
Appeal Decision

Site visit made on 20 November 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 15 December 2017

Appeal Ref: APP/X5990/W/17/3180646

6 and 7 Stanhope Terrace, Bayswater, London W2 2UB

- 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 Sultan Ali Al Attiyah against the decision of City of Westminster Council.
 - The application Ref 17/03427/FUL, dated 20 April 2017, was refused by notice dated 27 June 2017.
 - The development proposed is the amalgamation of two residential units to form a single family dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the amalgamation of two residential units to form a single family dwelling at 6 and 7 Stanhope Terrace, Bayswater, London W2 2UB in accordance with the terms of the application, Ref 17/03427/FUL, dated 20 April 2017, subject to the conditions in the schedule to this decision below.

Procedural Matters

2. Differing spellings of the appellant's name were given on the application and appeal forms; however, the appellant confirmed that the spelling given in the banner heading above is the correct one.
3. The application form indicates that the development as described has already occurred and I have treated the appeal on this basis.
4. The submitted details indicate some external alteration in respect of the installation of a new lift. However, the description of development refers only to the amalgamation of the units, and the submitted plans involved no elevational details on which to base an assessment of the external changes arising from the installation of a lift. Consequently, these external changes to the appeal properties associated with lift installation have not formed part of my assessment of the planning merits of the appeal development.

Main Issue

5. The main issue in this appeal is whether the appeal development results in the loss of a residential unit contrary to local planning policy.

Reasons

6. The appeal properties are two substantial terraced dwellings situated in broadly residential immediate environs close to Hyde Park. The appeal development, as described above, has resulted in the removal of some elements of the appeal properties' party wall at each floor providing circulation space to facilitate the conversion of these to form a single-dwelling.
7. Policy S14 of the Westminster City Plan-Consolidated with all Changes since November 2013 (adopted November 2016) (the City Plan) seeks to ensure that new development optimises housing delivery across the city. Amongst other things, the policy restricts the loss of residential floorspace, uses and land, and establishes that proposals that would result in a reduction in the number of residential uses would not be acceptable. Whilst there are some exceptions to this general restriction given in the policy, none apply to the appeal development. Consequently, as the appeal development has resulted in the loss of a residential unit, it clearly does not meet the expectations of Policy S14.
8. My attention has been drawn to the personal circumstances of the occupants of the appeal properties, and I note that the same extended household comprising 20 persons occupied Nos 6 and 7, prior to their amalgamation. I am mindful of references to both the religious beliefs of the household, and the health conditions of some of its members, including people with impaired mobility and other issues. Consequently, in my assessment of this aspect of the appeal I am mindful of the Public Sector Equality Duty (PSED) arising from section 149 of the Equalities Act 2010 (the Act). The Act requires me to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Amongst other things, for the purposes of the Act protected characteristics include both religious beliefs and physical impairments. Consequently, as I have been supplied with no material which would cast doubt on the appellant's statements in these respects, I am satisfied that the appeal properties' occupants have protected characteristics for the purposes of the PSED.
9. In these respects, I am conscious that the members of the family with mobility impairments require on a reasonably regular basis assistance from other members of the family, and that this can involve movement between Nos 6 and 7. The appeal development has led to efficiencies of movement between the properties to carry out these activities. Moreover, due to the occupants' religious beliefs, the female members of the household are required to cover their heads when outside of the home, even for the short distance between Nos 6 and 7, and the appeal development has meant that this is no longer necessary, further enhancing the convenience of movement across the properties. Consequently, the appeal development has clearly helped to meet the needs of persons that share a protected characteristic that are different from the needs of persons who do not share it. As a result, these matters weigh in favour of the appeal development to a moderate degree and in according this weight I am mindful of the Council's view that some of the needs could be met by other changes to the properties which would not entail their amalgamation.

10. In other respects, the appeal development has maintained the overall level of residential floor space present at the properties, and results in a dwelling capable of accommodating the same number of people as those previously separate dwellings. Furthermore, I am mindful that whether permission is forthcoming for the appeal development or not that Nos 6 and 7 would be likely to remain in a single ownership and be occupied by the same extended family, and that one or other of the properties would be unlikely to be sold individually whilst they remain in this ownership arrangement. Moreover, as the appeal development's changes are very limited in extent, and relate to the internal elements of the appeal properties, they would be reasonably straightforward to reverse, and I have been supplied with no substantive evidence to suggest that such a reversal would be unviable in this instance. As a consequence, I consider that the appellant's comment that a condition could restrict the appeal proposal to a purely personal permission, and that the changes could be reversed prior to any future sale is a persuasive one, and would ensure that the appeal development did not result in the permanent removal of a family-sized dwelling from the city's housing stock.
11. I conclude that the appeal scheme conflicts with the above-referenced policy of the development plan. However, the attachment of conditions requiring the properties to be separated prior to any future sale would ensure that the appeal development does not result in the permanent loss of a residential unit. Accordingly, this matter, taken together with the personal circumstances of members of the household, justifies a departure from the development plan policy in this instance.
12. In arriving at this view I am mindful of the appeal decision drawn to my attention by the Council¹. However, each planning proposal needs to be assessed on its own merits and in that former case the extent of the internal changes appear to be somewhat different to those of the current case entailing, as they did, an enlarged dining room straddling between the two converted properties. Moreover, the personal circumstances of the occupants in this case are other clear material differences. Consequently, those previous decisions, whilst material, have not been decisive in this case.

Other Matter

13. The appeal properties are within the Bayswater Conservation Area, and consequently, I am mindful of the duty arising from section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, as the appeal development has not resulted in material external changes to the appearance of Nos 6 and 7 I consider that it has preserved the character and appearance of the Conservation Area.

Conditions

14. In attaching conditions I am conscious of the tests set out in paragraph 206 of the National Planning Policy Framework (the Framework). This establishes that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In instances where I have attached conditions I have made amendments where necessary in the interests of clarity and to reflect the retrospective nature of the appeal.

¹ APP/X5990/X/12/2175770 and APP/X5990/A/12/2175764

15. In the interests of certainty I have attached a condition which specifies the approved plans. I saw that construction work was ongoing at the time of my site visit, and as it is unclear to what extent this is pursuant to the appeal development, and whilst mindful of the retrospective nature of the application that led to this appeal in terms of the use of the appeal properties, I have attached a condition restricting the hours of construction for works related to the appeal development in the interests of the living conditions of the occupants of adjacent properties. However, given the relatively limited extent of demolition, and that the construction works entailed by the appeal development are unlikely to involve excavation or piling operations, I have not found it necessary to impose the restrictions suggested for Saturday mornings in this instance.
16. In order that the appeal development does not lead to the permanent depletion of the city's housing stock, I have attached conditions which require the separation of the properties prior to any future sale by the appellant or his family. As this is essentially a temporary permission, but bound to the occupancy of the proposed dwelling by the named adults, I consider that the imposition of a temporary permission with a more arbitrary time limit, as suggested by the Council, would not constitute a reasonable alternative in this instance.
17. I note that the Council have concerns regarding the enforceability of these conditions particularly in terms of the identification of individuals to which they relate. However, as the condition expressly identifies three non-dependant adults I consider it reasonable that their identities could be ascertained, if necessary. Moreover, a reasonable construction of the term 'dependants' is captured by the definition given by the House of Lords² as persons living in family with the person defined and dependent on him (or her) in whole or in part for their subsistence and support- again given this definition, I consider that the identities of dependants could be ascertained by reasonable means, if enforcement of the conditions became necessary, and would not need to entail the Council in the judgement of varying medical conditions.
18. I am aware of the Council comments regarding notification arrangements when the persons identified in the conditions cease to reside at the appeal development. However, I consider the marketing of the appeal properties as a single dwelling at some point in the future would constitute a sufficient trigger for enforcement action. If the properties are transferred by a private transaction it is reasonable to assume that conveyancing would make the potential buyer aware of their planning status. Consequently, taking these matters together, it has not been demonstrated that the condition would be unenforceable in these terms.
19. I have taken into account comments regarding the potential for future applications for variation of the personal conditions. However, this could be said of any condition attached to a planning permission, and any future application of this type would have to be assessed on its own planning merits. Consequently, this does not alter my view regarding the reasonableness of the personal conditions.
20. I am aware of the Council's view that the personal conditions attached in this instance are unusual in that they refer to more than one person, and that their

² In *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at page 671

imposition on this permission could create a precedent for other similar schemes. However, for the reasons given above, I consider that the unique circumstances presented in this instance justify a departure from the policies of the development plan. As a result the specifics of the current case justify the imposition of the conditions, including their identification of more than one person; and they also mean that a generally applicable precedent that would justify developments that do not meet the expectations of the development plan has not been set in this case.

Conclusion

21. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted relates to the following approved plans: Location Plan of w22ub; Existing Plans (Demolition) Drawing No. D101 Revision C; Proposed Plans (Construction) Drawing No. D102 Revision D.
- 2) Demolition or construction works shall take place only between 0800 and 1800 on Monday to Friday and only between 0800 and 1300 on Saturday and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 3) The occupation of the development hereby permitted shall be carried on only by the following and their resident dependants: Mr Sultan Ali Al Attiyah and/or Mrs Moza Al Subaie and/or Mr Ali Sultan Alattiyah.
- 4) When the site ceases to be occupied by those persons identified in condition (3) above, the use hereby permitted shall cease, all party walls between 6 and 7 Stanhope Terrace shall be restored to their condition before the development took place, and 6 and 7 Stanhope Terrace shall revert to separate dwellinghouses.