

Appeal Decision

Site visit made on 28 November 2016

by **Philip Lewis BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 May 2017

Appeal Ref: APP/K5600/W/16/3158113

Flat 74 and 80 St Mary Abbot's Court, Warwick Gardens, London W14 8RD

- 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 Mrs Soyar Hopkinson against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/16/02457, dated 26 April 2016, was refused by notice dated 20 July 2016.
 - The development proposed is described as 'change of use from two residential flats to one residential flats'.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from two residential flats to one single residential flat (amalgamation of units) at Flats 74 and 80 St Mary Abbot's Court, Warwick Gardens, London W14 8RD in accordance with the terms of the application, Ref PP/16/02457, dated 26 April 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan 629-00-00; existing Flat 74 floor plan 629-01-01; existing Flat 80 floor plan 629-01-02; proposed Flat 74 floor plan 629-02-01 and proposed Flat 80 floor plan 629-02-02.

Procedural matters

2. The main parties have referred to the Stanhope Gardens decisions¹ and subsequent High Court Judgement². Given the similarities in respect of the current appeal and the Stanhope Gardens Case, I have considered carefully the original decision and the Judgement and the party's comments in respect of them.
3. I have used the description of development as set out in the Council's decision notice in my decision as that accurately describes the proposed development.

Main Issue

4. The main issue for the appeal is the effect of the proposal on supply and choice of housing in the Royal Borough of Kensington & Chelsea.

¹ APP/K5600/W/15/3028100 and APP/K5600/X/15/3028049

² [2016] EWHC 1785 (Admin) CO/6442/2015

Reasons

5. The appeal proposal relates to two flats, one above the other, within a block containing Flats 67 to 112 St Mary Abbot's Court on Warwick Gardens. It is proposed that the flats are amalgamated to form a single dwelling over two floors.
6. The parties do not dispute that the Council can demonstrate a five year supply of deliverable housing sites, with the Council's Annual Monitoring Report 2015 (AMR) indicating that the five year housing supply requirement is met marginally, with a buffer of 18 units. It is also not disputed that the amalgamation of dwellings in the Borough has given rise to a loss of dwelling units. I have considered that the change in the Council's position regarding planning permission for amalgamations may give rise to such losses declining in the future. However, the figure of about 50 dwellings per annum over the five year period as set out by the Council is not an unreasonable working assumption for such losses going forward, given it is based on the data for amalgamations set out in the AMR, and the number of planning applications received since August 2014 for such development. Consequently, on the basis of the above, I agree that further residential amalgamations are a factor for consideration in whether Council achieves the required level of housing supply.
7. Firstly, I note that the AMR sets out that net residential approvals for 2013/14 and 2014/15 significantly exceed the annual dwelling requirement for those years, as does the recorded level of net residential completions for 2014/15. Additionally, the appellant has referred me to data from the Department of Communities and Local Government for 2015/16 which indicates a continued rate of completions in excess of the dwelling requirement. This positive performance lends support to the argument that the Council is on course to meet its housing targets, taking into account the effect of ongoing losses through amalgamations.
8. The appellant has referred me to the recent Drayton Gardens appeal decisions³, which relate to the amalgamation of two residential units into a single unit. In those decisions, the Inspector concluded from the evidence before him which was tested at an Inquiry that the housing supply position was such that there is 'headroom' of 618 units, rather than the 18 as stated in this appeal, within which to accommodate the 250 amalgamations anticipated by the Council over the period.
9. I have considered the Council's concerns regarding the Inspector's findings in the Drayton Gardens decisions, that the supply of housing as set out in the AMR includes 46 dwellings per annum from returning vacancies and the advice in the Planning Practice Guidance (PPG) regarding the contribution of empty homes towards meeting housing need. I agree that up-to-date housing requirements and the deliverability of sites to meet a 5 year supply will have to be thoroughly considered and examined within the local plan examination process and that the degree of scrutiny cannot be replicated in the course of determining planning applications. However, I understand that the Council did not challenge the assumptions regarding vacancies during that appeal, or indeed the appeal decision and although I do not have the same detailed evidence before me in this case as my colleague in the Drayton Gardens appeals, I have not been convinced, on the balance of the evidence before me,

³ APP/K5600/C/16/3143934 and APP/K5600/X/16/3136227 dated 4 November 2016

that I should reach a different overall conclusion regarding the effect of the appeal proposal on the supply of housing in the Borough.

10. Consequently, given that the Council can demonstrate a 5 year supply of deliverable housing sites and the evidence regarding the recent housing performance and supply, I do not find that the proposed development would have an unacceptable effect on the supply of housing in the Royal Borough of Kensington & Chelsea.
11. In respect of housing choice, the Council has stated that the local need for smaller housing units has increased since the Local Plan was adopted, with the Council's SHMA (December 2015) indicating that there is broadly a 50/50 split between the need for 1 or 2 bedroom units and 3 and 4 bed units. The Council has referred me to the Mayor's Housing SPG 2016 (SPG) which sets out that in some neighbourhoods, especially in parts of central London, re-conversion of smaller private units into larger dwellings can reduce capacity to meet the requirements of small households and may be resisted to address identified housing needs.
12. However, whilst there are unmet housing needs across the range of sizes of housing in the Borough, and having taken into consideration the SPG, I do not consider that the Council has demonstrated that there is any more compelling housing need for smaller units in the Borough than for larger units. Furthermore, in this regard I note the evidence of the appellant that whilst the need for 1 and 2 bedroom dwellings amounts to 52%, such units represent 72% of the existing stock. Additionally, I have taken into account that 30% of the objectively assessed need is for 3 bed dwellings whilst 17% of the existing stock comprises 3 bed dwellings, which indicates an imbalance between need and supply.
13. I have considered the comments made in respect of affordability of the present flats compared to a larger property and the examples of property values in the area. I have not been convinced however that this specific scheme would have a significant effect upon affordability of dwellings in the Borough. I note the comments regarding the ownership and use of larger units by foreign investors, but have little evidence before me in this regard.
14. The Council has referred me to a number of appeal decisions⁴ in respect of the amalgamation of residential units, made either prior to or after the Stanhope Gardens decision which I have had regard to in making my decision. I do not know however what information was before the Inspectors and cannot determine whether the appeals cited are directly comparable with the proposal before me.
15. I have considered the appellant's references to the emerging policy as set out in the Local Plan Partial Review. This document in Policy CH1 includes that the loss of residential units through amalgamations of existing or new homes will be resisted 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 square metres gross. The appeal proposal falls below this threshold. Whilst the Local Plan Partial Review is at Examination, in accordance with

⁴ APP/K5600/W/15/3010078; APP/K5600/W/15/3030628; APP/K5600/W/15/3006728; APP/K5600/W/15/3133918; APP/K5600/W/15/3049301; APP/K5600/W/15/3134675; APP/K5600/W/15/3137970; APP/K5600/W/15/3141343; APP/K5600/W/16/3150429; APP/K5600/W/16/3149276; APP/K5600/W/16/3151240; APP/K5600/W/16/3149717; APP/K5600/W/16/3153809.

paragraph 216 of the National Planning Policy Framework (the Framework), given the limited evidence before me, I give minimal weight to the emerging policy. I have also had regard to the appeal decision referred to be by the appellant relating to 15 Cheyne Place (APP/K5600/W/16/3165766) dated 10 April 2017.

16. To conclude on this matter, I find that the appeal proposal would not have an unacceptable effect on the supply and choice of housing in the Borough. The Royal Borough of Kensington and Chelsea Consolidated Local Plan 2015 (Local Plan) Policy CH1 is concerned with housing targets being met. Policy 3.3 of the London Plan 2015 (London Plan) is concerned with increasing housing supply and recognises the pressing need for more homes in London and includes that Boroughs should seek to achieve and exceed the relevant minimum borough annual average housing targets. In isolation, the appeal proposal would give rise to the loss of one residential unit, however, from the evidence before me, I consider that the appeal proposal would not prejudice the Council's ability to meet its housing targets overall and therefore does not conflict with Local Plan Policy CH1 and London Plan Policy 3.3.
17. Local Plan Policy CH2 is concerned with housing diversity and I do not consider that the appeal proposal would conflict with the policy, in that it would reflect the varying needs of the Borough and has taken into account current evidence in relation to housing need which indicates an imbalance between need and supply for 3 bedroom dwellings.
18. London Plan Policy 3.14 is concerned with the maintenance of the existing housing stock. It sets out in 3.14B that loss of housing, should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace. Whilst the appeal scheme would not give rise to a loss of floorspace from residential use, it clearly involves the loss of a residential unit and I consider that the proposal conflicts with this policy in that it gives rise to a loss of a unit. Additionally, although Local Plan Policy CH3 is not included within the reason for refusal, the parties have made reference to it in the appeal documents. Local Plan Policy CH3 is concerned with the protection of residential uses and includes that the Council will ensure a net increase in residential accommodation, through protecting market residential use, except for in specified circumstances, which the appeal proposal does not meet.
19. Saved Policy H17 of the Royal Borough of Kensington and Chelsea Unitary Development Plan 2002 (UDP) seeks to resist the loss of small, self-contained flats with one or two habitable rooms, and I note that Flat 74 has 2 habitable rooms and Flat 80 three. Therefore, the proposal conflicts with the policy. However, given that the policy dates from 2002, I shall consider it in the context of the more recent evidence regarding housing need and mix.
20. In regards to the development plan, whilst I find conflict with Local Plan Policy CH3 and London Plan Policy 3.14 in that a unit of residential accommodation would be lost, and saved UDP Policy H17, the appeal proposal would not prejudice the Council's ability to meet its housing supply targets or give rise to unacceptable harm in regards to housing choice. Indeed, it would assist to address the imbalance in the housing stock in regards to 3 bedroom dwellings. Consequently, I do not consider that the appeal proposal conflicts with the development plan when taken as a whole. Additionally I apply minimal weight

to the provisions of the emerging development plan which weigh in favour of the appeal scheme.

Other matters

21. I have considered the comment that the proposed development could harm the structure of the block, but there is no substantive evidence that the proposed development would give rise to structural harm and in any event, structural matters are subject to other Regulations and damage to third party property would be a civil matter. I have also taken into account the comment that the proposed development could lead to noise, dust and general upheaval to the detriment of other residents. I consider however that given the limited extent of the internal works proposed, this would not give rise to unacceptable harm to the living conditions of neighbouring occupiers. Additionally, it has been stated that should asbestos be found at the premises, there would be a risk of contamination to the detriment of the health of other residents, However, I have little substantive evidence in this regard and asbestos removal is covered under other legislation.
22. On the balance of the evidence before me I find the scheme acceptable and do not consider that it would set an unwelcome precedent. I note that there are other 3 and 4 bedroom units in the block but that does not lead me to a different conclusion.

Conditions

23. I have applied conditions in regards to timescale and specifying the approved plans as that provides certainty.

Conclusions

24. For the above reasons and having considered all matters raised, I conclude that the appeal should be allowed.

Philip Lewis

INSPECTOR