



Appeal Decisions

Site visit made on the 11 December 2012.

by **David Murray BA (Hons), DMS, MRTPI**

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

Decision date: 20 December 2012

Appeal A - ref. APP/X5990/X/12/2175770 23 and 24 Ennismore Gardens Mews, London, SW7 1HY.

- 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 lawful development certificate (LDC) by the City of Westminster Council.
- The appeal is made by Mr and Mrs Hussain.
- The application Ref. 12/01395/CLOPUD, dated 13 February 2012, was refused by notice dated 16 April 2012.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use or development for which a lawful development certificate is sought is the amalgamation of 2 dwellings to form a single dwelling via internal alterations only.

Summary of Decision : The appeal is dismissed.

Appeal B - Ref: APP/X5990/A/12/2175764 23 and 24 Ennismore Gardens Mews, London, SW7 1HY.

- 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 Hussain against the decision of the City of Westminster Council.
- The application Ref.12/01031/FUL, dated 03 February 2012, was refused by notice dated 11 April 2012.
- The development proposed is the amalgamation of two dwellinghouses to form a single dwelling and addition of glazing bars to No. 24 and replacement of Juliet balcony to No. 24.

Summary of Decision: The appeal is allowed in part and dismissed in part.

Appeal A

Preliminary matters

1. For the avoidance of doubt, I should explain that the planning merits of any future use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
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Main Issue

2. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

3. The proposal is to convert two Class C3¹ dwellings into one dwelling. This would involve carrying out some internal work to break through the party wall at both ground and first floor level, and in particular form a larger dining room spreading across both properties. Also, both front doors to the mews would be retained as entrances to the single dwelling.
4. The critical question is whether the proposal involves development which requires planning permission. Section 55 of the Act sets out what constitutes development and this may be paraphrased as the carrying out of building operations or making a material change in the use of the building or land. However, subsection 55(2) clarifies that the carrying out of improvements or other alterations which only affect the interior of the building or do not materially affect the external appearance of the building, do not involve development.
5. In this case, I find that the proposed works to bring about amalgamation only affect the interior of the two houses and do not materially affect the external appearance of either. Therefore, the sole issue is whether a material change of use is involved.
6. The parties set out a number of court decisions which are relevant. There are a number of cases quoted where it was held that the joining of two dwellings to form one did not constitute a material change of use. However, these cases were decided before *London Borough of Richmond V SSETR and Richmond upon Thames Churches Housing Trust, QBD, 28.3.2000*. In this latter case, the Court adopted the proposition that 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. The Council refer to the provisions of policy CS14 of the Core Strategy (Jan. 2011) as being a key planning purpose and therefore a material consideration to the issue of whether a material change of use is involved. The policy indicates that as part of the "optimising of housing delivery" all residential uses, floor-space and land will be protected and that proposals that result in a reduction of the number of residential units will not be acceptable except where, (amongst other things), a converted house is being returned to a family size dwelling or dwellings.
8. In this case, although the basic use of the properties will remain as Class C3 residential, there will be a loss of one residential unit, and I consider this effect on the existing housing stock to be a critical factor in assessing whether the proposed change is a material one. In the Richmond case, the Judge observed that "In an age where, for social and economic reasons, there is more and more need for relatively low cost units of small accommodation it is not surprising that many planning policies in development plans and other policy

¹ As defined in the Town and Country Planning (Use Classes) Order 1987, as amended.

documents up and down the land seek to prevent the amalgamation of such units into larger units of residential accommodation. If [the Secretary of State as Respondent] is right, it would have profound implications for the practical application of such policies."

9. Further, it appears to me that the properties in the Mews are relatively small two storey properties which have probably been converted from stables / coach houses or garaging for the much grander properties in Ennismore Gardens. While an amalgamation of two dwellings into one may make little change to the external appearance of the buildings, the change to the character of the Mews could be significant with less people living there and less activity particularly if there were a number of amalgamations. Further, it could reasonably be expected that a consolidation of larger properties would change the character of the area through a different housing mix and the inclusion/exclusion of different communities.
10. A number of factors or 'propositions' are raised by the appellant in favour of his case, but these appear to me to be related to the planning merits of the case, rather than the assessment as to whether there is a material change of use, and I will deal with them under Appeal B.
11. Overall, I find as a matter of fact and degree on the circumstances of this case, that the proposal would result in a material change of use by the amalgamation of two houses into one as such development would impact on a recognised planning purpose by the affect it would have on the existing stock of dwellings, as well as potentially change the character of the area.

Conclusions on appeal A

12. For the reasons given above, I conclude that the Council's refusal to grant a lawful development certificate was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Appeal B

13. This appeal under s78 of the Act is made without prejudice to the appellant's claim under Appeal A that the amalgamation of the two dwellings into one is not development that requires planning permission but I have found that this work does constitute development. In addition, as well as seeking approval for the conversion, the scheme also seeks to alter the appearance of No.24 by adding glazing bars to the windows on the front elevation and replacing the Juliet balcony with one to match the existing balconies on No. 23.

Main issues

14. The main issues are the effect of the amalgamation of the two dwellings into one on the supply of housing in the Borough and the effect of the external alterations on the character and appearance of the area.

Background

15. No's 23 and 24 are two storey residential properties located in a Mews street of similar properties to the rear of larger houses fronting Ennismore Gardens. The properties form part of the Knightsbridge Conservation Area. The

submitted plans show that No. 23 has a kitchen, living room and small toilet on the ground floor, with three bedrooms and two bathrooms above, and in total comprises about 100 sq. m in floor area. No.24 has a single space living room at ground floor with a kitchen off, and a single bedroom at first floor with a bathroom off, down steps. The size of this property is about 65 sq. m floor area. The submitted plans show the proposed amalgamation would result in a different configuration with a larger dining room extending across both properties, and the formation of 4 bedrooms and an en-suite.

Supply of Housing

16. I have set out the provisions of policy CS14 of the Council's Core Strategy in paragraph 7 above. In essence, the policy stresses that residential use is the priority across Westminster and indicates that all residential uses, floorspace and land will be protected and that proposals that result in a reduction in the number of residential units will not be acceptable, except where they meet stated exceptions. One of these exceptions is where a converted house is being returned to a family sized dwelling or dwellings.
17. The appellants say that this exception should apply in this case, as a proper sized family dwelling is proposed and that neither of the existing houses is suitable for true family accommodation. However, I agree with the Council that the overall floorspace of each dwelling means that each unit is suitable for some form of family use, albeit on a limited basis and probably requiring some internal reconfiguration. Further, the dwellings have existed for many years and are not a 'converted house' as referred to in the policy.
18. Overall, on the policy issue I find that the proposal would result in the loss of a residential unit and there is a general presumption against this in the development plan.
19. The National Planning Policy Framework (the Framework) stresses the need to boost significantly the supply of homes and says that policies should seek to deliver a wide choice of high quality homes and create inclusive mixed communities. Local policies should be tailored to meet local demand through a robust evidence base. Although the Core Strategy predates the Framework, the policy approach advanced in CS14 is consistent with it.
20. The appellants say that the Council has met and exceeded the delivery of new housing units recently and with predicted completions on smaller sites are likely to comfortably exceed the housing requirement through the Plan period. Nevertheless, the housing target is for new housing to be added to the existing supply. Although the actual loss of housing from the stock is very limited, as set out in the Annual Monitoring Report (AMR), this could change significantly if amalgamations of smaller units into larger ones were financially beneficial to owners and developers. Further, the appellants' analysis of overall housing numbers does not demonstrate a clear housing need for much larger units based on evidence of demographic and local trends and housing demand, as set out in paragraph 50 of the Framework.
21. The appellants also refer to other decisions locally where amalgamations of properties have been proposed and in particular at 78 St. Georges Square. However, the Council say that this scheme fell within the exception under policy CS14 as it was, at least in part, a 'deconversion' of a family property

already put to flats. I therefore consider that the circumstances are not similar to those of the current appeals.

22. Bringing all of these aspects together, I find that these other considerations do not outweigh the policy presumption in the development plan that I have set out in paragraph 18 above. I have also taken into consideration whether the appellants have any personal family circumstances which may justify an exceptional case, but the appellants just say that they purchased both properties "with the sole purpose of creating a family home, which is the provision of accommodation of sufficient size for family occupation". Although an understandable intention, this does not amount to an exceptional case.

Character and appearance

23. Although I have found that the internal alterations proposed in the amalgamation scheme do not materially affect the external appearance of the building, the alterations proposed to the glazing bars and the Juliet balcony do. Nevertheless, I am satisfied that these minor changes preserve the character and appearance of this property and do not harm its setting in the Conservation Area. As such these aspects of the proposal are acceptable. The Council do not recommend any conditions on this aspect and I conclude that none are necessary.

Overall conclusion

24. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

Formal decisions

Appeal A - ref. APP/X5990/X/12/2175770

25. I dismiss the appeal.

Appeal B - Ref: APP/X5990/A/12/2175764

26. The appeal is dismissed insofar as it relates to the amalgamation of two dwellinghouses to form a single dwelling and planning permission is refused for that development. The appeal is allowed insofar as it relates to the addition of glazing bars to No. 24 and replacement of Juliet balcony to No. 24, and planning permission is granted for this part of the development at 24 Ennismore Gardens Mews, London, SW7 1HY, in accordance with the terms of the application, Ref.12/01031/FUL, dated 03 February 2012, and the plans submitted with it, so far as relevant to that part of the development hereby permitted.

David Murray
INSPECTOR