
Appeal Decision

Site visit made on 15 December 2015

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 4 February 2016

Appeal Ref: APP/K5600/X/15/3051160

Flats 1 and 2, 211 Ladbroke Grove, London W10 6HQ

- 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 Ms Ruby Wax against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref CL/14/07891, dated 5 November 2014, was refused by notice dated 6 January 2015.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The proposed use for which a certificate of lawful use or development is sought is amalgamation of two flats.
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Decision

1. The appeal is dismissed.

Reasons

2. The planning merits of a proposal are not relevant to the determination of a Lawful Development Certificate.
 3. The definition of development is set out in Section 55 of the Town and Country Planning Act 1990. Section 55(1) states that development is the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any building or other land. Building operations would include internal works normally undertaken by a builder, but there is an exclusion that development that only affects the interior of a building shall not be taken as development for the purposes of the Act. Therefore, it is only use that is relevant to this appeal.
 4. Section 55(3)(a) notes for the avoidance of doubt it is hereby declared that for the purposes of this section 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 specific indication about a change from two dwellinghouses into one dwellinghouse.
 5. The courts have considered the matter and indicate that whether or not a change of use is material is a matter of fact and degree. The National Planning Policy Framework [The Framework] identifies that to boost significantly the supply of housing, local planning authorities should use their evidence base to
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- ensure that their local plan needs are met in full. Any reduction in the existing housing stock would have a material effect on the number of dwellings in the area and a direct impact on the need for houses.
6. The Planning Practice Guidance indicates at Paragraph 012 Ref ID 3-012-20140306 that plan makers should consider all available types of sites and sources of data that may be relevant in the assessment process, but notes the following may be relevant, which includes potential permitted development changes e.g. offices to residential. It seems to me the converse would also have a material effect. The conversion of two dwellings into one reduces the number of available dwellinghouses and this would be material. The council provides its best estimate of the net residential losses through lawful development certificates, which even allowing for some variation is considerable with 72 in 2012, 80 in 2013 and 34 in 2014.
 7. The parties have referred to development plan policies of the council and of other councils where a similar situation has arisen. However, development control policies of the council are usually there to control development and not to determine whether development has occurred in the first place. The council identifies that there has been a gradual erosion in housing stock with the combining of smaller units to make larger units. The council also has Policy CH1, which relates to housing targets and 'net additional dwellings'.
 8. The appellant refers to Policy CH2 relating to Housing Diversity. Criterion (f) notes 'resist **development** which results in a net loss of 5 or more residential units and (g) require **development** that results in the amalgamation of residential units to be subject to a Section 106 agreement to ensure the resulting units are not further amalgamated in the future' (my highlights). It is material to consider this and I accept that it indicates that change of use involving under 5 units may occur and the appellant would refer to this in relation to any planning application. However, to my mind these are policies to control development not determinative of whether something is development.
 9. The number of dwellings within the council's area is very important for planning purposes, as identified in The Framework and backed up by the Planning Practice Guidance. The council identifies that there are policies related to net additional dwellings and identifies the loss of dwellings through lawful development. I therefore consider that the need for different types and sizes of houses is a material consideration. The need to control residential unit numbers (and size) fulfils a legitimate and recognised planning purpose and the loss of even one unit here, in the light of national and local policy, is a matter to be addressed in a planning application.
 10. I conclude that as a matter of fact and degree and on the evidence presented that the change of use from two dwellinghouses to one dwellinghouse is a material change of use for the purposes of Section 55 of the 1990 Act.
 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 amalgamation of two flats was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Graham Dudley

Inspector