

## Appeal Decisions

Site visit made on 24 November 2015

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

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

**Decision date: 3 February 2016**

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### **Appeal A - Ref: APP/K5600/X/15/3049304 9 Vicarage Gate, London, W8 4AG.**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Skyline Capital Developments Ltd. against the decision of The Council of The Royal Borough of Kensington & Chelsea.
  - The application Ref. CL/15/01206, dated 23 February 2015, was refused by notice dated 23 April 2015.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
  - The use for which a certificate of lawful use or development is sought is the conversion of the building from four flats to a single dwellinghouse.
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### **Appeal B - Ref: APP/K5600/W/15/3049301 9 Vicarage Gate, London, W8 4AG.**

- 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 Skyline Capital Developments Ltd. against the decision of The Council of The Royal Borough of Kensington & Chelsea.
  - The application Ref. PP/15/01179, dated 23 February 2015, was refused by notice dated 23 April 2015.
  - The development proposed is the use of the building as a single dwelling house (Class C3); External alterations including introduction of a roof light at ground floor level; removal of single storey rear outbuilding at lower ground floor level; and creation of glazed infill extension at first floor level.
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## Decisions

### **Appeal A - Ref: APP/K5600/X/15/3049304**

1. The appeal is dismissed.

### **Appeal B - Ref: APP/K5600/W/15/3049301**

2. The appeal is dismissed.

## Reasons

### *Background*

3. The appeals site comprises a six storey property in a terrace of similar properties located in the Kensington Palace Conservation Area. The appellant's

agent says that the property was originally built in the 19 century as a family house but its internal arrangements have evolved over time and at one time it comprised 8 self contained flats.

4. The appellant company bought the property in 2013. In November 2013, a Certificate of Lawfulness of Proposed Use or Development was granted by the Council under ref. CL/13/05299 for the conversion of the building from 8 flats to 4 flats and the appellant's agent submits that work was undertaken to form 4 flats in accordance with this permission.

## **Appeal A**

5. The central issue in this case is whether a change from the use of the building as four flats to a use as a single dwellinghouse is a material change of use for which planning permission is required. Section 55(3) of the Act states that 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 but the Act is silent on the reverse situation where two or more units would be converted into one. Whether or not a material change of use would occur is a matter of fact and degree.
6. As a starting point regarding the existing use, the Council refers to the Certificate of Lawfulness but question that four units have actually been instituted. The appellant's team say that four specified kitchens were removed from when the building comprised eight flats and with the other modifications made to the internal layout of the building, it is now available for use as four flats.
7. At the time of my site visit the building was unoccupied and empty. I was shown the layout of the four flats and their entranceways from the main staircase and the kitchens to each of the flats. In some cases, these kitchens did not include main appliances like a fridge or cooker but there was space set aside for these under worktops and their provision can be dependant on the personal taste of any occupier. Further, there were irregular holes in ceilings and walls, said to be from structural investigations into the fabric of the building, which will need minor repair. Nevertheless, from my observations at the visit I am satisfied that four flats are currently 'useable' and have the necessary facilities for independent domestic existence without further material alterations. Viewed in the round, I am satisfied that four individual units of residential accommodation are readily available for occupation in the context of the *Impey* and *Welwyn Hatfield* court decisions<sup>1</sup> as the appellant submits, and that this should be regarded as the present and lawful use.
8. In terms of the proposed change to use as a single dwellinghouse, the Council refers to the policies in the development plan to increase the local housing targets on housing supply, as supported in studies on market trends and housing need, to justify a planning policy position against the amalgamation of residential units and the corresponding loss of housing stock. Further, the National Planning Policy Framework (2012) indicates that the government seeks to boost significantly the supply of housing (paragraph 47) and deliver a wide choice of high quality homes (section 6).

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<sup>1</sup> *Impey v Secretary of State* (1984) 47 P&CR 157; and *Welwyn Hatfield Council v Secretary of State* [2011] UKSC 15.

9. Without rehearsing all of the details of the issues which will be integral to the planning merits of Appeal B, it appears to me in this case that the issues of the accord with local and national planning policy on housing strategy; whether there is a material loss of housing units and the effect on the local housing stock; together with the effect on local character; are fundamental considerations in the planning judgement on such a proposal to reduce the number of residential units by three.
10. Having regard to the general principles established under *Richmond*<sup>2</sup> I am satisfied that the circumstances of this case are such that the conversion of the building from 4 flats to one house would result in the material change of use of the property.
11. For the reasons given above I conclude that the Council's refusal to grant a Certificate of Lawful Use or Development in respect of the conversion of the building from 4 flats to a single dwellinghouse was well-founded and that this appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

## **Appeal B**

### *Main Issues*

12. The main issues are: the accord of the proposal with the housing strategy set out in the development plan; the effect of the use as a single dwellinghouse on the supply and choice of housing within the Borough to meet identified housing needs; and the effect on the character and appearance of the host property and the surrounding area.

### *Background*

13. The general background to the case is as set out in paragraph 3 above in respect of appeal A.
14. The proposal involves changing the property to a single dwelling and carrying out some relatively minor alterations to make the house more useable. There is no formal reason for refusal about these physical changes and they are not contested by the Council.

### *Accord with housing strategy*

15. The development plan comprises the Council's Core Strategy adopted in 2010 and the London Plan (2015). I will consider the relevant policies in turn.
16. Core Strategy Policy CO6 sets out a strategic objective to have a diversity of housing to cater for a variety of local needs and that new housing is built to a high quality. Policy CH1 sets out a target for a minimum 350 net additional dwellings per year and to maximise affordable housing with a minimum provision of 200 units per annum. Policy CH2 promotes housing diversity and sets out criteria for housing type and mix and affordable housing; while Policy CH3 looks to protect residential uses.
17. However, although the overall targets in Policy CH1 relate to 'net additional dwellings' per year, the limitations put forward to secure the retention of the

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<sup>2</sup> *Richmond LBC v Secretary of State for the Environment, Transport and the Regions and Richmond housing Trust* [2001] JPL 84.

existing housing stock are limited. Part CH2(f) indicates that development that will result in the net loss of 5 or more residential units will be resisted. Clearly the proposal now involves a loss of a net three units from the lawful use and is as such below the specified threshold. Policy CH3(a) seeks to ensure a net increase in residential accommodation by protecting 'market residential use and floorspace' subject to stated exceptions. In the proposal, the market residential use is retained, albeit for one house, as is the overall floorspace within the property and this is slightly increased. I therefore find that the proposal does not conflict with the relevant parts of the housing policies in the adopted Core Strategy.

18. These policies generally accord with the more recent Framework (2012) in that the representations on the appeal show that the policies were formulated on an evidence base to meet objectively based needs. These policies should therefore be given significant weight.
19. In terms of the London Plan (2015) (Consolidated with Alterations since 2011) the Council refers to Policies 3.3 and 3.14. Policy 3.3 recognises the pressing strategic need to increase housing supply and provide real choice for Londoners. Policy 3.14 indicates in (b) that the loss of housing should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace. Neither, the policy nor the supporting text make clear whether the reference to 'housing' is in respect of the number of units or general floorspace but as the policy makes reference to existing or higher densities, I agree with the Council that the policy concerns itself with housing *units*, otherwise densities could not be monitored, retained or increased. As the three units being lost would not be replaced in the proposal I find that the conversion to one unit would not accord with this strategic policy.

*Effect on housing supply and choice to meet identified needs*

20. In terms of the effect of the proposal on the existing housing stock, the appellant's team says that the change would amount to a reduction of 0.0034% of the number of houses in the Borough based on 2008 figures. Further, in relation to the Borough's housing targets set out in the London Plan the appellant suggests that the loss of three units would have a loss impact of 0.04% of the 10 years housing target. Clearly, in simple mathematical terms the direct effect of the proposal on its own on the present and future increase in housing stock would not be significant.
21. In relation to a more detailed breakdown of housing needs, the appellant's team refer to the Strategic Housing Market Assessment (2009) (SHMA) which informs the formulation of planning policy. The appellant says that this highlights an identified need for 'super prime' residential dwellings in the Borough. However, the assessment of housing diversity set out in the Core Strategy stresses in the introduction that "the demands for all types of homes is insatiable" (paragraph 35.1.1) and that the strategic focus is therefore on achieving a diversity of housing in mixed communities. Further, the justification in the Strategy says in paragraph 35.3.10 that the main identified shortfalls in terms of market housing are three and four or more bedroom houses.
22. In this case, the proposed house would have five bedrooms but this would occupy basically the same extensive residential space as the current use which appears to comprise: Flat 1 - a 3 bedroom flat; Flat 2 - a one bedroom flat;

Flat 3 - a two bedroom flat; and Flat 4 - a 3/4 bedroom flat, (as set out in the Note of Advice (Jan 2015) from Saira Kabir Sheikh QC). Although these are flats rather than houses, the size of the accommodation provided is more akin to the most acute housing need than the proposed single dwelling, even though the appellant's team has identified that the flats have quality issues.

23. Overall on this issue, it appears to me that the proposed change of use on its own would not have a significant effect on the present or future local housing stock, but would set a precedent for further amalgamation of flats which would contribute to a cumulative material reduction in the housing stock. Further, while there is evidence of a continuing demand for a 'super-prime' single dwellings, the present lawful use of four residential units of mixed sizes are more likely to meet the more pressing identified local housing needs.

*Effect on character and appearance*

24. The main character of the property itself derives from its original design as a single family dwelling. I note that the Council's Kensington Palace Conservation Area Proposals Statement (1996) supports the retention of single family dwellings. The proposal would allow for the removal of some more recent internal partitions to open up the original rooms and main staircase and reinstate architectural features like complete cornice mouldings within principal rooms. I see this enhancement as a positive benefit, but it would be mainly realised by the occupiers of the property rather than the wider community as there would be little external change to the appearance of the building. I am also satisfied that the proposed physical changes to the property would preserve and not harm its character and its appearance.
25. Externally, I find that the proposal would have little effect on the appearance of the area and, in terms of other impacts, may be likely to cause less parking demand.
26. Overall, I conclude on this issue that the proposal would have a positive effect on the historic character of the building and a neutral effect on its setting in the Conservation Area.

*Planning Balance*

27. Bringing together my conclusions on the main issues, I have found that while the proposed change of use to a single dwelling does not materially conflict with the relevant policies within the Council's Core Strategy, the change does not accord with Policy 3.14 (b) of the London Plan because the loss of housing would not be replaced by other units of at least the same density. I have also found that while the proposal on its own would not have a significant effect on the present or future housing stock, as an amalgamation it would contribute to a trend involving a material reduction in housing stock. Three residential units would be lost and these are of a size that are more likely to help meet the identified and most pressing local housing need compared to a single dwelling.
28. Balanced with these negative effects, I have also found that the proposal would help restore the appeal building to its original character as a single dwellinghouse and the change of use would have a neutral effect on the building's setting in the Conservation Area. The proposal would therefore not harm the special character or appearance of this sensitive area.

29. The application of national policy is also a material consideration. The Framework seeks to encourage growth through sustainable development. The Framework indicates in section 7 that a wide choice of high quality homes should be delivered within the aim of boosting significantly the supply of housing.
30. The appellant submits that there is continuing demand for a 'super prime' single dwelling in an area of international recognised quality but it appears to me that in the context of significantly boosting the supply of housing, greater weight should be given to retaining the current mix and sizes of units on site which better relate to the most pressing identified housing need.
31. In terms of sustainable development, I find that the proposal has benefits that fall within the *economic* and *environmental* roles as indicated in paragraph 7 the Framework, but I find that the proposal does not accord with the *social* role as it would push in the wrong direction in terms of contributing to and boosting the overall stock of housing. I therefore conclude that the proposal does not constitute sustainable development when the Framework is read as a whole.
32. Overall, I conclude that the conflict with the development plan and the negative effect on housing stock is not outweighed by the positive benefits of the proposal.

### **Conclusion**

33. For the reasons given above I conclude that the appeal should be dismissed.

*David Murray*

INSPECTOR