



Appeal Decision

Site visit made on 2 July 2019

by J Wilson BA Hons BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 17th July 2019

Appeal Ref: APP/K5600/W/19/3227151

15 Palace Gardens Terrace, London W8 4SA

- 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 Ms Monica Monajem against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/19/01356, dated 22 February 2019, was refused by notice dated 5 April 2019.
 - The development proposed is De-conversion (amalgamation) of first and second floor flats to form a 3 bedroom duplex apartment.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my visit work was being undertaken to alter the roof under the auspices of a permission granted in February 2019¹. There was no indication that the work being undertaken related to this appeal proposal and the flats were at the time of my visit two separate residential units.

Main Issue

3. The main issue is whether the amalgamation of two upper floor level flats would result in the unacceptable loss of a residential unit having regard to the supply and choice available in the Borough and in the context of the Development Plan policies.

Reasons

4. The existing accommodation comprises two flats both with two bedrooms which are located on the first and second floor of the property. The ground floor accommodation has been previously amalgamated into the adjacent property at No.17 Palace Gardens Terrace following an appeal decision² in 2017. All works relating to this proposal would be internal with walls removed on the first floor to form a single living space with a small study; on the second floor living/kitchen space would be amalgamated to provide a third bedroom.
5. The Royal Borough of Kensington and Chelsea Consolidated Local Plan (2015) (the Local Plan) states that loss of housing through deconversion can reduce

¹ Council reference PP/18/08317

² APP/K5600/W/16/3157243

the provision of housing stock. To protect the stock Policy CH 3 of the plan states that the Council will ensure a net increase in residential accommodation by protecting market residential use and floorspace. Exception criteria are set out though none would apply to the circumstances of this appeal. The total area of residential floorspace would be unchanged, both floors would continue in residential use and though there would be a net loss in the number of bedrooms this is not a listed criterion. Indeed, the Council in their officer's report clarify that the application would not conflict with policy CH 3 in this regard and CH 3 is not cited in the reasons for refusal.

6. Nonetheless, the fact remains that there would be one less residential unit with the amalgamated unit becoming a three bedroomed unit rather than the two similarly sized two bedroomed units. A reduction in the number of units would be at odds with Local Plan Policy CH 1 which seeks to ensure that: sufficient housing is provided; and housing targets met. It does not appear to be at odds with the detailed criteria of CH 2 even though that policy aims to ensure a mix of housing type to achieve housing diversity. The London Plan is of clearer intent in this regard stating, at Policy 3.4 that the loss of housing should be resisted unless it is replaced at the existing or higher densities. The density of units is a material consideration. Additionally, the Mayors' adopted Housing SPG (2016) clarifies that de-conversion of smaller units into larger ones can reduce capacity and, where there is the sustained loss of homes, Boroughs are encouraged to resist such loss in line with Policy 3.14 of the London Plan.
7. The appellants' main ground of appeal is that the Council did not take into account emerging planning policy in reaching their decision. The thrust of that emerging policy is that the amalgamation of existing or new homes will be resisted unless it results in the net loss of only one unit and the total floorspace of the new dwelling created would be less than or equal to 170sm gross internal area (GIA). As this unit would be 139.8 square metres GIA the appellant argues that the proposal would be compliant with emerging policy. Furthermore, virtually the same conversion was consented in 2014³. It is however clear that these matters were covered in the planning officers report and the Council took that into account in their decision.
8. That the Local Plan was adopted in 2015 (and therefore after the previous approval) and that the emerging plan has not yet been fully considered are both material factors. The provisions referred to in the emerging plan are not yet part of the adopted development plan. Moreover, there is inconsistency between the parties whether that plan will proceed on the basis of the inclusion of the policy referred to in paragraph 7 above. The plan is with the Secretary of State and the Council say that minimal weight should be afforded to it as policies are at an early stage and the extent of objection is not yet known. In contrast the appellant argues that the Examination Inspector and the Council do not want the review of the plan delayed. In any event, whilst I recognise that the emerging policy would provide a justification for the development, I cannot be certain that the wording of the policy will be adopted in that form, nor can I be certain of the timescale for the resolution of the emerging plan. As such I can afford it only limited weight.
9. I am mindful that the appellant has owned and occupied both flats and wishes to reconfigure her accommodation. Nonetheless the thread of the adopted

³ Planning Permission PP/14/02782 expired 10 July 2017

policies is to ensure that there is sufficient housing to meet the needs of the Borough and it is clear to me that incremental attrition of separate units would result in the loss of an available homes (notwithstanding that there would be no loss of residential floorspace in this case).

10. I find there is merit in the argument that amalgamations, if repeated often, would undermine the Councils clear policy intent to increase the availability of homes in the Borough though I am cognisant that the policy circumstances may change in the future in cases where the loss would relate to only one unit.
11. Nevertheless, the starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. There are no material considerations which would indicate a different approach, in this case, at this time.
12. Consequently, the development would conflict with Policy 3.14 of the London Plan; Policies CH1 and CH2 of the Local Plan and the advice presented in the Mayors SPD 2016 and the National Planning Policy Framework. These together seek to ensure that the net provision of housing is increased in order to meet the demand for homes in the Borough.

Other Matters

13. My attention has been drawn to a series of appeal decisions by the appellant⁴ in respect of other sites where amalgamations have been allowed, equally the Council have drawn attention to other appeals and a court case⁵ where the Inspectors have dismissed or allowed appeals and where the arguments centred on the amalgamation of units. I have been provided with some details of all the cases referred to and am mindful that no two sites are the same having different rationale and reasoning depending on the circumstances. Whilst the range of cases would in some instances support and in others undermine the appellants' case, I do not regard there to be a consistent approach that I must follow. I have therefore determined this appeal on its own merits based on the evidence before me and with regard to the adopted policies of the Local Plan and the London Plan.

Conclusion

14. For the above reasons and having regard to all other matters raised the appeal is dismissed.

Janet Wilson

INSPECTOR

⁴ APP/K5600/W/16/3165766; APP/K5600/W/16/3155398; APP/K5600/W/17/3169044; App/K5600/W/16/3158237; App/K5600/W/18/3195913; App/K5600/W/16/3143452; App/K5600/C/17/3170674

⁵ APP/K5600/W/16/3165766; APP/K5600/X/16/3157244; APP/K5600/W/18/3211238; Kensington and Chelsea RBC v SSCLG & Reis & Tong [2016] EWHC 1785 (Admin).