
Appeal Decision

Site visit made on 3 December 2018

by J Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2018

Appeal Ref: APP/K5600/W/18/3203496

Basement Northwest Nell Gwynn House, Sloane Avenue, London SW3 3AX.

- 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 Mark Jeffery on behalf of Nell Gwynn Apartments 2 Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/17/07658, dated 8 December 2017, was refused by notice dated 7 February 2018.
 - The development proposed is change of use of northwest basement parking area to 24 serviced room/apartments and 4 nos car parking spaces.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision notice refers to sheltered accommodation in the reason for refusal. Both parties have confirmed in writing that the appeal is for serviced accommodation. I have dealt with the appeal accordingly.
3. The Council's decision notice does not refer to plan 07160 H_201 P01. Both parties have confirmed that the Council's decision notice incorrectly omitted this plan. I have considered this plan in determining this appeal.
4. The appeal site's freehold is held by Nell Gwynn House Freehold Ltd, while the appellant holds the appeal site's leasehold. The appellant has acknowledged that they erroneously completed and submitted Certificate A on the application form and the subsequent appeal form, rather than completing Certificate B and serving notice on the freeholder and any other leaseholder with interest in the land.
5. I have had regard to the legal judgments provided¹ by the freeholder and the appellant. It is clear that the Council issued a site notice and press advertisement both dated 22 December 2017, and that interested parties, including the freeholder, responded to the planning application consultation. Furthermore, numerous interested parties, including the freeholder, responded to the appeal. In this instance, I consider that no prejudice would be caused by the appellant's procedural omission.

¹ Bishop v Westminster City Council & Ors [2017] EWHC 3102 (Admin); Maximus Networks Ltd v SSHCLG, Southwark LBC & Hammersmith and Fulham LBC [2018] EWHC 1933 (Admin); R (O'Brien) v West Lancashire Borough Council [2012].

Main Issue

6. The main issue in this appeal is the effect of the proposed development on the living conditions of its future occupiers, with particular regard to sunlight and daylight.

Reasons

7. Nell Gwynn House is a 10 storey 1930s block of flats located at the junction of Sloane Avenue, Whitehead's Grove and Draycott Avenue. Over 200 of the flats within the building are managed by the appellant and are operated as serviced apartments, with maid and reception/concierge services.
8. The appeal site is located within Nell Gwynn House's north west basement and comprises a private car park with some windows providing light and a ceiling with a central feature of opaque glass bricks. The appeal site can currently be accessed from within the building or via a ramp located between Nell Gwynn House and Marlborough Primary School.
9. The proposed development would provide 24 serviced rooms and apartments within the basement, 4 car parking spaces and 6 cycle parking spaces. The car parking spaces would not be associated with the proposed units, as they would be used by Nell Gwynn House tenants who have long term licences by deed. Refuse provision would be via existing refuse provision within the building.
10. The proposed units would vary considerably in size, from approximately 51m² to 11m², with most proposed units at around 18–20m². Plan 07160 H_201 P01 shows that 6 proposed units would be larger units with a kitchenette, seating area, bedroom and bathroom, while the other proposed units would consist of a room with an armchair, bed, wardrobe, and bathroom.
11. Some of the proposed units would benefit from windows, many which would be situated behind a low wall at the front of Nell Gwynn House. This would reduce the amount of sunlight and daylight reaching these proposed units. However, many of the proposed units would not have windows giving access to natural light. It is not clear from the appeal documentation whether the opaque glazed part of the existing ceiling would be retained to allow light to permeate into some of the proposed units. Even if it were retained, a number of the proposed units would still have no access to natural light.
12. Paragraph 34.3.36 of the supporting text to policy CL5 of the Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015 (LP) confirms that the Council will have regard to the most recent Building Research Establishment (BRE) guidance on sunlight and daylight. The BRE guidance *Site Layout Planning for Daylight and Sunlight* (2011) states that the guidelines may be applied to any existing non-domestic building where the occupants have a reasonable expectation of daylight; this would normally include hotels. The BRE guidance also highlights that people expect good natural lighting in a wide range of non-domestic buildings. Furthermore, LP paragraph 34.3.37 confirms that issues of daylight and sunlight are most likely to occur where development is situated within the lower floors of buildings with openings on to lightwells, and that on-site judgment will often be necessary in these circumstances. No specific quantum of daylight or sunlight is set out for hotel use.
13. Planning permissions PP/12/02482 and PP/12/ 04674 for 4 and 7 serviced rooms respectively in Nell Gwynn House's south west basement have already

been implemented. During my site visit at lunchtime on a rainy day, I visited 3 of those rooms, 2 of which had high level windows allowing some natural light into the rooms, and one room without any natural light. While the site visit confirmed that the rooms were well-appointed, it also verified that the total absence of natural light to one room and the limited provision of natural light to the other rooms rendered them somewhat oppressive.

14. Considering the appeal before me in light of my site visit and the documentation provided, I see no reason in this instance why the future occupiers of the proposed units should not expect adequate natural lighting. I find that the absence of daylight and sunlight would be likely to make the intended future occupiers feel uncomfortable with their surroundings. Despite the appellant's assertions that the future occupiers would use facilities outside the building and spend their days visiting London's sights, and that the only purpose of the proposed units is for sleep, I consider the proposed units would not provide a pleasant living environment whenever the future occupiers were in occupation.
15. Additionally, while the appellant has made reference to the proposed units comprising only a small percentage of such accommodation within Nell Gwynn House and being for short-term use, I have nothing before me which would restrict the proposed units to use only for a few consecutive nights. I note that the decision notice for PP/12/04674 provides a condition which restricts the serviced rooms to being short-term lets of no more than 8 consecutive nights by reason of the rooms being unsuitable for permanent residential occupancy due to their size and amenity levels. No such condition has been suggested by the Council in this appeal. In any event, I am not convinced that such a condition would meet the tests set out in paragraph 55 of the National Planning Policy Framework in terms of enforceability.
16. The appellant has provided examples of windowless hotel and serviced apartment accommodation in London and Birmingham, including in Kensington and Chelsea, and has drawn my attention to schemes in Islington, Westminster and Camden which have obtained planning permission in recent years. However, in the absence of more information about the site-specific circumstances of these hotel/service apartment schemes, it is not possible to be certain how similar those schemes or their policy contexts are to the proposal before me. I therefore give them limited weight.
17. The appellant asserts that the existing serviced apartments and rooms at Nell Gwynn House, including the basement units, are popular due to their combination of comfort and affordable price for a central location. I understand that windowless rooms attract a lower price than rooms with windows. Furthermore, the appellant considers that the existing serviced apartments' management ensures that they do not detrimentally affect neighbouring occupiers' living conditions. I also note that they would be located close to services and public transport, would exceed Building Regulations requirements, and would make effective use of land. Additionally, they would support the employment of staff to service the proposed units and the mix of visitor accommodation available locally in line with LP policy CF8 on hotels. The proposed units would also bolster the enhancement of London's visitor economy in line with policy 4.5 of the London Plan 2016. However, these matters do not outweigh my concerns.

18. I note that the appellant received pre-application advice and that the officer's report recommended the proposed development for approval. However, the Council's committee members were entitled not to accept their planning officer's professional advice so long as a case could be made for the contrary view. While the appellant considers that the committee members have failed to understand that the proposal is for C1 use, the Council's statement does not indicate that this was the case.
19. Although the proposed development would result in lower usage of the vehicular access from Sloane Avenue and an associated reduction in air pollution, and the appellant has referred to the possibility of enhancing pedestrian access, this does not alter my findings on this appeal.
20. Concerns have been raised by interested parties, including Nell Gwynn House Freehold Ltd. These concerns include additional pressure being placed on the building's infrastructure, car parking, health and safety, security, increased service charges, fire safety, amenity space for future occupiers, ventilation, refuse storage, effect on the building's character and appearance, accessibility, and property values. Although the appellant has sought to address these concerns, as I am dismissing this appeal, I have not addressed these concerns in detail.
21. I conclude that the proposed development would have a harmful effect on the living conditions of its future occupiers, with particular regard to sunlight and daylight. It would therefore be contrary to LP policy CL5, which requires all development to ensure good living conditions for occupants of new, existing and neighbouring buildings. Amongst other things, LP policy CL5 makes reference to the need to ensure that good standards of daylight and sunlight are achieved in new development. The appellant has referred to policy H4 of the Council's Unitary Development Plan 2002 with regard to commercial activities encroaching into residential areas, but this policy does not appear directly relevant in this instance.

Conclusion

22. For the reasons set out above, the appeal is dismissed.

J Gilbert

INSPECTOR