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## Appeal Decision

Site visit made on 29 October 2012

**by Chris Hault BA(Hons) BPhil MRTPI MIQ**

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

**Decision date: 8 November 2012**

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**Appeal Ref: APP/X5990/X/12/2173590**

**516 Sherbrooke House & 517 Cranbrooke House, Monck Street, London SW1P 2AD**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Grand Victory Holdings against the decision of City of Westminster Council.
- The application Ref 12/00691/CLOPUD, dated 23 January 2012, was refused by notice dated 16 March 2012.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
- The use for which a LDC is sought is described as "the amalgamation of 516 Sherbrooke House and 517 Cranbrooke House into a single residential unit...together with the installation of windows on the eastern elevation".

**Summary of Decision: The appeal is dismissed.**

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### Preliminary matters

1. The appeal relates to two top-floor flats in separate but adjoining blocks at the junction of Monck Street and Horseferry Road. Sherbrooke House is accessed from Monck Street where its address is no. 24. Cranbrooke House is separately accessed from Horseferry Road and its address is listed on the appeal form as no. 84. I adopt the address as on the application form. I base my decision on plans of the proposal submitted with the application.<sup>1</sup>

### Background and main issue

2. The proposed amalgamation would result in one large flat covering the whole of the top floor of the adjoining blocks. The appellants argue that this does not amount to development for purposes of s55 of the 1990 Act. A proposal for the sub-division of one unit into two or more is classed as development under the provisions of s55(3)(a) of the 1990 Act but there is no express provision for a proposal which reverses this process i.e. involves a reduction in the number of units. Whether it amounts to development, as a material change of use, falls to be determined on the basis of fact and degree.
3. In the case of the windows, the appellants argue that their installation does not amount to development in so far as the provisions of s55(2)(a)(ii) class as not involving development for purposes of the 1990 Act alterations of a building which do not materially affect its external appearance.

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<sup>1</sup> See location plan; plan ref. A1/2639/02 Rev A - floor plan; and plan ref. A1/2639/03 Rev A - sections and elevation.

4. The Council has refused to grant a LDC in relation to both elements. On the amalgamation of the units, it relies on the case of *LB of Richmond upon Thames v SSETR and Richmond upon Thames Churches Housing Trust* [2001] JPL 84 ("*Richmond*"). This is authority for the view that, despite the proposal being for a change from one form of dwellinghouse use to another, a material change of use occurs where the existing use fulfils a legitimate or recognised planning purpose. On the windows, it argues that their installation amounts to a change in the exterior appearance of the building. On this element, the appellants rely on the principles established by the case of *Burroughs Day v Bristol City Council* [1996] 1 PLR 78 ("*Burroughs Day*"). Having regard to the provisions of s195 of the 1990 Act, the main issue for me to consider is whether the Council's decision to refuse a LDC was well-founded.
5. I deal firstly with the windows before going on to consider the substantive issue in the appeal relating to *Richmond*.

## Reasons

### Windows

6. In determining whether a proposal is covered by the provisions of s55(2)(a)(ii), *Burroughs Day* establishes that what has to be affected is the external appearance, not the exterior of the building. The change has to be material and be judged against the building as a whole, not a part of it taken in isolation. It must be visible from normal vantage points, although no distinction is made between public and private views.
7. The eastern elevation faces a seven-storey office block, part of the Home Office. Since the blocks are five-storey, normal vantage points are not limited to public views from the street. Employees on the upper floors of the Home Office building have views in which the top floor is a prominent component. That said, a "privacy screen" is in place at top-floor level. It consists of a row of obscure-glazed panels covering the width of both blocks. While much of the elevation is blank, there are some windows at lower levels which also appear to be obscure-glazed, no doubt in the interests of the privacy of occupiers. The screen appears to be a permanent feature and integral to the design of the building. I see no reason, on the evidence before me, to suppose that it might be removed at some point in the future.
8. Any installation of new windows would take place behind the screen and would not be visible in views from the Home Office building. It would have no discernible effect on the external appearance of the blocks, irrespective of whether it would change their external fabric. Applying the principles established in *Burroughs Day*, I conclude that no material change would occur to their external appearance and that any installation falls under s55(2)(a)(ii) of the 1990 Act as not amounting to development for purposes of the Act.

### Amalgamation of units

9. The judgment in *Richmond* builds principally on the authority of *Panayi*<sup>2</sup> in a case involving the proposed conversion to a single dwelling of a property previously converted to seven flats. Mr Christopher Lockhart-Mummery, sitting as a Deputy Judge, made a clear finding that the Inspector had erred in law, in allowing a LDC appeal, in not addressing wider planning considerations such as

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<sup>2</sup> *Panayi v Secretary of State for the Environment* [1980] 50 P&CR 109

the effects in policy terms of a loss of a number of small residential units. In this case, only one residential unit would be lost and it is a high-value penthouse flat with either two or three spacious bedrooms. However, the Council cites Policy CS14 of its Core Strategy for Westminster, adopted in 2011, which maintains an express and unqualified presumption against any proposals which would result in a reduction in the number of residential units. The proposal would plainly conflict with the letter of this policy.

10. The Council explains that housing development in Westminster is typically from small sites. Its Core Strategy indicates that 93% of sites yield fewer than 10 units while the Council also says that, historically, around 80% of housing is delivered from windfall sites. The Council's Annual Monitoring Report for 2011 shows that, over the period 2005/06 to 2010/11, housing delivery just about kept pace with the annual target set by The London Plan. Policy CS14 takes forward the thrust of Policy H1 of the Westminster City Council Unitary Development Plan 2007 in aiming to prevent a loss of residential units. I set aside any issue as to whether it has or has not been saved. The more recently-adopted Policy CS14 differs from it in one significant respect in that it introduces the express presumption against proposals resulting in a loss of units which I have highlighted.
11. The proposal relates to generously-proportioned units in a desirable location in the heart of Westminster. In terms of site-specific effects (levels of activity, parking pressures etc.), there would be little discernible change. Unlike *Richmond*, no loss of a small low-cost unit is involved nor, plainly, does the proposal concern affordable housing. Other cases of a conversion to a single dwelling where the Council has taken a similar stance appear to have mainly involved a greater reduction in the number of units. There would be no net loss of residential floorspace or in terms of the number of bedrooms.
12. However, the Council's policy stance does not relate to a need to safeguard a particular form, size or value of unit but applies across the board. The Council is clearly of the view, given high land values, the pattern of housing delivery and constraints on delivery from larger sites, that there is a need to "micro-manage" proposals which result in a reduction in its housing stock. That is reflected in the wording of Policy CS14. Set against such a policy background, the loss of even one residential unit has the potential to impact on a legitimate and recognised planning purpose, that of a need to protect the existing housing stock in line with giving priority to residential use. Both units are capable of providing family housing in their present form.
13. The appellant refers to difficulties experienced in sourcing larger penthouses of this sort, which have necessitated this novel approach to the problem, and to the particular contribution to housing supply that a five-bedroom penthouse could therefore make. He questions (in response to the Council's stated concerns) what possible effect on affordable housing there could be from the proposal. However, these are arguments which need to be made in the context of a planning application, raising material considerations to set against any strict conflict with Policy CS14. The evidence indicates that there are arguments both for and against the proposal and that there is a balance to be struck between planning policy and other considerations. That such arguments are capable of being advanced, irrespective of any judgment on the planning merits, lends weight to my view of the materiality of the change of use.

### **Conclusions**

14. In the light of this, and on the basis of fact and degree, I conclude that the proposal to reduce the number of residential units would amount to a material change of use and therefore to development for purposes of s55 of the 1990 Act, for which planning permission should be sought. Following *Richmond*, and for the reasons I have given, the need to protect all existing residential units in Westminster fulfils a legitimate and recognised planning purpose. The loss of even one unit would, in the light of the provisions of Policy CS14, raise considerations which ought properly to be addressed in a planning application.
15. I therefore conclude that the Council's refusal to grant a LDC in respect of the proposed amalgamation of the residential units at nos. 516 Sherbrooke House and 517 Cranbrooke House was well-founded and that the appeal should fail. I shall exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

### **Decision**

16. The appeal is dismissed.

*C M Hoult*

INSPECTOR