
Appeal Decision

Site visit made on 5 September 2016

by D M Young BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30th September 2016

Appeal Ref: APP/K5600/W/16/3149276

Upper ground and first floor, 62 Oxford Gardens, London W10 5UN.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Tatiana Van Lancker against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/16/01105, dated 18 February 2016, was refused by notice dated 15 April 2016.
 - The development proposed is the amalgamation of three units into one at upper ground floor and first floor levels.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, the appeal scheme seeks permission for a single 5 bedroom home which would occupy both the upper ground and first floor of the property. There would be a net loss of 2 residential units.
3. Both parties have referred to the *"Issues and Options for the Housing Policies for the Local Plan Partial Review"*. However, given that this document is not at an advanced stage I have attached little weight to the options set out therein in my decision in accordance with paragraph 216 of the *"National Planning Policy Framework"* (the Framework).
4. In their original submissions both parties cited the Stanhope Gardens decision¹ where the Inspector allowed the appeal after finding that the amalgamation of two units into one was in accordance with the development plan. That decision was subsequently challenged by the Council and since my site visit, the High Court issued has its Judgment² upholding the Inspector's decision in relation to the section 78 appeal. Given that the matters in dispute in relation to the current appeal are similar to those in the Stanhope Gardens case, I have carefully considered both the original decision and the Judgement and the party's comments in relation to them.

Main Issue

5. In light of the above, I consider the main issue to be the effect of the proposal on housing provision within the Borough.

¹ PINS Ref: APP/K5600/W/15/3028100

² [2016] EWHC 1785 (Admin) CO/6442/2015

Reasons

6. 62 Oxford Road is large detached property located on the north side of Oxford Gardens. The property is currently sub-divided into a number of private apartments.
7. In terms of development plan policy, Policy 3.3 of the "*Consolidated London Plan 2015*" (the LP) seeks to increase housing supply and to meet housing need by the provision of an annual net average of at least 42,000 dwellings. At the local level this requirement is reflected in Policy CH1 of the "*Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015*" (the CLP) which states that the Council will ensure sufficient housing sites are allocated to meet its housing targets. It identifies a minimum 10-year target to 2025 of 7,330 dwellings, with an annual monitoring target of 733 homes. I accept the Appellant's point that the housing target figures are set in *net* terms and so are inclusive of losses in housing units. However, I am not persuaded that this should necessarily be construed as giving tacit approval for the loss of habitable units that otherwise make an important contribution to the Borough's housing stock.
8. The Council estimates that over the past 5 years approximately 400 residential units have been lost in the Borough as a result of amalgamations. I find this estimate to be somewhat conservative since prior to August 2014 planning permission was not required and therefore the Council's figures are based on the number of lawful development certificates received in each year. By extrapolating the number of amalgamations from 2014/15 to the 5 year period, the number of lost units would be closer to 550.
9. Irrespective of the exact scale of the losses, the Council accepts it can currently meet its housing supply target. However, the figures are finely balanced (equivalent to 3.6 units a year across the whole Borough) and therefore had it not been for the Council's stance in relation to amalgamations since 2014 there would now be a shortfall. Whilst I accept that the proposal in itself would only have a minimal effect on the Borough's housing target, it would only take the approval of this appeal and one other similar proposal to tip the balance towards a shortfall in housing supply across the Borough. Therefore based on the information before me, it is clear that amalgamations are having a deleterious effect on the Council's housing stock. Given that policies in the development plan and the Framework emphasise the importance of housing supply, this is a significant material consideration to which I attach paramount weight.
10. Both parties have cited Policy 3.14 of the LP. This seeks to ensure that loss of housing is resisted, and that existing housing should be retained where possible and appropriate. It goes on to state that the loss of housing units should be resisted_unless the *housing* is replaced at existing or higher *densities* with at least equivalent floor space. Irrespective of the fact that the overall floor area would remain the same, there would be a net loss of two units and accordingly a net reduction in density. The proposal thereby conflicts with the LP in this regard.
11. Policy CH2 of the CLP seeks to ensure housing diversity by delivering, inter alia, a mix of housing types, tenures and sizes to reflect the varying needs of the Borough. More specifically CH2 (f) resists development involving the loss of 5 or more residential units. However, as the scheme would only result in the loss of 2 units it would not conflict with this policy.

12. Nonetheless, with cognisance to paragraph 35.3.10 of the supporting text, it is apparent that the threshold was set at 5 dwellings due to the disproportionately high demand at that time for 3 and 4 bedroom units. Thus the policy sought to balance the loss of residential units against the need for larger family dwellings. However, things have moved on since that time. In addition to the significant uplift in the Council's overall housing targets³, there has also been a marked shift in the demand for smaller units. The most up to date evidence from the December 2015 "*Strategic Housing Market Assessment*" indicates that there is now broadly equal demand for 1, 2, 3 and 4 bedroom properties in the Borough. As a consequence, the balance has now shifted towards the preservation of residential units. That being the case, it reduces the weight I attach to Policy CH2 of the CLP.
13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. I accept that, prima facie, the development would accord with Policy CH2 of the CLP. However it would manifestly conflict with Policies 3.14 and 3.3 of the LP and Policy CH1 of the CLP. Taking all these matters in the round, I conclude, based on the evidence before me, that the development would conflict the objectives of the development plan taken as a whole.
14. In coming to that view, I accept that my findings are inconsistent with those of my colleague in respect of the Stanhope Gardens appeal. However, the evidence in that case particularly regarding housing demand and the effect of amalgamations in the Borough was materially different to that now before me. I have also considered the range of appeal decisions that have been drawn to my attention by both parties in support of their cases. However, I am required to assess the scheme before me purely on its own merits in the light of the particular circumstances which apply in this case and this is what I have done.

Conclusion

15. I appreciate the appellant's desire to increase the amount of living space available to her growing family, but this does not outweigh the conflict I have identified with the development plan. For the reasons given above and taking into account all other matters raised, I conclude the appeal should be dismissed.

D. M. Young

Inspector

³ From 350 units in 2010 when the Local Plan was first adopted (as the Core Strategy); to 600 units between 2011 and 2015 and a current target of 733 units with the publication of the Consolidated London Plan (2015).