



Appeal Decision

Site Visit made on 8 June 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2022

Appeal Ref: APP/K5600/W/20/3264406

Flats A & C, 61 Holland Park, LONDON, W11 3SJ

- 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 FT Architects against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/20/00419, dated 21 January 2020, was refused by notice dated 23 October 2020.
 - The development proposed is described as: Amalgamation of Flats A and C to form single dwelling and associated internal and external works to building and garden including replacement of basement.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In March 2021 the new London Plan (the London Plan) was published and replaced Policies 3.4 and 3.14 of London Plan 2016 which are cited on the decision notice issued by the Council. The Council advise that Policies H1 and H8 of new London Plan are now the most relevant Policies from the London Plan.
3. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The views of parties were sought on any implications of the revised Framework on their respective cases. The appellant advised that they had no further comments and no response was received from the Council. I have determined the appeal taking account of the revised Framework.
4. As the proposal is in a conservation area and relates to a listed building, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issue

5. The main issue in this appeal is the effect of the proposed development on the supply of housing in the area.

Reasons

6. The appeal building is a substantial three storey, detached, building that also has accommodation at attic and basement levels. In the past it was subdivided into a number of self-contained flats. The appeal proposal seeks to combine the two flats at the ground floor and lower ground floor levels to form one dwelling. It is also proposed to create new basement accommodation beneath

the existing rear garden area that would replace an existing basement room, the upper part of which presently projects slightly above the level of the ground to allow for high level glazing to provide daylight to the interior.

7. I am advised that the area in which the appeal site is located is covered by an Article 4 Direction that removes permitted development rights afforded by the Town and Country Planning (General Permitted Development) Order 2015 that would normally permit the construction of a basement without the need to apply for planning permission.
8. Policy CH1 of the Royal Borough of Kensington and Chelsea Local Plan 2019 (the Local Plan) addresses increasing housing supply on the Borough. Part b of Policy CH1 seeks to prevent the loss of residential units through amalgamations of existing or new homes but makes an exception where the amalgamation would only result in the net loss of one unit and the total floorspace of the new dwelling created would be less than, or equal to, 170m² gross internal area.
9. Part d of Policy CH1 seeks to restrict very large units by optimising the number of residential units delivered in new developments, taking into account the London Plan policy on housing density.
10. Policy H1 of the London Plan, which the Council consider is most relevant following the superseding of the London Plan 2016, sets housing targets for each of the London Boroughs. At Part B 2) the policy sets out that Boroughs should optimise the potential for housing delivery on all suitable and available brownfield sites.
11. Flat A occupies the ground floor, part of the lower ground floor and also incorporates an annex within the vaults at the front of the building and a basement below the rear garden. Overall, it comprises 351.5m² floorspace. This flat also has access to the rear garden. Flat C occupies the remaining lower ground floor level and has a floorspace of 126m².
12. The appellant accepts that the proposal would result in a dwelling that would have a gross internal area that exceeds the 170m² that is permissible under the exception in Part b of Policy CH1. Consequently, it is not in dispute that the appeal proposal conflicts with the policy in this respect.
13. There is disagreement between the parties as to the applicability of Local Plan Policy CH1 Part D to the proposal. Policy CH1 d seeks to optimise the number of residential units delivered in new developments. The policy also refers to the density policy in the London Plan. This latter point relates to the now superseded Policy 3.4 of the London Plan 2016 which contained a density matrix relating housing densities to location and public transport accessibility. This has not been carried over into the new London Plan. Neither Policy CH1, nor its supporting text, defines very large units with reference to floor area and the references to property values is not particularly helpful in this case. Nonetheless, the resulting dwelling proposed by the appeal scheme would significantly exceed the minimum gross internal area for a 4 bedroom dwelling over two storeys that is set out in the Technical housing standards- national described space standard and in the London Plan.
14. It is argued by the appellant that this part of the Policy only applies to new build development and not to adaptations to existing buildings. The wording of the Policy refers to "new developments". The supporting text to the Policy,

which although not part of it is intended to show how the policy is to be implemented, makes specific reference to restricting unit sizes in new build developments to address issues of housing supply by optimising the number of units that can be provided on a site and prevent schemes coming forward with very large units thus reducing potential site capacity.

15. Although the supporting text recognises that restricting the provision of very large units may reduce the opportunities within the borough for catering to the market for international investors from new build developments, it states that opportunities will continue to remain within the second-hand market. The supporting text is slightly ambiguous because the reference to investment opportunities within the second-hand market could equally mean investing in purchasing existing very large units rather than investing in creating them from existing properties. Consequently, I do not share the appellant's conclusion that this is in some way permissive of amalgamation within existing buildings that would be contrary to the requirements of Part b of Policy CH1.
16. The Council refer to Policy H8 of the London Plan which broadly re-iterates the wording of Policy 3.14 of the London Plan 2016 in setting out that loss of existing housing should be replaced by new housing at existing or higher densities with at least the equivalent level of overall floorspace. The supporting text to Policy H8 is not unequivocal, however, it does strongly suggest that the policy is applicable to proposals to demolish and replace existing dwellings. It is also difficult to see how, in practical terms, this could be applied to proposals that would result in the loss of dwellings through amalgamation of units within an existing, sub-divided, building. By definition, amalgamation would result in fewer units. Using existing floor space to create an equal number of differently proportioned units to that which existed previously, would more properly be termed re-configuration.
17. Drawing these points together, I do not find that Part d of Policy CH1 is directly applicable to the determination of this appeal but, equally, I do not find that it offers any support for the proposal such that it would override a conflict with Part b of the Policy.
18. London Plan Policy H1 seeks to optimise the delivery of housing on suitable brownfield sites. Optimising should not be conflated with maximising and Policy H1 does not set out a definition for the purposes of the policy. The Oxford dictionary definition of optimise is to the make the best or most effective use of (a situation or resource).
19. It is, nevertheless, common ground that the appeal site can comfortably accommodate two units. The appeal proposal would lead to a reduction in the overall number of units within the building and there is no evidence before me that would demonstrate that this would be the most effective use of the building. Whilst I have noted that the lower ground floor flat was vacated on 4 January 2021 and was still vacant at the time of my site visit, I have no substantive evidence in respect of the marketing of this through letting agencies or the level of rent sought in comparison to similar units. Consequently, I do not consider that lack of demand for the lower ground floor unit has been demonstrated. As such I do not find that the proposal would contribute to optimising the delivery of housing and would conflict with London Plan Policy H1.

20. Taking the proposal against the housing policies in the development plan as a whole, it is common ground between the parties that the proposal conflicts with Part b of Policy CH1. It would also conflict with Policy H1 of the London Plan. Whilst I have found that Part d of Policy CH1 of the Local Plan is not relevant to the appeal proposal, this part of the policy does not support it either.
21. I therefore conclude that the proposed development would cause harm to the supply of housing in the area. It would not comply with the relevant requirements of London Plan Policy H1 or Local Plan Policy CH1 Part b. It would also conflict with the objective of the Framework to significantly increase the supply of housing.

Other Matters

22. The appeal building is listed at Grade II [List Entry: 1358173]. I am advised that the Council has granted Listed Building Consent for the proposed works. The application was supported by a comprehensive Heritage Statement, the general findings of which are not challenged by the Council.
23. From what I have read and from what I saw when I visited the site, the proposed development would preserve the building and the features of special architectural or historic interest which it possesses and would result in the re-instatement of internal features and elements of the historic floorplan that have been lost as a result of previous alterations to the building. The proposal would also result in the removal of the above ground elements of the existing basement and replace this with a landscaping scheme that is more in keeping with its surroundings. This would enable a clearer understanding of the significance of the listed building in terms of its architecture and design and also result in a small positive effect on the setting of the two adjacent buildings which are also listed at Grade II.
24. The appeal building is located in the Holland Park Conservation Area. The Conservation area is based around Holland House and its parkland and the surrounding housing that was built to fund the upkeep of the house and grounds. Its significance is primarily derived from the varied examples of Nineteenth century speculative housing that it contains. The appeal site is situated in the north part of the conservation area on one of two streets of largely identical detached Victorian houses in an Italianate style separated by a mews that were constructed as a planned development.
25. The appeal proposal would result in very little change to the exterior of the building with only some elements of the present basement that are visible above ground in the rear garden, facing Holland Park Avenue, being removed. These are of little architectural merit and have no historic significance. At present these are largely concealed from public viewpoints behind the rear boundary wall and planting within the rear garden of the property. Although these would be replaced by a lawned and landscaped area this change would be largely unnoticeable from the public domain. As such, the proposal would have a neutral effect of the character and appearance of the conservation area.
26. Although it is common ground that the Council is able to demonstrate a five year housing land supply, the Council has failed to meet the targets for housing delivery in the 2020 and 2021 Housing Delivery Tests. The proposal therefore has to be considered in terms of the presumption in favour of sustainable development set out in Paragraph 11 of the Framework.

27. The appeal building is listed and is situated in a conservation area. However, the proposals would not cause harm to these heritage assets, and it is not argued that there are any other policies in the Framework that seek to protect areas or assets of particular importance that would provide a clear reason for refusing the development proposed.
28. There are clearly some heritage benefits that would result from the proposal. However, the question is are these significantly and demonstrably outweighed by the adverse impacts of granting planning permission?
29. It is argued that the loss of one dwelling unit would not affect the Council's ability to meet its housing targets as the Council currently has a small surplus in its deliverable 5 year housing land supply. Whilst this may be the case, the Housing Delivery Test results clearly show that, this fact notwithstanding, actual housing delivery in the borough is falling well short of the targets. The appeal proposal would further reduce the housing stock in the borough and would run contrary to the Government's objective set out in the Framework to significantly boost the supply of homes. This weighs heavily against the proposal.
30. Works which would enhance the significance of a heritage asset are capable of being a public benefit. The appellant suggests that the works would not be undertaken without the uplift in value that would result from the proposal. Whilst this is most certainly the case with regard to the new basement, I am not persuaded that some or all of the works to reinstate features in the principal building are dependent on the proposal proceeding.
31. From what I saw when I visited the site, although it does have a slight adverse effect, the current configuration of the rear garden with the above ground elements of the current basement extension does not significantly diminish the ability to understand the architecture of the rear of the building and how it relates to the rest of the structure. Nor does it have more than a minor adverse effect on the setting of the adjacent listed buildings.
32. There is no evidence before me that would indicate that the proposed works are necessary to secure the long term future of the listed building or its optimum viable use.
33. I have noted that planning permission and listed building consent were granted for a broadly similar proposal in 2017 but also that those approvals had lapsed by the time the appeal proposal was determined. The decisions on these proposals were made within a different policy context, contained in the Council's previous local plan, and within a different housing supply context. Although noting the appellant's account of the Council's application of its previous policy on amalgamation, the Council's current Policy CH1 contains specific criteria in respect of amalgamations that would result in the creation of larger units over a certain size. Although the heritage benefits of the proposal have not particularly altered, the weight that can be given to other factors has changed and, consequently, the circumstances at the time of the 2017 approvals are not directly comparable to the present circumstances.
34. The appeal proposal would undoubtably represent a small scale improvement in heritage terms, but this has to be balanced against the loss of a housing unit in a borough that is clearly not meeting its targets in terms of housing delivery.

35. There is a tension between the policies in the Framework in respect of boosting the supply of housing and those which seek to ensure the conservation of heritage assets. The Framework does not prioritise one over the other. The delivery of new housing in the borough is substantially below the targets set and the appeal proposal would effectively result in a reduction the borough's current overall housing stock. Whilst the proposal would benefit the building in heritage terms there is no indication that the building is at risk or that the works are necessary to secure a viable use consistent with the conservation of the heritage assets, or to secure the optimum viable use of the building. In this light the balance tips towards increasing the supply of housing.
36. I therefore find that the adverse impacts of granting planning permission significantly and demonstrably outweigh the benefits.
37. I have had regard to the representations made by interested parties both in respect of the original planning application and the appeal. None of the points raised would lead me to a different conclusion with regard to the principal disputed matter.

Conclusion

38. Section 38(6) of the of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications and appeals must be made in accordance with the development plan unless material considerations indicate otherwise. I have found that the proposal would conflict with the relevant requirements of Policy CH1 of the local plan and Policy H1 of the London Plan which are the policies in the development plan that are most important for determining the appeal and, as such, it is contrary to the development plan when taken as a whole, notwithstanding that it may comply with other policies within it. Beyond the potential heritage benefits which have been addressed above, no other material considerations have been identified that would indicate making a decision other than in accordance with the development plan.
39. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR