The Planning Inspectorate

Appeal Decision

Site visit made on 22 December 2015

by R M Pritchard MA PhD MRTPI

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

Decision date: 08 January 2016

Appeal Ref: APP/K5600/W/15/3133918
164 Lancaster Road, London, W11 1QU

- 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 Paris Pennesi against the decision of the Council of The Royal Borough of Kensington & Chelsea.
- The application Ref PP/15/03831, dated 21 June 2015, was refused by notice dated 19 August 2015.
- The development proposed is the amalgamation of two residential apartments (one x 1-bedroom and one x 2-bedrooms) into a single three bedroom residential apartment with the creation of a private recessed terrace.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Paris Pennesi against the Council of The Royal Borough of Kensington & Chelsea. This application is the subject of a separate decision.

Main Issue

3. I consider the main issue to be whether the loss of a residential unit is justified in the light of the policies of the adopted development plan and other material considerations.

Reasons

4. The appeal site comprises two residential flats on the top floor of a four storey, mid-terrace property on the north side of Lancaster Road. The property is sometimes referred to as 164-166 Lancaster Road but the two addresses share an entrance and staircase. The two flats, that are the subject of this appeal and which are referred to as Flats G and H, are respectively a two-bedroom apartment with an area of around 55m^2, and a one-bedroom apartment with an area of some 45m^2. The property is neither nationally nor locally listed and the appeal site is not within a Conservation Area.

5. The proposed development would amalgamate the two flats into a single, three-bedroom residential unit. Apart from the internal re-arrangements required, there would be alterations to the frontage of the property at third floor level, including the formation of a recessed terrace.

6. The Council has raised no objections to the external alterations proposed, which would be virtually invisible from street level. I agree. Nor would there be any material harm to the living conditions of the occupants of any neighbouring residential property. The single issue raised is whether it is acceptable to lose a small residential unit as a consequence of the proposed amalgamation.

7. Policy CH1 of the adopted Consolidated Local Plan (CLP) seeks to deliver additional dwellings within the Borough in order to meet the strategic objectives of the approved London Plan as set out in that Plan's Policy 3.3. As contribution to this delivery, Policy CH3 provides a series of criteria designed to maximise the net increase in residential accommodation. It assists the net increase in housing units required 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. However, none of the exceptions cited in Policy CH3 apply to the proposal before me.

8. The specific thrust of Policy CH3 is aimed at proposals to change residential accommodation to other uses. As a result, the Council also relies on Policy 3.14(b) of the London Plan. This 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 accommodation. The appellant suggests that this last criterion applies to the proposed development and that it would replace residential units that are sub-standard with a larger unit of better quality.

9. In March 2015, the Government published draft revised Housing Standards with the intention of simplifying the wide range previously available from both local authorities and others. Following consultation, the new standards came into force on 1 October 2015. The Mayor of London has taken the new standards on board and amendments in line with these have been incorporated into the annexes to his *Housing* SPG. The new standards are mandatory for all London boroughs and also came into force on 1 October.

10. The new standards require a total internal space provision of 61m^2 of gross internal area for a two-bedroom, three person dwelling on one storey and provision of 50m^2 for a one-bedroom, two person dwelling on one storey. Although both the existing flats fall short of these standards by around 10%, I agree with the Council that the deficiency is marginal and can be set aside where existing accommodation, as opposed to new development, is being considered. I therefore give no significant weight to the shortfalls in floorspace found in the existing flats.

11. I therefore consider that, notwithstanding Policy CH3 of the CLP or Policy 3.14 of the London Plan, the appellant's contention that Policy CH2 of the CLP is relevant to, and supportive of, his proposal is the critical issue. Policy CH2 deals with '*Housing Diversity*'. Criterion (f) of the policy states that development will be resisted '…*which results in the net loss of five or more residential units*'. The appellant emphasises that his development is not contrary to this criterion as only one unit would be lost.

12. The background to this matter is set out in the Council's appeal statement, which acknowledges that prior to 2014, 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 related to 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.

13. In August 2014 however, and after the adoption of the CLP, the Council changed its stance, henceforth taking the view that the loss of any residential unit through amalgamation would require planning permission. The principal material consideration taken into account by the Council appears to have been the higher housing targets imposed by the London Plan – these have doubled over the past five years. The consequent growth in housing pressures in the Royal Borough has been reflected in the Council's increasing difficulties in meeting its housing targets, and the '…*impact that amalgamation is having upon progress in achieving these*'. The appellant has not challenged the Council's assessment of housing pressures or the increasing scale of amalgamations.

14. Notwithstanding this differing assessment of housing pressures and when planning permission might be needed, 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.

15. 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. The appellant has made an application to the Council and has submitted his appeal on the grounds that he seeks planning permission. The appeal must therefore be decided in the light of section 38(6) of the Planning and Compulsory Purchase Act 2004. This requires any application, or subsequent appeal, to be determined in accordance with the development plan, '…*unless any material considerations indicate otherwise*.'

16. However, I am not convinced that Policy CH2, on which the appellant principally relies, necessarily implies that the Council will not 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, as well as in the Mayor's *Housing* SPG, equally imply that there is no presumption in other policies of the development plan that these amalgamations would be acceptable.

17. If Policy CH2 is discounted, as I consider it should be, and given that I can find no exceptions in Policies CH3 or the London Plan's Policy 3.14 to support the proposed development, 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 in themselves 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.

Conclusion

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

R M Pritchard

INSPECTOR