



Appeal Decision

Site visit made on 20 October 2022

by D Barlow BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Appeal Ref: APP/K5600/W/22/3300995

115-117 Highlever Road, London, W10 6PW

- 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 Mizmo Investments Ltd against the decision of the Royal Borough of Kensington and Chelsea Council.
 - The application Ref: PP/22/00449 dated 21 January 2022, was refused by notice dated 7 April 2022.
 - The development proposed is the amalgamation of two residential units into a single family dwelling, rear extension at ground floor, loft extension, addition of rear dormer window and alterations to front façade, access and front garden. Includes retention of two existing flats.
-

Decision

1. The appeal is allowed and planning permission is granted for the amalgamation of two residential units into a single family dwelling, rear extension at ground floor, loft extension, addition of rear dormer window and alterations to front façade, access and front garden, including retention of two existing flats at 115-117 Highlever Road, London, W10 6PW in accordance with the terms of the application Ref PP/22/00449 dated 21 January 2022, subject to the following conditions:
 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
 2. The development shall not be carried out except in complete accordance with the details shown on submitted plans P0200; P1400; P1401; P1402; P1403; P1500; P1501; P1600; P1601; P1602; P2000 rev B; P2001; P2002; P2003; P2100 Rev A; P2101; P2200; P2201; P2202.
 3. Prior to of the erection of the privacy screens to the terraces, and the installation of the proposed front doors and side gate entrance at 115 and 117 Highlever Road, details shall be submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details and thereafter maintained.
 4. Prior to the installation of the railings to the roof terrace, external windows, doors and dormer windows, details shall be submitted to and approved in writing by the Local Planning Authority. The work shall be carried out in accordance with the approved details and thereafter maintained.
 5. Prior to the construction of any external surfaces, details of the materials to be used shall be submitted to and approved in writing by the Local Planning

Authority. Development shall be carried out in accordance with the approved details.

6. Prior to the first use of the single family dwelling at 117 Highlever Road, the side ground level access door currently serving the ground floor level flat shall be permanently fixed shut and be so maintained thereafter.

7. The single family dwelling hereby approved shall not be occupied until the reconfigured parts of the front communal entrance area serving the existing residential block of flats at Nos. 115 & 117 Highlever Road is made available as a shared facility for the use of occupiers of the retained flats at No. 115 Highlever Road and the new dwelling house at No. 117 Highlever Road.

Main Issue

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

Reasons

3. The host property is currently configured as 4 self-contained flats with a communal entrance, having previously been converted from a pair of two storey semi detached houses. The flats are within the Oxford Gardens-St Quintin Conservation Area, characterised by two and three storey dwellings in a mature tree lined setting. There is mostly on street parking and the properties are set back from the street with enclosed gardens.
4. Policy CH1 of the Local Plan 2019 (LP) seeks to increase housing supply and resist the loss of residential units through amalgamations of existing or new homes unless the amalgamation would result in the net loss of one unit only and the total floorspace of the new dwelling created would be less than or equal to 170 sq m gross internal area (GIA).
5. The proposal seeks to amalgamate the 2 flats at No 117 into a single dwelling, therefore the first criteria of LP Policy CH1 b. is complied with, in that one residential unit would be lost. In terms of the floor area of the new unit, there is dispute as to whether the resultant dwelling would be larger than the 170 sq m GIA set out within the policy.
6. The appellant has calculated that the new dwelling, with the proposed extensions and excluding the communal front porch area would have a floor area of 166.8sq m. I have no substantive evidence before to demonstrate that these calculations are not accurate.
7. The area of debate is what is currently a front porch with a glazed roof which currently provides communal access for the four flats. The proposed scheme sub-divides this area, providing what is described as an external store for storage of bikes amongst other things and a communal entrance and stairs for No 115 Highlever Road. The appellant has calculated the store as just over 2 sq m to serve the new dwelling and the Council have calculated this to be 2.2 sq m. Several third party calculations have measured the area at 7.3 sq m.
8. Taking the appellant's and Council's calculation of the size of the porch/storage area, the resultant extended dwelling falls within the threshold set out within LP Policy CH1 b. However, taking the calculation of interested parties, it is clear

that the threshold would be exceeded, with reference being made to the new dwelling having a GIA of 174.7m².

9. I note the suggestion that the store should be included in the GIA calculations, however the appellant has indicated that the storage area would be available for the occupiers of No 115 as well as for the new dwelling. It would be unlikely that the entrance serving No 115 would be used by the occupiers of No 117, as the new house would have a separate entrance via a new front door. The use of the porch/storage area can be controlled by conditions, as well as the blocking up of the side door to No 117, to ensure the use is communal, which the appellant is happy to accept. It would not therefore be reasonable to apportion the whole space to No 117 Highlever Road alone. I also note the suggestion that the RICS GIA definition should be applied in this case, however Policy CH1 makes no reference to this and I am required to determine the appeal against the Development Plan.
10. Given the above, and subject to the use of the current porch remaining in communal use for the occupiers of No 115 as well as the occupiers of No 117, I conclude that the proposal would fall within an exception for the amalgamation of residential units and provide a family sized dwelling. The proposal would not harmfully effect the supply of housing in the Borough and accords with the aims of LP Policy CH1 which seeks to control amalgamations of units and to increase the supply of housing.
11. The Council state the proposal would be in conflict with Policy H1 and H8 of The London Plan (March 2021). Policy H1 relates to increasing land supply and Policy H8 relates to the replacement of loss of existing housing with new housing. As this is a proposal for an amalgamation of two flats and for conversion and extension, I see no conflict with these London Plan Policies which are strategic in their purpose.

Other Matters

12. Concerns have been expressed over the size and expanse of the rear extension and accompanying party wall which would lead to possible encroachment and a loss of a sense of place. The 2 storey part of the extension would be set away from the windows of nearby properties and whilst the outlook from the windows would change, I am satisfied that the extension would not be unduly enclosing, overbearing or lead to reductions in light to the degree that would be harmful to nearby occupiers' living conditions. The party wall has also been reduced in height and would not have an unacceptable impact on the living conditions of adjacent occupiers. The appellant has produced a report to confirm that whilst slight reductions in daylight would occur to neighbouring windows, they are within the recommendations set out in the Building Research Establishments Guidelines and I have no evidence provided to refute that report. The rear extension and dormer window proposed would have no unacceptable impact on the living conditions of nearby occupiers.
13. The proposed extension has been setback and reduced in height and its rear projection would be in line with several other extensions approved on Highlever Road in this part of the Conservation Area. It would be sub-ordinate to the host dwelling. The proposal would result also see a front door being reinstated on the front elevation of No 117. Accordingly I find that the proposal would respect the character and appearance of the area and would preserve the character and appearance of the Oxford Gardens-St Quintin Conservation Area.

It is noteworthy that the Council raised no objection in respect of these matters.

14. There have been several observations and objections from neighbouring occupiers, the majority relating to the area of the front extension. I have dealt with that issue above.
15. Representations have also been made as to the possible risk of personal injury to the private rights of adjoining property owners, however no evidence has been provided to back up this claim and this matter does not alter the conclusions I have reached.
16. Representations have also expressed concern about the change to the application form proposal in the Appeal Documents which could set a precedent for further applications to further sub-divide No 115 Highlever Road at a future date. My decision has been based on the proposal submitted as on the application form, and in any event I have no other proposals before me.

Conditions

17. I was supplied with suggested conditions by the Council, however I have removed the proposed Condition 4 on Code of Construction Practice and Condition 5 on Flood Risk Assessment, as given the nature and scale of the development proposed, they are neither reasonable nor necessary having regard to the guidance on conditions within the National Planning Policy Framework and the Planning Practice Guidance.
18. Condition 1 is as required by the 1990 Town and Country Planning Act 1990; Condition 2 is necessary for certainty; Conditions 3-5 are to protect the character and appearance of the area; Conditions 6 and 7 are to ensure the size of the dwelling is restricted to the tolerances allowed for within LP Policy CH1.

Conclusion

19. For the reasons given above, and having regard to all other relevant considerations, the appeal is allowed.

D Barlow

INSPECTOR