The Planning Inspectorate

Appeal Decision

Site visit made on 16 May 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 7 June 2017

Appeal Ref: APP/K5600/W/17/3167152
Flat 6 and Flat 7, 15 Pembridge Square, London W2 4EH

- 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 Mr Christopher Bodker against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref PP/16/03010, dated 12 May 2016, was refused by notice dated 2 September 2016.
- The development proposed is the amalgamation of flats 6 and 7 to provide a single four-bedroom residential unit with associated internal alterations.

Decision

1. The appeal is allowed and planning permission is granted for the amalgamation of flats 6 and 7 to provide a single four-bedroom residential unit with associated internal alterations at Flat 6 and Flat 7, 15 Pembridge Square, London W2 4EH in accordance with the terms of the application, Ref PP/16/03010, dated 12 May 2016, subject to the following conditions:

    1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

    2) The development hereby permitted shall be carried out in accordance with the following approved plans: 049_P_001 P01 Site Plan; 049_P_002 P01 - Site Photos; 049_P_005 P01 Existing Second Floor Plan; 049_P_006 P01 Existing Internal Elevations; 049_P_010 P01A Proposed Second Floor Plan; 049_P_011 P01 A Proposed Internal Elevations.

Procedural Matters

2. The appeal property is a Grade II listed building and is located within the Pembridge Conservation Area. Listed building consent has been granted for the scheme under a separate consent (Ref LB/16/03011). I am nevertheless required to have regard to the statutory duty to consider the effect of the proposals on the designated heritage assets. I address this matter below.

Main Issue

3. The main issue is the effect of the proposal on housing provision within the Borough.

Reasons

4. The appeal property comprises a former detached three storey dwelling that has been sub-divided into a number of flats. The proposal relates to the two flats on the second floor. Flat 6 is a one bedroom flat and flat 7 is a two bedroom flat. The appeal proposal would amalgamate this accommodation to provide a single four-bedroom residential unit.

5. Policy CH1 of The Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015 (Local Plan) sets out the Council's provisions for the supply of housing. This indicates that the Council will ensure that sufficient housing sites are allocated in order to ensure the housing targets are met. The Consolidated London Plan 2016 (CLP) identifies an annual requirement of 733 units in the Borough. However, due to persistent under delivery of completions the Council has applied a 20% buffer to this figure in accordance with the provisions of paragraph 47 of the National Planning Policy Framework (the Framework) taking the current target to 880 dwellings per year.

6. The Council indicate that there were 982 net residential completions during 2014/15 but this fell to 341 in 2015/16. Evidence provided for the period between 1 April 2014 and 31 March 2015 suggests that 93 units were lost as a result of the amalgamation of units. For the same period in 2015/16 the Council suggest that 69 units were lost due to amalgamation.

7. Although the Council indicate that it is currently able to meet its 5 year housing supply target this is marginal with a current buffer of less than 20 units. However, the negative impact of amalgamations has yet to be factored in to the small site estimate of its trajectory and the Council suggest that if the current rate of amalgamations continues the borough would lose approximately 65 units per year which would quickly deplete the 5 year housing supply.

8. Against this background it is clear that the amalgamation of units can have a significant effect on the delivery of housing in the Borough. Consequently, proposals for amalgamations need to be carefully balanced against other policies in the development plan as a whole, including those relating to housing diversity.

9. Policy CH2 of the Local Plan deals with Housing Diversity, including housing mix and type. The supporting text to this policy recognises that some net loss of units is to be expected through de-conversion/amalgamation. It also recognises that there is a demand for larger residential units of 3 or more bedrooms in the Borough and that a balance has to be stuck between the loss of residential units and the need for larger family dwellings. Criterion (f) of Policy CH2 seeks to provide some quantification of this balance and indicates that the Council will resist proposals which result in the net loss of five or more residential units. As the appeal proposal would result in the loss of one residential unit there would be no conflict with this part of Policy CH2.

10. I have taken into account the evidence provided on the dwelling size requirements in the Borough as published in the most recent Strategic Housing Market Assessment (December 2015) (SHMA) which indicates that the need for dwellings of 4 bedrooms or more has decreased and that it is now not significantly greater than the need for one and two bedroom accommodation.

11. However, I accept the appellant's view that a moderate demand for accommodation of 4 bedrooms or more remains, albeit now comprising 18% of the need. Furthermore, the SHMA does not take into account variations in supply in sub areas. The appellant suggests that between April 2014 and April 2016, of the five property transactions on Pembridge Square none related units with 4 bedrooms or more and given that the Square contains a large amenity area and two schools there appears to be a lack of available family type accommodation in the locality.

12. I have no other information to suggest that the appellant's evidence of property transactions may be incorrect. Notwithstanding the evidence provided in the SHMA, this reinforces my view that a demand for residential units providing larger family accommodation remains to reflect the varying needs of the Borough.

13. I recognise that Policy CH2 (f) is silent on proposals that would result in a net loss of less than five residential units. In this regard, I have also taken into account the judgment provided in the Council's challenge to the case relating to the Inspector's Decision relating to No 44 Stanhope Gardens [*Royal Borough of Kensington and Chelsea v Secretary of State for Communities and Local Government, David Reis, Gianna Tong [2016] EWHC 1785 (Admin)].* The relevant part of that judgement in relation to this appeal stated that '*the local plan policies for Kensington and Chelsea do not seek to resist a development which results in the net loss of only one residential unit, or indeed any net loss up to and including four units*'.

14. Taking all of the relevant evidence into account, my findings remain that the proposal would not conflict with Policy CH2 (f). Furthermore, as the proposal would contribute to the mix of types and sizes of homes to reflect the varying needs of the Borough, taking into account the characteristics of the area, and current evidence in relation to housing need, there would also be no conflict with Policy CH2 (a).

15. Policy 3.14 of the CLP states, amongst other things, that the loss of housing should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace. The CLP is a strategic plan and places an emphasis on the increase or preservation of residential floorspace rather than the number of housing units. The proposed amalgamation of the two flats would not result in any loss of residential floorspace and, as such, the proposal would not conflict with CLP Policy 3.14.

16. However, I have taken into account the advice provided in the adopted Mayor of London's Housing Supplementary Planning Guidance 2016 (SPG) which emphasises that where there is evidence that the amalgamation of separate flats into larger units is leading to the sustained loss of homes, Boroughs are encouraged to resist this process in line with CLP Policy 3.14. The SPG suggests that the loss of residential units is an appropriate measure of residential density and not floorspace.

17. There is some difference between the main parties regarding the interpretation of the advice provided in the SPG and Policy 3.14. To some extent the emerging policy as part of the Council's Local Plan Partial Review does provide a more clearer approach to the relationship between unit loss and floorspace. This was submitted for examination on 5 May 2017. The draft approach to amalgamations is set out in suggested revisions to Policy CH1 of the Local Plan

where criterion (b) states that '*the Council will resist the loss of residential units through amalgamations of existing or new homes unless the amalgamation will result in the net loss of one unit only and the total floorspace of the new dwelling created will be less than or equal to 170 sq m gross internal area (GIA)'.*

18. In accordance with paragraph 216 of the Framework, account can be taken of emerging policies. In this case, I have no evidence of the extent or significance of any unresolved objections to policies that are relevant to this appeal, which have yet to be tested at the examination. Consequently, although the Local Plan Partial Review has reached an advanced stage only minimal weight can be given to relevant policies because they might materially change as a result of the examination. Nevertheless, the revisions to Policy CH1 do provide some indication of the Council's preferred intended future policy approach to the issue of amalgamations and therefore does provide some limited support for the appeal.

19. The scheme would result in the loss of a single unit and the combined floor space would be 153 sq m (GIA) which would be under the suggested floorspace limit as set out in the draft policy. The supporting text to the draft policy also recognises that the need for family sized accommodation still exists. The proposal would comply with the requirements of this emerging policy.

20. The Council also suggest that the proposal would be in conflict with Saved Policy H17 of the Council's Unitary Development Plan 2002 (UDP) which, states that the loss of existing, small, self-contained flats of one or two habitable rooms will be resisted. The provisions of this policy cannot reasonably be applied to Flat 7. Whilst the proposal in relation to Flat 6 would represent a conflict with this policy, I have had regard to the age of the policy, the very limited extent to which the council's evidence seeks to rely on it, and the extent to which it conflicts with Policy CH2 in terms of providing housing diversity. Taking these factors into account I do not consider that the modest conflict with this dated policy in relation to one of the flats would be a sufficient reason to dismiss this appeal.

21. In considering the 'appropriate balance' between the loss of residential units and the need for larger family homes I have taken into account the degree to which the proposal conflicts with the Development Plan taken as a whole. The loss of one flat would marginally reduce housing stock in the Borough of smaller units for which there is a need. However, the evidence clearly demonstrates that there is also a recognised need for larger accommodation of which the appellant indicates is limited in supply on Pembridge Square.

22. The proposal would not conflict with Policy CH2 (a), CH2 (f) of the Local Plan, and policy 3.14 of the CLP. The loss of one unit would be contrary to the objectives of meeting housing supply, as set out in Policy CH1 of the Local Plan. However, the fact remains that the Council is currently able to meet its required housing supply target. I am not convinced that the loss of one unit would be so significant in this case to outweigh the benefit of providing an additional 4 bedroom dwelling which would contribute to housing diversity in accordance with Policy CH2 and for which there is an identified Borough wide need and which the evidence suggests is a localised need.

23. Furthermore, in the light of the emerging policy now being proposed as part of the Local Plan Partial Review, the Council appears to consider that

amalgamations of the kind proposed in this appeal could be acceptable. In applying the appropriate balance in this case, I therefore conclude that the proposal would not have a harmful effect on housing provision within the Borough of an extent to warrant the dismissal of this appeal.

Other matters

24. The proposal would result in the removal of two internal partition walls that appear to have been installed as part of the conversion works to create two flats. The removal of these later interventions would not result in the loss of any historic fabric or finishes. As no external works are proposed, the scheme would preserve the character and appearance of the conservation area. In applying the statutory test as set out in Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I have had regard to the desirability of preserving or enhancing the designated heritage assets. I am satisfied that the proposal would preserve those interests.

25. Both parties have drawn my attention to various other appeal decisions relating to the amalgamation of units where varying conclusions on the interpretation of policy were reached. However, I do not have full details of the nature of the proposals in those cases or the evidence that informed the relevant Inspector's decision. Consequently, I cannot be sure that the circumstances in those cases are directly comparable to those in this appeal. I have, in any case, reached my own conclusions on the individual merits of the appeal proposal on the basis of the evidence before me.

Conditions

26. Although the Council has not suggested any conditions, I consider that two are necessary. In addition to the standard time limit condition, I consider it necessary to impose a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.

Conclusion

27. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR