

Appeal Decision

Site visit made on 25 October 2022

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th December 2022

Appeal Ref: APP/X5990/W/22/3300967

34 Formosa Street, London W9 2QA

- 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 and Mrs R Brand against the decision of Westminster City Council.
 - The application Ref 21/07384/FULL, dated 27 October 2021, was refused by notice dated 15 December 2021.
 - The development proposed is amalgamation of two units (basement flat and upper maisonette) to create a single family dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the supply of housing in Westminster.

Reasons

3. The appeal property is a four storey building on the north side of Formosa Street, comprising a flat at basement level and an upper level maisonette. It is located in the Maida Vale Conservation Area.
 4. Policy 8 of the City Plan 2019-2040 (2021) concerns housing delivery; section (C) of the policy addresses existing housing. This states that all existing residential units, uses, floorspace and land will be protected. One exception is where non-family sized housing is being reconfigured to create family-sized housing.
 5. The Council also refers in its appeal statement to relevant housing policies from The London Plan 2021. While these are not mentioned in the decision notice or officer report I have nonetheless had regard to them as part of the adopted development plan. Policy H1 sets targets for net housing completions for the relevant local authorities, while the supporting text to Policy H2 states that boroughs are encouraged to resist proposals where the amalgamation of separate flats into larger homes is leading to the sustained loss of homes. Family-sized housing comprises three or more bedrooms.
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6. The maisonette currently includes two bedrooms on the second floor. The proposal involves the amalgamation of the separate basement flat to create a single three bedroom dwelling. The Council refers to current national space standards¹, which indicate that the minimum internal floor area for a three bedroom dwelling over three floors is between 90m² and 108m², depending on occupancy levels. By comparison, the current three floor maisonette has a total floor area of 170m², which materially exceeds these national standards. However, the national provisions are relevant only in determining compliance with the space standards in new dwellings and have no other statutory meaning or use². As such, they should not be determinative in considering the appeal proposal, which involves existing rather than new dwellings.
7. With regard to overall size, however, the supporting text to Policy 8 states that properties that are de-converted to create family-sized homes should not exceed 200m² maximum unless it is demonstrably impracticable to do so. The proposal would result in a single dwelling with a floor area of some 239m², in excess of the maximum size.
8. I have had regard to the appellants' contention that the properties are in single ownership, that the proposal would restore the property to its original state as a single dwelling and that it is not practical to amalgamate only part of the basement flat. I acknowledge also that it may not be possible to extend the maisonette to create additional space. Nonetheless, the amalgamated dwellings would exceed the maximum size in circumstances where strategic and local policies seek to resist the loss of housing stock. As such, it has not in my view been demonstrated that it would be impracticable to create a family-sized home with three bedrooms by means other than amalgamating the two separate dwellings. In particular, given its existing size and the fact that it has three storeys, it has not been demonstrated that the internal space of the existing maisonette could not be reconfigured to provide this number of bedrooms.
9. The supporting text to Policy 8 also refers to exceptions to the maximum size of properties where this will ensure the protection of a heritage asset. While the appeal property is in a conservation area, I note that no external alterations are proposed and internal changes are not subject to control. As such, there is no basis to consider that this exception applies. The appellants indicate also that the flat is untenanted with no current intentions to let it. However, this current situation is not sufficient basis to overcome the conflict with the development plan where the permanent loss of a dwelling is involved.
10. The appellants contend that the maisonette currently lacks outdoor space, making it unsuitable as a family dwelling. However, I am unaware of any policy requirement that external space should be available in these circumstances, or in more practical terms, the proximity of public open space that could be used. Therefore, this consideration does not overcome the harm that would result from the loss of a residential unit.
11. The appeal property is located in an area at risk of surface water flooding and evidence is provided of recent instances where this has occurred. I

¹ Technical housing standards – nationally described space standard, March 2015.

² Ibid. Paragraph 2.

acknowledge that there may be recent decisions where bedrooms in proposed basements have not been permitted due to flood risk, although these are not specified. However, I have also had regard to the Council's response that it requires a flood risk assessment for proposals, including any mitigation measures, but this cannot be undertaken retrospectively for an existing dwelling. As such, it cannot assess the level of risk or whether any mitigation measures could be achieved to reduce the risk from flooding to an acceptable level. Given that such measures may be possible, this is not sufficient reason to overcome the policy conflict in this case.

12. It is also contended that the basement flat does not provide adequate living conditions as the kitchen does not meet the recognised standard for natural light. While I acknowledge this shortfall, it is not significant for a non-habitable room in a basement location. Moreover, there is no evidence to suggest that the flat has not provided adequate accommodation for previous occupants and, in this regard, I also note the Council's contention that this type of assessment should not be applied retrospectively to existing dwellings.
13. The supporting text to Policy H2 refers to circumstances where the requirements of large families are not being met. However, the text refers to the 'identified' requirements, which in my view relates to specific housing needs identified by the Council, rather than the personal circumstances involved in the appeal proposal. The fact that Policy H2 also refers to a 'sustained loss of homes' in the context of the Council having a greater than five year housing supply does not overcome the conflict with the development plan as a whole, particularly Policy 8 of the City Plan. Moreover, the policies relied upon are consistent with the National Planning Policy Framework's objective to significantly boost the supply of homes³.
14. Accordingly, while I have had full regard to these considerations raised by the appellants, for the reasons given they do not provide a sufficient basis to overcome the conflict with Policy 8 of the City Plan 2019-2040 or with Policies H1 and H2 of The London Plan 2021. Consequently, I conclude that the proposal results in a materially harmful effect on the supply of housing in Westminster.

Conclusion

15. It has been found that the proposal is contrary to development plan policies as it results in a materially harmful effect on the supply of housing in Westminster. There are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR

³ Paragraph 60.