



Appeal Decision

Site visit made on 21 September 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2020

Appeal Ref: APP/K5600/C/19/3237927

Land at 312 Fulham Road, London SW10 9UG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Anne-Marie Jenkins of Wedding List Solutions Ltd against an enforcement notice issued by The Council of The Royal Borough of Kensington & Chelsea.
 - The enforcement notice, numbered ENF/18/08493, was issued on 19 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use from residential (Use Class C3) to showroom for a wedding gift list provider with associated ancillary office use (Use Class Sui Generis).
 - The requirements of the notice are cease the use and occupation of the premises as a wedding gift list provider with associated ancillary office use (Sui Generis Use Class).
 - The period for compliance with the requirements is four calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. The appeal was initially to be taken forward by way of an Accompanied Site Visit. However, due to the situation regarding Covid-19, the Council was unable to send a representative. Consequently, I wrote to parties suggesting that, given the arguments that has been made, the site visit could be unaccompanied. Parties' comments were invited, but neither replied. I undertook the site visit on an unaccompanied basis.

Ground (a) Appeal

Main Issues

3. The main issues are the effect of the development on: housing provision within the London Borough of Kensington and Chelsea (the Borough); and the vitality and viability of other retail areas, particularly the Fulham Road (West) District Centre (FRDC).

Housing provision

4. The appeal site is a mid-terraced townhouse on the north side of the busy Fulham Road, with accommodation set over four floors. The appeal site and the

other properties in the terrace are grade II listed. The lower ground floor is used as an office ancillary to a wedding gift list business, which is carried out from the floors above. The remainder of the terrace appeared to be in residential use.

5. At one time, both it and 310 Fulham Road were in the same ownership. When it was sold off separately from No 310, most of the combined rear amenity space was given over to No 310, leaving No 312 with only a yard at its rear.
6. In respect of this main issue, the notice refers to Policies CH1 and CH3 of the Royal Borough of Kensington and Chelsea Local Plan, September 2019, (LP). Policy CH1 sets out the Council's intention to boost the supply of housing in the borough. Amongst its terms, point (e), entitled 'Protection of Residential Uses', states that the Council will protect market residential units and floorspace except in listed circumstances. None of those listed is applicable to the scheme.
7. Both parties agree that the Council is able to demonstrate that it has a five-year housing land supply. The evidence shows that the Inspector that relatively recently assessed the emerging London Borough of Kensington and Chelsea Local Plan found it, including its housing land supply figures, to be sound. The appellant states that the emerging London Plan will reduce the housing target for the Borough and this will result in a "surplus" of 1482 dwellings over a 5-year period.
8. I have not been provided with substantive evidence of this latter point, but this has not been challenged by the Council. Therefore, I accept that the housing land supply position in the Borough is healthy. Notwithstanding this, the aim of LP Policy CH1 is to boost housing in the Borough, and a fundamental part of the policy is the protection of market housing stock. The policy's overall aim is consistent with that of Government, set out in paragraph 59 of its National Planning Policy Framework (the Framework) which refers to "the Government's objective of significantly boosting the supply of homes".
9. It is argued that the loss of a single dwelling, against this background, will not cause harm to housing provision. However, this argument, if accepted, could be used so often as to have an impact on its provision. Whilst each proposal has to be treated on its individual merits, this argument relates to a matter of principle. Allowing the appeal on this basis would be likely to have a significant bearing on other proposals, which could further undermine LP Policy CH1.
10. I find this to be the case even allowing for the fact that the appellant seeks a temporary 5-year permission. This is substantially longer than the 4 months given for compliance with the notice, and I find that permitting the development for this period would result in the harm that I have identified being allowed to continue for an inordinate period.
11. On this first main issue, for the reasons set out above, I find that the proposed development would result in the harmful loss of a dwelling contrary to the terms of LP Policy CH1.
12. As LP Policy CH3 relates to 'Housing Size Mix and Standards' and does not refer to the protection of residential uses, it is not relevant to my decision.

Vitality and viability

13. The Council sets out what it describes as a “town centres first” approach to new retail floorspace in LP Policy CF1. It can be broadly divided into two areas. Its sections (a)-(d) permit or support retail development in defined areas. As the appeal site does not lie within one of these areas, its section (e) is relevant. Its support is gained in one of two ways. Firstly, where the development meets the requirements of a sequential assessment and would not have an unacceptable impact on existing centres. Secondly, that the retail floorspace would underpin the Council’s regeneration objectives or support the business function of an Employment Zone. I have been given no indication that the second criterion is relevant to this appeal.
14. There is a mixture of uses in the area, the terrace is overtly residential and there are shops, a petrol filling station and other businesses nearby. Whilst the site lies close to, the FRDC it is nonetheless outside it. Thus, and I have been given no reason to find to the contrary, the proposal would need to be supported by a sequential assessment in line with the first criterion of LP Policy CF1 (e).
15. No such assessment has been submitted. This would demonstrate whether or not there would be harm to nearby centres. To say that as the site is close to the centre the proposed use would attract people to the centre through shared trips, rather than draw them from it, is not enough. I find this to be the case even though some of the business’s customers come from outside the Borough and even outside London. There is little substantive evidence to support the contention that the development would not harm the centre; a sequential assessment is required to show this. Without this, I cannot conclude that the use of the appeal site in the proposed manner would not have an adverse effect on it.
16. Thus, it has not been demonstrated that the use of No 312 for retail purposes would not harm the vitality of the FRDC. The proposal is, therefore, contrary to LP Policy CF1(e).

Section 38(6) and Material Considerations

17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that proposals for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. A number of considerations have been put forward here that must be weighed against the harm that I have identified.
18. The lack of a garden might put off some families from moving to the appeal site. However, I have not been given any substantive evidence to show that this would be the case for all families nor that there is a low demand for family occupation in the area.
19. I acknowledge that the nature of the business differs from more traditional retail uses. However, it has not been adequately demonstrated that the bespoke, personalised service in a more “intimate environment” that resembles a residential property could not be achieved through the use of a property in a town centre with accommodation over several floors.
20. That the site is located in a highly accessible location and represents the use of previously developed land does not outweigh the harm that I have identified.

Whilst there have been no internal or external alterations that might have adversely affected the property, this is a neutral matter not one that lends support to the scheme.

21. Whilst lending support for the scheme, the material considerations that have been raised do not outweigh the harm that I have identified, above.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Roy Curnow

INSPECTOR