



Appeal Decision

Site visit made on 24 August 2022

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/H5390/X/21/3289500

72 - 73 And 74 Compass House, 5 Park Street, London SW6 2FB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jeffrey J Griffiths against the decision of London Borough of Hammersmith and Fulham.
 - The application ref 2021/01562/CLP, dated 10 May 2021, was refused by notice dated 6 July 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the conversion of two flats into single self-contained flat (Flat 72-73 to be merged with flat 74).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address given on the appeal form is more precise than the one provided on the application form and the decision notice, and I have used it in the banner heading above.
3. The development is described as a 'conversion', but it is clear that the certificate is sought to confirm that the amalgamation of two flats is not a material change of use. Flats 72 and 73 were previously amalgamated into one flat, following the grant of an LDC¹. It is now proposed to merge Flat 72/73 with Flat 74. The existing floor plan indicates that Flat 72/73 contains four bedrooms with a large living-dining-kitchen and three bathrooms, while Flat 74 has two bedrooms, a living-dining-kitchen and two bathrooms. The proposed floor plan indicates that the resulting flat would have five bedrooms with an enlarged living-dining-kitchen, and five bathrooms.
4. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. The applicant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. No account can therefore be taken of the merits of the proposal, or the concerns raised by neighbours.

¹ 2016/00320/CLP

Main Issue

5. The main issue is whether the change of use would be material in planning terms and thus development for which planning permission is required.

Reasons

6. Section 55(3)(a) of the 1990 Act provides that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. The 1990 Act does not state whether the reverse change of use would be material, and so that is a question which must be considered on the facts of the case.
7. A change of use is material if there is some significant change in the character of the activities taking place, as a matter of fact and degree. The proposed change from one to two residential units would cause no change in appearance of the site, or the nature or scale of activities taking place.
8. Case law² has established that the extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether a change of use is material. A more recent High Court judgement³ set out that a change resulting in the loss of an existing use, including the loss of a residential unit or units, may be material even where there would be no amenity or environmental impact, and despite not having a specific policy in place. It is necessary to consider the extent to which an existing use fulfils a proper planning purpose and whether the loss of the use would have a significant planning consequence as a matter of fact and degree. For example, a need for a land use such as housing, or a type of housing, is a planning purpose which relates to the character of the use of the land.
9. The Council describes what, in its view, would be significant planning consequences, and has provided copies of policies to support its claims. I shall look at these issues in turn.

Loss of a housing unit

10. Policy HO1 of the Hammersmith and Fulham Local Plan 2018 (HFLP) sets out the extent of housing need in the Borough, and states that the council will seek to exceed the London Plan minimum target of 1,031 additional dwellings a year up to 2025, and will continue to seek at least that annual figure in the period up to 2035. The policy states that the target will be met, amongst other things, by the retention of existing residential accommodation. Paragraph 6.8 of the policy justification states that it is essential that housing is not lost to other uses. London Plan 2021 Policy H1 is identified by the Council as setting out the extent of housing need in London, although a copy of the policy was not provided with the submissions. HFLP Policy HO2 relates to housing conversion and retention and states that the Council will resist proposals which would result in a net loss of permanent residential accommodation, with justification paragraph 6.18 stating that to achieve the housing target there should be no net loss of the existing housing stock.

² The London Borough of Richmond upon Thames v. The Secretary of State for the Environment, Transport and the Regions and Richmond upon Thames Churches Housing Trust [2000] 2 PLR 115

³ Royal Borough of Kensington and Chelsea v. Secretary of State decision [(2016) EWHC 1785].

11. The above policies in the HFLP give a clear indication that the loss of residential units will undermine the ability to meet or exceed the target in the London Plan and the HFLP. The appellant refers to the house building taking place in the surrounding area, including some 2,000 new homes being provided by the Berkeley Group Plc, and asserts that the Council's housing target is being met. However, he has provided no evidence to substantiate the assertion, and although the Council has not provided any detailed evidence to show otherwise, the onus is on the appellant to make out his case. In any event, even if housing targets are being met for the period to 2025 as required by the London Plan, HFLP Policy HO1 seeks to ensure that an additional 1,031 dwellings are provided annually beyond that period. It is logical that if residential units are lost, there will be implications for housing supply. The need for housing and the effect of a reduction in the number of available units is a planning purpose which relates to the character of the use of the land. The loss of even one unit through amalgamation would conflict with the aim of increasing the supply of houses. I therefore find that the proposal would result in a material change of use when considered against the policy background outlined above, as it has the potential for significant planning consequences.

Changes to the housing mix by reducing the number of smaller units and increasing the size of a larger unit

12. The proposal would result in the loss of a smaller unit, and the increase in size of the four bedroom unit. HFLP Policy HO2 is supportive of the conversion of smaller units to single family sized housing, although justification paragraph 6.22 refers to the de-conversion of smaller flats in order to enable the reinstatement of family accommodation, whereas this proposal relates to the amalgamation of purpose built flats. HFLP Policy HO5 sets out the mix of housing types and sizes that will be sought in development schemes, which for market housing includes a mix of unit sizes including larger family accommodation. The Council states that there is a particular need in the Borough for larger affordable family houses rather than market housing. However, the four bedroom unit is already market housing, and the Council has not identified the significant planning consequence that results from increasing its size to five bedrooms, nor from the loss of the two bedroom unit. I do not therefore find that there would be significant planning consequences from the change in housing mix.

Conclusion

13. Although I have found that the change in housing mix would not have significant planning consequences, I find that the appellant has failed to demonstrate that the proposal, and the resultant loss of a residential unit, would not have significant planning consequences, as a matter of fact and degree. It does not follow that the consequences would amount to planning harm, but I must conclude on the balance of probabilities that the change of use would be material and thus development that requires planning permission.
14. The appellant has referred to similar LDC cases in other London Boroughs, but planning decisions made elsewhere cannot be imported to support the appellant's case, and do not have the weight of case law. I am also mindful that the Council granted the certificate for the amalgamation of Nos 72 and 73

in 2016, but the decision predates the most recent case law on the subject in *Royal Borough of Kensington and Chelsea*.

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the conversion of two flats into single self-contained flat (Flat 72-73 to be merged with flat 74) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

N Thomas

INSPECTOR