
Appeal Decision

Site visit made on 28 November 2016

by C Sherratt DipURP MRTPI

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

Decision date: 5 January 2017

Appeal Ref: APP/K5600/X/16/3150688
73 Ifield Road, London SW10 9AU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Michael Brady against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref CL/15/02310, dated 16 April 2015, was refused by notice dated 09 June 2015.
 - The application was made under section 192(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 removal of stud partition separating two existing maisonettes between ground and underside of staircase serving upper maisonette.
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Decision

1. The appeal is dismissed.

Reasons

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. It is acknowledged that the physical works proposed would not affect the external appearance of the building. However, the effect of the proposed works would be to reinstate the property to a single residential property following its conversion to two units in 1954. These conversion works to reinstate the single dwelling would, in the Council's opinion, constitute a material change of use requiring planning permission. The assessment is therefore based on whether or not the amalgamation of the two residential units would be lawful if instituted or begun at the time of the application.
3. Section 55 of the Town and Country Planning Act 1990 sets out the meaning of development which includes the making of a material change in the use of any buildings or other land. To determine whether a material change of use exists is a question of fact and degree. For there to be a material change of use there needs to be some significant difference in the character of the activities from what has gone on previously.
4. Case law has established that the extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether there has been a material change of use. Thus, the need for a land use such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land. It is necessary to consider whether

the loss of the existing type or number of housing units would have a significant planning consequence, even where there would be no amenity or environmental impact.

5. The National Planning Policy Framework seeks to boost significantly the supply of housing and requires local planning authorities, in summary, to objectively assess their housing needs and meet their housing requirements. Policies within the Council's development plan seek to ensure that sufficient housing provision is made. In particular, Policy CH3 of the Consolidated Local Plan 2015 (LP) requires a net increase in residential accommodation. The supporting text to Policy CH3 states that the *"loss of housing through deconversion (...) can reduce the overall provision of housing stock."* Saved Unitary Development Plan (2007) Policy H17 resists *"the loss of existing, small, self-contained flats of one or two habitable rooms"*. The Further Alterations to the London Plan (2015) recognises the *"pressing need for more homes in London"*. Any reduction in the existing housing stock may undermine this planning purpose set out in national and local policy.
6. The Strategic Housing Market Assessment (December 2015) demonstrates local housing needs have changed since the LP was adopted. In particular there is a 50/50 split between the need for smaller (1-2 bedrooms) and larger units (3-4+ bedrooms), compared to a previous need for 80% 3-4+ bed houses. The emerging Local Plan is at an early stage. It will review the housing needs of the Borough. One of the options being explored is a policy presumption against the loss of residential units but with possible exemptions that include restoration of a house to its original use as a single dwelling subject to a maximum of two dwellings being combined and an overall floorspace limit. Clearly the current proposal may be captured by that exemption should it materialise. However, options that resist the loss of all residential units unless it can be demonstrated that the de-conversion is required to create a decent standard of accommodation are also being considered. The housing trajectory graph supplied by the appellant from the former Core Strategy (that was adopted in 2010) shows the anticipated assumptions for future housing delivery at that time and is of little assistance to the current housing situation.
7. The overall consideration of adopted policy and that emerging demonstrates how critical the issue of managing housing stock in the Borough is, even in relation to the net loss of one residential unit. Having regard to the general principles now established in recent judgements, I am satisfied that the conversion of the building from two residential units to one would, as a matter of fact and degree, result in a material change of use of the property for which planning permission is necessary.
8. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the removal of stud partition separating two existing maisonettes between ground and underside of staircase serving upper maisonette 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.

Claire Sherratt
INSPECTOR