



Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2024

Appeal Ref: APP/K5600/X/24/3343466

18 Astwood Mews, London SW7 4DE

- 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 Ashkin Mittal against the decision of the Royal Borough of Kensington and Chelsea.
 - The application ref CL/24/00663, dated 31 January 2024, was refused by notice dated 27 March 2024.
 - The application was made under section 192(1)(a) and (b) of the Town and Country Planning Act 1990 as amended.
 - The use/development for which a certificate of lawful use or development is sought is described as 'Minor internal alterations to allow amalgamation of Ground Floor flat with flat above'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form indicates that the certificate sought relates to building operations and that no change of use is involved. However, given the description of the proposal, the Council's decision and the matters raised at appeal, it is clear that the appellant seeks a certificate relating to the scheme as a whole, including the use, and not just the building works. In fact, the dispute relates to the use rather than the internal works proposed.
3. In view of the nature of the dispute, it was not necessary for me to visit the site and I did not do so.

Main Issue

4. The main issue is whether the Council's decision was well-founded. This turns on whether, on the date of the LDC application, the proposal amounted to 'development', as defined by section 55 of the Town and Country Planning Act 1990 (as amended).

Reasons

5. Section 55 states that "*development,*" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
6. At section 55(3)(a) it adds that, for the avoidance of doubt, '*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*'. There is no corresponding clarification for the reverse situation, where two or more dwellinghouses are subsequently used as

a single dwellinghouse, as proposed in this case. That situation was, however, considered by the High Court in *Richmond upon Thames LBC v SSETR [2001] JPL 84*, which concerned an appeal decision relating to the proposed amalgamation of 7 flats to form a single dwellinghouse. From that judgement it is clear that whether or not there is a material change of use in those circumstances is a matter of fact and degree and requires the planning consequences of the proposed change to be considered. The extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether there has been a material change of use.

7. Here, the Council argues that there would be a material change because the amalgamation of the units would result in a loss of smaller residential units at the property. The Council states that there is a shortage of housing in terms of overall numbers. It also argues that the loss of smaller units in particular makes it harder for people, particularly young people, to live and work in London. This is said to run counter to the aims of Policy HO1 of the Council's current local plan, although I am mindful that this was not the adopted plan when the LDC application was made.
8. The local plan in force at that time included Policy CH1, part (b) of which stated that the Council would '*Resist the loss of residential units through amalgamations of existing or new homes unless the amalgamation will result in the net loss of one unit only and the total floorspace of the new dwelling created will be less than or equal to 170 sq m gross internal area (GIA)*'. The Council's claim that the floorspace here exceeds the threshold in the policy is not disputed.
9. Ensuring an adequate supply of housing is a widely-recognised planning objective, addressed extensively in national policy. Here, the Council had identified a need, backed up by adopted policy, to manage the loss of units by amalgamation. That, says the Council, is necessary to allow it to meet its housing targets. Consequently, it seems to me that the reduction in the number of residential units in this instance would have been a material change, since it would have a bearing on the delivery of a legitimate and recognised planning objective. Thus, it would amount to 'development' within the meaning set out in s55 of the Act. No relevant permitted development rights have been identified and so the proposed change would not have been lawful on the date of the application.
10. The proposed amalgamated unit would no doubt meet a need and the appellant refers to deficiencies of the existing arrangement. However, the question for me to determine is not whether the proposal has merit, but rather whether there would be a material change of use.
11. The appellant states that there were previous, unimplemented, approvals for amalgamation of the flats, but that does not alter my view that, at the time of the LDC application, the proposal was a material change of use requiring planning permission.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was well founded. I will exercise

accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended) and dismiss the appeal.

Peter Willows

INSPECTOR