
Appeal Decision

Site visit made on 14 February 2017

by Michael Moffoot DipTP MRTPI DipMgt MCMI

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

Decision date: 28 July 2017

Appeal Ref: APP/K5600/W/16/3160787

Flats 4 and 6, 45 Holland Park, London W11 3RP

- 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 Konstantin Von Unger against the decision of the Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref: PP/16/04839, dated 22 July 2016, was refused by notice dated 28 September 2016.
 - The development proposed is internal alterations in connection with the conversion of Flats 4 & 6 on the second and third floors and mezzanine level into one family size unit. Replace casement window on second floor front elevation with a single glazed timber sliding sash.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has granted listed building consent for internal alterations to the flats necessary to facilitate the proposed conversion, including a replacement window to the front elevation of the building. These alterations are not an issue between the parties, and as the appearance of the Conservation Area would be preserved I am satisfied there would be no harm to this designated heritage asset. I shall therefore confine my detailed considerations to the proposed conversion of Flats 4 and 6 to form one family size unit.
3. The Council's *Local Plan Partial Review* is presently out to public consultation. Publication Policy CH1 seeks to boost the supply of homes in the Borough and sets out measures to achieve this, including a general resistance to the loss of residential units through amalgamations of homes. As the policy is not at an advanced stage I accord it very limited weight in accordance with paragraph 216 of the *National Planning Policy Framework* ('the Framework').

Main Issue

4. The main issue in this case is the effect of the proposal on the supply and choice of housing within the Borough, with particular reference to development plan policies which seek to resist the loss of housing.

Reasons

5. No 45 Holland Park is a substantial detached property on the south side of the street and is divided into six flats over five storeys. The proposal involves the amalgamation of Flat 4 on part of the second floor and Flat 6 which occupies
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the mansard-roofed top floor and includes a mezzanine level. The floors would be connected by the existing lift and a new staircase, and the scheme includes reconfiguration of the rooms to form four-bedroomed family accommodation.

6. Policy CH 1 of the *Royal Borough of Kensington and Chelsea: Consolidated Local Plan* (2015) ('the CLP') states that the Council will ensure that sufficient housing sites are allocated to meet the Borough's housing targets and sets out measures for achieving this objective. Whilst the appellant argues that the policy is not relevant to the proposal as it relates to housing sites for additional dwellings, I consider it sets an appropriate contextual background against which other relevant policies can be applied to the proposal. Paragraph 35.3.34 of the CLP states that "*Loss of housing through deconversion, and additionally to other uses, can reduce the overall provision of housing stock. The AMR¹ monitors losses of residential use and has identified the need to further prevent against losses. To achieve the annual housing target in Policy CH 1, which takes account of net losses of units, it is therefore important to protect residential units in most circumstances*".
7. Consistent with these objectives, Policy 3.3 of the *London Plan* (LP) recognises the pressing need for more homes in London in order to improve housing choice and affordability, and expects Boroughs to achieve and exceed the minimum annual average housing target.
8. The Council advises that the annual housing target set out in Policy CH 1 of the CLP has increased from 350 units in 2010 in the *Core Strategy*² to 600 units/year between 2011 and 2015, and now stands at 733 units. Its evidence shows that housing completions have generally fallen short of the target every year since 2009/10 and in some years quite significantly.
9. Since August 2014, and based upon legal opinion in 2003, the Council has taken the view that the amalgamation of residential units generally requires planning permission. The Authority acknowledges that quantifying the loss of such units to amalgamations is difficult prior to this date when permission was not deemed to be necessary, and therefore records of amalgamations did not exist. However, based on lawful development certificates and permissions issued between 2009/10 and 2014/15, the Council estimates some 400 units have been lost to amalgamations. Although there is no clear evidence, I consider that this is likely to be a conservative figure given the uncertainty over numbers prior to August 2014.
10. Although the Council advises that it can presently meet its housing supply target the surplus is marginal, and the estimated shortfall once amalgamations and other factors are included is likely to result in the Borough being unable to meet its target. In the absence of compelling evidence to the contrary I see no reason to doubt this scenario, and it is clear that the number of amalgamations is adversely affecting the overall supply of housing in the Borough.
11. I acknowledge that the net loss of one residential unit arising from the appeal proposal would have a modest impact on housing supply. Nevertheless, it could be repeated all too often on other sites across the Borough. In such circumstances, the shortfall in housing supply would only get more severe against a background of increasing local targets for new housing provision and

¹ Annual Monitoring Report

² Now the CLP

the clear objective in the Framework to boost significantly the supply of housing. I therefore find, on the evidence before me, that amalgamations are having a detrimental impact on housing supply in the Borough.

12. To ensure a net increase in residential accommodation, CLP Policy CH 3 protects market residential use and floorspace except in prescribed circumstances, none of which applies in this case. As the residential use and floorspace of the two flats would not change as a consequence of the appeal proposal there would be no conflict with Policy CH 3.
13. In order to maintain the level of population by allowing a more intensive use of residential properties, saved Policy H17 of the *Unitary Development Plan* (UDP) resists the loss of existing, small, self-contained flats of one or two habitable rooms. It is apparent from the submitted drawings that Flat 4 would fall within this category, and as such the proposal would conflict with this policy objective.
14. Policy 3.14 of the LP seeks to prevent loss of housing unless it is replaced at existing or higher densities with at least equivalent floorspace. Whilst the proposed development would not result in the loss of residential floorspace it would reduce the number of residential units from two to one, and accordingly would not replace housing at the existing density or higher. The proposal would therefore breach Policy 3.14 and associated guidance in *The Mayor's Housing Supplementary Planning Guidance* (2016). In respect of this matter, the appellant refers to the Egerton Crescent³ and Evelyn Gardens⁴ appeal decisions which concluded that as the floorspace would remain as existing there would be no loss of housing units. However, subsequent decisions⁵ have concluded that density should be quantified by the number of residential units rather than residential floorspace, and I concur with this approach.
15. Under Policy CH 2 of the CLP the Council will ensure new housing development is provided to further refine the grain of the housing mix across the Borough. In this regard part (f) of the policy resists development which results in the net loss of 5 or more residential units. Although the appeal proposal would not breach this threshold, it does not follow that the loss of less than five residential units would automatically be acceptable, and other policy considerations must come into play. That said, the supporting text acknowledges that the creation of larger homes by amalgamating smaller ones is not uncommon and there is a demand for larger (3+ bedroomed) dwellings in the Borough. It therefore recognises that an appropriate balance needs to be struck between the loss of residential units and the need for larger family dwellings.
16. On the face of it this approach may favour the appeal proposal. However, the Council's *Strategic Housing Market Assessment* (December 2015) indicates there is a 50/50 split between the need for smaller (1-2 bedrooms) and larger units (3-4 bedrooms). This represents a significant shift from the identified need for 80% of housing to be 3 and 4 bedroom units when the CLP was adopted to a far more level demand across the board between 1-2 bedroom and 3+ bedroom units. This reinforces the case for retaining residential units and reduces the weight to be accorded to Policy CH 2 of the CLP in the circumstances of the appeal proposal.

³ APP/K5600/W/15/3035957

⁴ APP/K5600/W/15/3007959

⁵ including APP/K5600/W/16/3151240 & APP/K5600/W/16/3149276

17. The appellant contends that the proposal would enhance housing choice by offering the option of one larger or two smaller units. That may be the case, but the proposal as submitted involves the creation of a larger unit and the likelihood of it reverting to two smaller ones is not particularly realistic whilst the appellant's family accommodation requirements remain.
18. Overall, I conclude that the amalgamation of the two flats would result in the loss of a residential unit which presently contributes to the supply and choice of housing in the Borough, and would thereby reduce housing provision. The proposal would therefore conflict with CLP Policy CH 1, UDP Policy H17 and Policies 3.3 and 3.14 of the LP.

Other Matters

19. I note that the proposal involves the reinstatement of the building's upper floors which would bring about some benefits to this listed building as a heritage asset. I have also taken into account the family's personal circumstances including the need for additional accommodation, but these factors do not outweigh the conflict with the development plan I have described.
20. The appellant submits that the Council did not apply the 2003 legal opinion until 2014 and that there has been no significant change in planning legislation or development plan policies in the interim. Nevertheless, the impact of amalgamations on the Borough's housing stock became increasingly apparent to the Council, and the continuing pressure to increase housing provision has prompted the Authority to exercise a largely consistent approach to resisting such proposals which has generally been upheld on appeal.
21. Between them, the main parties have submitted a number of other appeal decisions in support of their respective cases. Where allowed, they have variously concluded, amongst other things, that the amalgamation of two flats to form one did not conflict with development plan policy, the loss of one unit would be minimal and the proposal would meet an identified need for family accommodation⁶. I have explained above why I disagree with that position. I have also invited the main parties to the appeal before me to comment on appeal ref: APP/K5600/W/16/3158113 at Warwick Gardens. However, I am not familiar with all the evidence before the Inspectors in these or other cases cited, and have based my decision on the particular circumstances of the proposal before me.
22. The appellant submits that the restrictive nature of the policies relevant to this case could ultimately have implications for housing land supply by keeping floorspace under-utilised as people's accommodation needs change. However, I see no reason why such circumstances would occur to the extent that housing supply would be materially affected.

Conclusion

23. For the reasons set out above, and having regard to all other matters raised, I conclude that the proposal is unacceptable and the appeal should fail.

Michael Moffoot

Inspector

⁶ APP/K5600/C/16/3143934; APP/K5600/X/16/3145624; APP/K5600/W/16/3155398 & APP/K5600/W/16/3153809