of time and energy in preparing a neighbourhood plan with specific policies for Latimer Road. As a third party to the case, we supported the Council in their defence of a legal challenge to progressing the StQW Draft Neighbourhood Plan to referendum (*Legard, R (On the Application Of) v The Royal Borough of Kensington and Chelsea* [2018] EWHC 32).

**We argue that StQW Policy LR5 is the primary development plan policy against which application PP/24/05920 should be determined and that the applicant’s case statement relies on a misconceived understanding of the status of policy guidance in a Supplementary Planning Document in the form of a design code.**

St Quintin and Woodlands Neighbourhood Forum  
July 24th 2025