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# Appeal Decision

Site visit made on 19 January 2016

**by Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

**Decision date: 29<sup>th</sup> February 2016**

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**Appeal Ref: APP/K5600/W/15/3134675**

**Flat 1 and Flat 2, 12 Egerton Gardens, London SW3 2BW**

- 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 Chris Milner against the decision of the Royal Borough of Kensington & Chelsea.
  - The application Ref PP/15/03291, dated 29 May 2015, was refused by notice dated 24 July 2015.
  - The development proposed is the amalgamation of two residential units to create 1 family maisonette. Alterations to internal floor layouts to provide a better space for a family residence and improve the energy efficiency of the house and replacement of existing windows with new timber sliding sash windows.
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## Decision

1. The appeal is dismissed.

## Procedural

2. Since the Council's Core Strategy was adopted in December 2010, the Council has adopted updated policies as part of the Core Strategy Review. The Council has published a document which brings those changes into one place- the 'Consolidated Local Plan' (CLP) Royal Borough of Kensington and Chelsea July 2015<sup>1</sup>. The relevant policies pertinent to the appeal have not changed in numbering or content. Both parties have referred to the CLP policies in the submissions.
3. The submissions make reference as to whether the proposal is development. However, this is not a matter that may be formally determined as an appeal against the refusal of planning permission. However, the appellant has made an application to the Council on the grounds that this proposal does require planning permission and I have decided the appeal on that basis.

## Main Issue

4. I consider the main issue to be the effect of the loss of a residential unit on housing supply.

## Reasons

5. The appeal site is a five storey plus basement mid terrace property, which has been divided into flats, situated on the western side of Egerton Gardens within the Thurloe/Smith's Charity Conservation Area. The proposed development

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<sup>1</sup> Consolidated with alterations since the Core Strategy (December 2010) incorporating Pubs and Local Character Review (October 2013), Miscellaneous Matters Review (December 2014), Conservation and Design Review (December 2014) and Basements Review (January 2015).

- would amalgamate the existing lower ground two bedroom flat and the existing ground floor one bedroom flat to create a four bedroom maisonette.
6. Policy 3.3 of the London Plan (LP) (2015), consolidated with alterations since 2011, recognises the pressing need for more homes in London. The policy expects Boroughs to seek to achieve and exceed the minimum annual average housing target.
  7. Policy CH1 of the CLP states that the Council will ensure that sufficient housing sites are allocated in order to ensure that the housing targets are met. The Council has indicated that the annual target net increase required has risen from 350 units in 2010 to the current target of 733 units. It states that data indicates that 93 units were lost as a result of amalgamation of units between 1 April 2014 and 31 March 2015.
  8. Some net loss of units is to be expected, and it is permitted in certain circumstances in accordance with Policy CH 3a) of the CLP. However, the cumulative effect of loss of dwellings through amalgamation of units has potential to have a significant effect on the delivery of much-needed housing in the Borough.
  9. Policy CH 3a) protects market residential use and floor space except in a limited number of specified circumstances. The specified circumstances do not apply in the case of the appeal proposal.
  10. In addition, Policy 3.14 B of the LP states that the loss of housing units should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floor space.
  11. The appellant contends that as there is no loss of residential floor space, the proposal would not conflict with the development plan and refers to two appeal decisions (APP/K5600/W/15/3008343 and APP/K5600/W/15/3007959) in support of this stance. However, I am not aware of the evidence which was before the Inspector in those cases which limits the weight which I can attach to them in my decision.
  12. The housing targets set out in Policy 3.3 of the London Plan and CH 1 of the CLP is clearly expressed in terms of units. Policy CH 2 and the supporting text also clearly refer to residential units, not floor space. Furthermore, in the context of Policy 3.14 of the LP, I agree with the Council that as residential density is counted in units, Policy 3.14 should be interpreted as requiring the re-provision of at least the existing number of units.
  13. Whilst the appeal proposal would protect the total amount of floor space in residential use, the use of part of the floor space as a separate dwelling unit would not be protected by the appeal proposal. The loss of existing housing as expressed by the loss of a housing unit would, therefore, be contrary to the objectives of the LP Policy 3.14B and CLP Policy CH 3.
  14. Criterion (f) of Policy CH 2 of the CLP states that the Council will resist development which will '*....result in the net loss of five or more residential units*', reflecting the Council's position at that time that planning permission was not required for amalgamations of four units or less.
  15. However, the Council changed its position in August 2014 identifying all amalgamations as development for which planning permission was required.

- The justification for the change was the growth in housing pressures in the Royal Borough, as demonstrated by increasing difficulties in meeting its housing target which had increased in the London Plan.
16. The appellant considers that the proposal complies with criterion (f) of Policy CH 2 and that the Council should not attempt to change the policy of the Development Plan without a formal review.
  17. However, whilst I consider that the Policy 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 LP and Policy CH 3 of the Consolidated Local Plan equally imply that there is no presumption in other policies of the development plan that these would be acceptable. Such proposals must be considered in the context of the development plan as a whole.
  18. Contrary to the assertion that Policy 3.3 of the LP and Policy CH 1 of the CLP are not relevant; I consider that the development plan policies must be taken in combination. The London Plan has imposed higher housing targets on the Council-these have doubled over the past five years. Consequently the increase in amalgamations can no longer be sustained. It is noted that the appellant has not challenged the Council's assessment of housing pressures or the increasing scale of amalgamations.
  19. The Mayor's adopted Housing SPG (2012) (para 1.2.6) recognises that re-conversion of smaller private units into larger dwellings can reduce capacity to meet the requirements of small households and may be resisted to address identified housing needs. Furthermore, the Draft Interim Housing SPG (2015) states that *'de-conversion of a number of smaller units into larger dwellings can reduce the capacity to meet the requirement of small households. Where there is local evidence that the amalgamation of separate flats into larger units is leading to sustained loss of homes, boroughs are encouraged to resist this process in line with London Plan Policy 3.14'*.
  20. The 'appropriate balance' between the loss of residential units and the need for larger family homes referred to in paragraph 35.3.18 of the CLP will reflect the circumstances at the time and the increase in the housing target has clearly altered the balance. Furthermore, the last sentence of the paragraph states that future amalgamation will be restricted to ensure that successive developments do not lead to loss of residential units.
  21. The appellant considers that the housing targets set out in Policy 3.3 of the LP and Policy CH1 of the CLP are net figures which have already taken account of losses. However, there is a clear presumption against losses to existing stock in Policy 3.14 of the LP and Policy CH2 of the CLP. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that *'if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise'*.
  22. Notwithstanding whether the housing targets have already accounted for net losses, I consider that this would not outweigh the clear conflict with the development plan to resist the loss of existing housing stock and the objective set out in paragraph 47 of the National Planning Policy Framework (the

Framework) to significantly boost the supply of housing and the objectives of Policy 3.3 of the LP and Policy CH1 of the CLP to increase housing supply.

23. To conclude on the main issue, the loss of a dwelling at the appeal property would add to an unacceptable cumulative impact on net housing supply in the borough by reducing the overall housing stock, contrary to development plan objectives. The development plan policies are compatible with the objective of the Framework, which seeks to boost significantly the supply of housing.
24. Whilst there would be some benefits of the proposal in terms of creating a family home, this would not outweigh the public policy disadvantages of the loss of a unit of residential accommodation. I, therefore, conclude that the proposal is contrary to Policies 3.3 and 3.14 (b) of the LP and Policy CH1 and CH2 of the CLP.

#### *Other Matters*

25. It is proposed to replace the existing rear ground floor window and lower ground windows with wood sliding sash windows reflecting that of the existing. I am, therefore, satisfied that the proposal would preserve the character and appearance of the Thurloe/Smith's Charity Conservation Area.
26. I have taken into account the representations received in support of the proposal on the basis that it would create a family home; ease the parking stress; and alleviate difficulties relating to refuse disposal/collection. However, I do not consider that those benefits would outweigh the harm which I have identified in respect of the main issue.

#### **Conclusion**

27. For the reasons stated above, I dismiss the appeal.

*Caroline Mulloy*

INSPECTOR