

Appeal Decision

Site Inspection on 21 November 2016

by Graham Self MA MSc FRTPI

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

Decision date: 23 November 2016

Appeal Reference: APP/K5600/X/16/3149451

Site at: 3 Egerton Gardens, London SW3 2BS

- The appeal is made by Ms Alison Jackson under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against the refusal by the Royal Borough of Kensington and Chelsea Council to grant a certificate of lawfulness.
- The application (Reference No. CL/15/06693) dated 20 October 2015 was refused on 29 December 2015.
- The application was made under Section 192 of the Town and Country Planning Act 1990 as amended.
- The application sought a certificate of lawfulness for: "the amalgamation of Flat 2 and Flat 3".

Summary of Decision: The appeal does not succeed.

Site Address

1. In the application now subject to this appeal, the site address was specified as "Flat 3" at 3 Egerton Gardens. In the appeal form, the site address was specified as "Flat 2" at 3 Egerton Gardens. It is clear from other documents, including the statement submitted in support of the application, that the appeal site can properly be described as Flats 2 and 3, so that is how I am treating this case.

Reasons

2. The main issue raised by this appeal is whether the amalgamation of the two flats would constitute "development" as defined under Section 55 of the 1990 Act. The Act specifies that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building and of each part of which it is so used. Taking into account that "building" is defined under the Act as including any part of a building, it is clear from the legislation that the creation of two flats from one is development for the purposes of planning law. The reverse - amalgamating two flats into one - is not specifically referred to in primary legislation, but has been the subject of court judgments.¹
3. Having regard to what may be termed "case law" derived from relevant judgments, the principle which I apply to this appeal is that the conversion of two flats into one can constitute a material change of use amounting to development

¹ Among the court judgments of relevance to this case are *LB Richmond upon Thames v SSETR and Richmond Housing Trust* [2000]. I have also had regard to other judgments including *Hertfordshire CC v SSCLG* [2012], referred to by the appellant in relation to an intensification of a use.

where the change would have planning consequences, which could result from a change in the character of use of the land or from a significant effect when considered in the light of other considerations including planning policy. Each case has to be judged depending on its own particular circumstances.

4. In this instance, the proposal would not involve any external alterations and the amalgamation of the two small one-bedroom flats into one larger, two-bedroom flat would not result in any change from residential use. There would be no change in the amount of residential floor-space. There are evidently about 12 flats in the block containing Flats 2 and 3. Taking those points into account, I agree with the appellant's argument that there would be no material change in the overall character of use of the land.
5. However, that is not the end of the matter. In their statement, the council describe the rather unusual social structure of this part of London, with a degree of polarisation between the very rich and the poor. The statement explains how the loss of small dwellings through amalgamation makes it harder for young people in particular to live in the area, leading to reduced choice in the private rented sector and to increased commuting. A reduction in the supply of small dwellings also makes it more difficult for housing supply targets to be met. Looked at in terms of numbers of households, the proposed amalgamation would provide a dwelling for one household, compared with the present situation accommodating two households.
6. The appellant contends that the council have taken a generalised "blanket" approach based on out-of-date legal advice, contrary to policy in the Consolidated Local Plan and without considering the site-specific facts of this proposal. There is some force in that argument, since much of the council's statement is concerned with the overall situation in the Borough. Moreover, neither of the two legal opinions submitted by the council (one in 2003, one in March 2016) relate to this appeal site, and the later opinion - which is anyway only a counsel's opinion, not definitive of the law - reaches only the general conclusion that "amalgamation can constitute a material change of use".
7. The housing policies in the Consolidated Local Plan and the housing supply figures in the annual monitoring reports do not provide clear guidance on this proposal; but it is apparent from the policy background that the existing use with the two one-bedroom flats fulfils a legitimate and recognised planning purpose by contributing to the stock of such dwellings in the Borough. Therefore it is reasonable and appropriate to consider the wider effects of this proposal, and the cumulative impact of numerous small-scale changes, when assessing materiality from a planning viewpoint.
8. Part of the appellant's case is that one of the existing flats has an internal floor area below the national standard for a one-bedroom, one-person flat, and that the amalgamation would create a more policy-compliant situation because the proposed dwelling would meet floor-space standards. This is the sort of point which could potentially be argued if an application for planning permission were to be made for the proposed amalgamation, rather than supporting an application for a certificate of lawfulness.
9. I have noted the evidence and submissions by both sides about past decisions by the council and past appeals. The council's approach does appear to have changed in recent years, but it also appears that the effects of dwelling amalgamations have become more noticeably significant and the planning consequences have become more material. Bearing that in mind, I consider that past decisions have limited weight which do not affect my decision either way.

10. In my judgment the council have a sound case. Although the residential nature of the use of these flats would not be altered, I find that their amalgamation would have significant planning consequences and that the proposal would cause a material change of use. Therefore the proposal would constitute development for the purposes of planning law. I conclude that the council's refusal to grant a certificate of lawfulness was well-founded.

Formal Decision

11. I dismiss the appeal.

G F Self

Inspector