



Appeal Decision

Site visit made on 1 September 2015

by Philip Willmer BSc Dip Arch RIBA

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

Decision date: 08 October 2015

Appeal Ref: APP/K5600/W/15/3030628
18 Chepstow Crescent, London, W11 3EB.

- 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 C Rolaz against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/15/00878, dated 13 February 2015, was refused by notice dated 1 April 2015.
 - The development proposed is the amalgamation of Flat B (first floor) and Flat C (second floor) to form a single flat.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellants suggest in their evidence that in their opinion flats B and C are not self-contained units and, further, have been occupied as a single residential unit since 2009. Nevertheless, they submitted a planning application, now the subject of this appeal, and not an application for a lawful development certificate. I shall therefore consider this appeal only on the basis of the refusal by the Council to grant planning permission for the amalgamation of flats B and C all as the appellants' original application.
 3. Policy CH2 (f) of the *Core Strategy with a Focus on North Kensington* (Adopted 8 December 2010) (CS) states, along with other things, that it will resist development which results in the net loss of five or more residential units. At the time of the adoption of the CS in 2010 the Council advises, although not set out in the policy, that it took the view that the loss of four or less units did not constitute development. However, in August 2014, due to the impact the Council considered this approach was having upon the total housing stock, it changed its interpretation on this matter and now considers the loss of four or less units to be development. While a planning application will now be required in these circumstances there has been no change of policy. The Council now requires a planning application to be made so that it can ensure that such development meets the objectives of planning policy in the round. This is born out by the number of such de-conversions approved since 2014 that the appellants have drawn to my attention. While this proposal may well fall far below the threshold set out in CS Policy CH 2(f), that is no reason for the
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Council not to require a planning application, or indeed as in this case why the appellants should not have submitted an application for consideration. However, Policy CS Policy CH 2(f) is not applicable in this case.

4. The appeal site is located in the Pembridge Conservation Area. I am required therefore to take account of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended which states that, with respect to buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. There are no external alterations proposed in relation to this proposed development. I am therefore satisfied, as was the Council when determining the application, that it would not impact on the character and appearance of the conservation area. Accordingly the main issue in this case is as set out below.

Main Issue

5. I consider the main issue to be the effect of the proposal on housing provision within the Borough with particular regard to planning policies that aim to resist the loss of housing and in particular small, self-contained flats of one or two habitable rooms.

Reasons

6. The building the subject of this appeal, 18 Chepstow Crescent, is a five storey (plus roof) mid-terrace property. It has been subdivided into some six separate flats. The appeal relates specifically to first and second floor flats identified as 'B' and 'C' respectively.
7. The two flats, occupied by the appellants' family, are each accessed from the communal staircase. The rooms that make up the two flats are currently configured so as to provide two bedrooms and a bathroom at first floor level and a kitchen/reception room, study and bathroom on the second floor. The appellants propose the amalgamation of the original two flats into a single residential unit. Although the two entrance doors from the communal hallway would be retained, a new internal private stair is proposed linking the first and second floor rooms.
8. Saved Policy H17 of the Unitary Development Plan (Adopted May 25th 2002) (UDP) seeks to resist the loss of existing, small, self-contained flats of one or two habitable rooms.
9. The thrust of CS Policies CH1 and CH3 and Policies 3.3 and 3.14 of the Mayor of London - *London Plan – The spatial development strategy for London consolidated with alterations since 2011* (Adopted March 2015) (LP), to which I have also been referred, is to increase the number of homes by, amongst other things, resisting the loss of housing.
10. The appellants' state in their evidence that flat C cannot be used for sleeping accommodation because of on-going noise and disturbance issues in respect of the third floor flat over. Further, flat B does not have a kitchen. Accordingly they contend that the two flats cannot be considered as self-contained.
11. I am sympathetic to the appellants' concerns and, more particularly, associated health issues emanating from the lack of adequate sound proofing between their second floor flat and that of their neighbour on the third floor. I note that

the appellants have installed a secondary ceiling that has not addressed the sound transference problems. Nevertheless, in my experience, depending on the type of noise transference that is of concern (air borne or structural) there are any number of remedial techniques that could be employed to reduce if not overcome this problem without significantly impacting on the habitable space. As I saw, due to the current use of flat B by the appellants primarily for sleeping, it does not currently have a fitted kitchen. Nevertheless, one could be installed relatively easily in the fashion of the one in flat C above. I am therefore not persuaded, given that this building is in residential occupation, that the failure/lack of sound proofing to the compartment floor/ceiling or the lack of a fitted kitchen in flat B is sufficient reason to conclude that the flats could not be occupied as self-contained units as designed.

12. The LP seeks to ensure that new residential developments are constructed to meet minimum space standards. Those most relevant in this case are 37 square metres for a 1-person unit and 50 square metres for a 1-bed 2-person unit. According to the appellants each flat has a floor area of between 40 and 41 square metres. They would therefore both meet the new space standard for 1-person units. However, assuming flats B and C were to be occupied as 1-bedroom 2-person units, then they would not accord with the current minimum recommended floor area for new developments. Notwithstanding that the flats are existing and not to be part of a new development, many historically subdivided buildings often have smaller floor areas. Further, as I saw, these flats have independent access, are dual aspect and appeared light and airy. Accordingly, in my judgement, they could not, in terms of floor area, be considered so substandard as not to provide an acceptable level of accommodation.
13. For the reasons set out I consider, notwithstanding the appellants' contentions to the contrary, that flats B and C should be considered as self-contained flats with a maximum of two habitable rooms. Accordingly, the amalgamation of the two one bedroom flats into one two bedroom flat would result in the loss of an existing, small, self-contained flat, contrary to the aims of saved UDP Policy H17.
14. While I appreciate that a single two bedroom flat might better suit the appellants' current family needs, I do not consider that the proposed amalgamation would necessarily improve the condition and quality of the residential accommodation per se.
15. CS Policy CH 1 sets out the Council's housing targets. LP Policy 3.3, amongst other things, recognises the pressing need for more homes in London in order to promote opportunity and provide a real choice for all Londoners in ways to meet their needs at a price they can afford. The appellants contend that the targets given are net and allow for the loss of housing units provided that overall there is a gain. Given the existing high density of the built environment of the Borough, it is important that the Council limits those losses to ensure a net increase in residential accommodation. Nevertheless, the Council defines in CS Policy CH3 a limited number of situations in which losses are permitted. However, none of the exceptions set out apply in this case.
16. Turning to LP Policy 3.14 B the appellants contend that the proposal would not result in the loss of housing, which the policy advises should be resisted unless

housing is replaced at existing or higher densities with at least equivalent floorspace. To my mind there would be no loss of residential floorspace here, and a single two bedroom flat might equally accommodate as many people as two self-contained one-bedroom flats. However, unlike the case dealt with at appeal Ref: APP/K5600/W/15/3008343, it would result in the loss of a small, self-contained flat rather than a mews dwelling, therefore contrary to saved UDP Policy H17. Further, unlike the above appeal it would not have the benefit of the creation of a larger family dwelling, for which the appellants have highlighted the specific emphasis set out in the LP itself.

17. The parties have drawn my attention to two further recent appeal decisions, APP/K5600/W/15/3010078 and APP/K5600/W/15/3007959. In the first appeal, the Inspector found that due to an extant permission to extend the basement unit that part of the proposal to amalgamate the existing house and basement flat would not fall within the remit of saved UDP Policy H17. Nevertheless, as highlighted by the Council, the Inspector did find that the proposed loss of the basement unit would be contrary to CS Policy CH 3.
18. The second appeal related to the amalgamation of three fourth floor flats to create a four-bedroom maisonette. Had the appeal been allowed, it would have resulted in the loss of two residential units from the supply of existing homes. However, in that case, unlike here, there would have been a significant increase in residential accommodation as well as the creation of two roof terraces resulting in a dwelling better suited to a family. The Inspector, while acknowledging a conflict with the aims of saved UDP Policy H17, found the proposal to accord with the strategy outlined in LP Policy 3.14 (A) and CS Policy CH 2(f) resulting in no material conflict with LP Policy 3.14 (B). I do not believe that either appeal is directly comparable on a like for like basis to the one before me.
19. Having regard to the foregoing, I conclude that the proposal would result in the loss of a small residential unit. Accordingly, it would not accord with the objectives of saved UDP Policy H17. In reaching this conclusion I have taken due account of what might be considered exceptional circumstances, in this case, including lack of sound insulation, the present lack of a kitchen in the first floor unit and current floor area standards, all of which I have found to have very limited weight in the planning balance.
20. Although I accept that the housing targets given are net and allow for the loss of housing units provided that overall there is a gain, there would be no gain here in terms of an increase in residential floor area, the density of development or the creation of a large unit more suited to the needs of a larger family. Overall, therefore, if the proposal were to be allowed it would serve to reduce the supply and choice of housing available within the Borough and not contribute to meeting housing targets and housing needs for the Borough and London as a whole through ensuring a net increase in residential accommodation. The proposal is therefore contrary to the aims of CS Policies CH1 and CH3 and LP Policies 3.3 and 3.14 as they seek to meet housing targets, to ensure a net increase in residential accommodation and resist the loss of housing.

Other matters

21. I have noted from the evidence before me that the Council has allowed a number of amalgamations of flats in the Borough. Whatever the circumstances surrounding those de-conversions I do not consider that they are an appropriate justification for permitting another here, which I have considered on its individual planning merits.

Conclusions

22. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Philip Willmer

INSPECTOR