The Planning Inspectorate

Appeal Decision

Site visit made on 22 July 2015

by Roger Pritchard MA PhD MRTPI

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

Decision date: 11 November 2015

Appeal Ref: APP/K5600/W/15/3006728
Flats 2.6 and 2.9, Cheyne Gardens, London, SW3 5QU

- 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 Alireza Ittihadieh against the decision of The Council of The Royal Borough of Kensington & Chelsea.
- The application Ref PP/14/07865, dated 19 November 2014, was refused by notice dated 13 March 2015.
- The development proposed is the amalgamation of Flats 2.6 and 2.9 to form a single dwelling unit, with new glazing throughout and a discreet external heating and cooling unit to the rear elevation.

Decision

1. The appeal is dismissed.

Main Issue

2. I consider the main issue to be whether the loss of a residential unit would be justified in the light of the policies of the adopted development plan.

Reasons

3. The appeal site comprises two, two-bedroom, self-contained flats at first floor level in 6 and 9 Cheyne Gardens. Nos 6 and 9 are five-storey, mid-terrace properties in the Cheyne Conservation Area. Neither is listed nationally or locally. The proposed development would amalgamate the two flats into a single residential unit with the provision of an external heating and cooling unit at the rear of the property.

4. Underpinning the appeal is the fundamental question as to whether the proposal to amalgamate the two flats constitutes development and thereby requires planning permission. The Council's view, which cites Court judgments[1], is that this is a matter of fact and degree.

5. That view is reflected in the policies of the adopted development plan. Policy 3.14 (b) of the approved London Plan states that the loss of housing units will be resisted unless there are arrangements for the provision of equivalent replacement floorspace. Exceptions are set out in section (c) of the Policy which refers, amongst other matters, to the reduction in sub-standard

[1] *London Borough of Richmond v SSETR and Richmond upon Thames Churches Housing Trust, QBD, 28 March 2000.*

accommodation. Policy CH3 of the adopted Royal Borough's Core Strategy addresses similar issues. It argues that the net increase in housing units accommodation as required by the London Plan and reflected in the Strategy's Policy CH1, will be assisted by protecting the loss to other uses of '…*market residential use and floorspace*…'. A series of exceptions to this general objective are put forward, for example, in town centres or employment zones. None of the exceptions cited in Policies 3.14 (c) or CH3 apply to the proposal before me.

6. More specifically, however, criterion (f) of Policy CH2 states that the Council will resist development which will '…*result in the net loss of five or more residential units*'. Criterion (f) is entirely consistent with the manner in which the Council applied policy to this matter prior to 2014. Up to that date, it took the view that whilst amalgamations that resulted in the loss of five or more residential units required planning permission, the loss of four units or fewer normally did not. This approach was justified by the Council's assessment of the housing pressures being placed on it and its perception, at that time, that small-scale amalgamations would not seriously add to those pressures. Furthermore, the appellant has quoted to me examples of Lawful Development Certificates (LDCs) granted by the Council where the reasoning included the statement that, '…*the proposed alterations are internal to the building and the amalgamation of two residential units into one residential unit is not a material change of use'*.

7. In August 2014, however, the Council changed its stance, henceforth taking the view that the loss of any residential unit through amalgamation would require planning permission. The justification for the change was the growth in housing pressures in the Royal Borough, as demonstrated by increasing difficulties in meeting its housing targets, and the '…*impact that amalgamation is having upon progress in achieving these*'. Notwithstanding this differing assessment, the change was not reflected in any formal amendment to the policies of the adopted development plan – the Council considering none was necessary as these remained compatible with its new stance.

8. The consequence was that when the appellant applied for an LDC, the Council refused it on 24 October 2014 on the grounds that the amalgamation of two residential units into one '…*is a material change of use*'. (The examples of granted LDCs quoted to me by the appellant pre-date the Council's change of policy.)

9. The question as to whether the amalgamation of two residential units to form a single unit represents development within the meaning of Section 55 of the Town and Country Planning Act 1990 is ultimately one for the Courts. Nevertheless, the appellant made an initial application to the Council and has submitted his appeal on the grounds that his proposal does require planning permission. I have decided this appeal on that basis.

10. In respect of the policies of the adopted development plan, the appellant understandably refers to Policy CH2 of the Core Strategy in suggesting that, irrespective of whether or not the proposal is a material change of use requiring planning permission, criterion (f) of that policy only applies to amalgamations that result in a net loss of five or more residential units.

11. The appellant quotes the much publicised judgment in the Supreme Court that '…*policy statements should be interpreted objectively in accordance with the*

language used, read as always in its proper context[2]. However, I am unconvinced that the appellant is correct in his interpretation that Policy CH2 necessarily implies that the Council will not (*the appellant's emphasis)* resist developments which result in the loss of less than five residential units. Whilst Policy CH2 is absolutely clear as to larger amalgamations, it is silent on those which result in a net loss of four units or less. It makes no statement that these would be acceptable and the general principles set out in Policy 3.14 of the London Plan and Policy CH3 of the Core Strategy equally imply that there is no presumption in other policies of the development plan that these amalgamations would be acceptable.

12. On the contrary, the inescapable logic of those development plan policies when taken in combination and in context is that there is no general presumption against smaller scale amalgamations in the Royal Borough. Such proposals have to be assessed on their merits and may result in differing outcomes where, as referred to by Section 38(6) of the Planning and Compulsory Purchase Act 2004, '…*other material considerations*…' apply. That conclusion also leads me to the view that proposals of a similar nature close to the one before me could produce different outcomes. I therefore give limited weight to the examples quoted by the appellant as possible precedents for his proposal.

13. The principal material consideration taken into account by the Council is its current assessment that the higher housing targets imposed by the London Plan – these have doubled over the past five years – can no longer sustain a rising scale of amalgamations in Kensington and Chelsea. The balance that was acceptable in 2010 no longer applies.

14. The appellant has not challenged the Council's assessment of housing pressures or the increasing scale of amalgamations. On the contrary, I have already commented that none of the particular exceptions cited by Policies 3.14 (b) and CH3, as indicated in paragraph 5 above, seem to me to be applicable here. Nor should a number of the arguments put forward by the appellant carry significant weight, including that the proposal would not lead to any reduction in residential floorspace – the policies cite the loss of residential units - that there would be a higher density of occupation –not necessarily a permanent arrangement – or that it would raise the standard of residential accommodation that is already satisfactory.

15. The appellant's case rests on the personal benefits to him and his family of the amalgamated accommodation. I acknowledge those benefits but I agree with the Council that they are alone insufficient to outweigh the public policy disadvantages of the loss of a unit of residential accommodation. I therefore conclude that the proposal is contrary to Policies 3.14 (b) and CH3 and that there is nothing in Policy CH2 that can outweigh that conflict.

Other Matters

16. Although the appeal site is situated in the Cheyne Conservation Area, neither main party has raised any question that the proposed development would fail to preserve or enhance the character or appearance of the Conservation Area. I agree. This is therefore not a matter that should weigh against the proposed development.

[2] *Tesco Stores v Dundee City Council* [2012] UKSC 13 at 18.

17. In addition to the matter I have identified as the main issue in this appeal, the Council advanced a second reason when refusing the application. This was that the appellant had not submitted a noise report with his application and that, as such, it was not possible to assess whether the air conditioning units proposed would have an acceptable impact on the living conditions of the occupants of neighbouring residential properties.

18. The appellant subsequently, however, commissioned and submitted an acoustic report that concluded that the proposed equipment could function satisfactorily with only minimal modifications. As the appellant concedes, full testing of the air conditioning unit can only take place when installed *in situ*. In these circumstances, it would be acceptable to him for a condition to be imposed on any permission that would set acceptable general noise limits and ensure that the air conditioning unit was properly installed and retained subject to regular maintenance and servicing.

19. The Council has objected to the subsequent submission of this acoustic material on the grounds that neither it nor neighbours have had the chance to comment on it. Whilst I concede that the submission of late material is always unfortunate and to be deprecated, the Council has had an opportunity to submit final comments that could have covered these issues. I also note that it has submitted to me a set of conditions that it would wish me to impose were the appeal to be allowed. Those conditions make direct reference to the appellant's acoustic report and would specify how the air conditioning unit should be installed and monitored to ensure that it results in acceptable noise levels.

20. I am therefore satisfied that, subject to the imposition of such conditions, the effects of the air conditioning units should not weigh against allowing the appeal.

Conclusion

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

Roger Pritchard

INSPECTOR