
Appeal Decisions

Hearing held on 5 April 2016

Site visit made on the same day.

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 6 July 2016

Appeal Ref: APP/K5600/X/15/3133521
118 Portland Road, London W11 4LX

- 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 by Arabella Grandage against the decision of The Council of The Royal Borough of Kensington and Chelsea.
- The application ref. CL/15/00678, dated 3 February 2015, was refused by notice dated 2 April 2015.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is internal alterations to link all floors as a single family dwelling use, including re-insertion of internal stairs linking the basement and ground floors.

Summary of decision: the appeal is dismissed.

Appeal Ref: APP/K5600/W/15/3136075
118 Portland Road, London W11 4LX

- 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 by Arabella Grandage against the decision of The Council of The Royal Borough of Kensington and Chelsea.
- The application ref. PP/15/03330, dated 22 May 2015, was refused by notice dated 21 July 2015.
- The development proposed is the reversion of all floors to one single family dwelling use.

Summary of decision: the appeal is allowed, and planning permission is granted subject to conditions.

Application for costs

1. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matters

2. For the avoidance of doubt, I should explain that in the LDC appeal the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider in the context of the appeal under section 195 of the Town and Country Planning Act 1990 as amended (the Act), which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
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3. In July 2015 The Royal Borough of Kensington and Chelsea Consolidated Local Plan (CLP) was introduced, combining the Core Strategy of 2010 with various subsequent reviews of various matters. The decisions in this case were assessed against the updated policies, although at the time of issue the CLP had not been published. In the planning decision notice the Core Strategy is referred to rather than the CLP, but the Council confirm the policies have not changed. There was no dispute on this matter at the Hearing.
4. The appeal property stands within the Norland Conservation Area, and I have therefore had regard to my duty under Section 72(1) of the Listed Buildings and Conservation Area Act 1990 as amended to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. I note that the property is not a listed building.

Background matters

5. The appeal property stands on the eastern side of Portland Road, part of a terrace of 19th century houses having three storeys above a basement. At present it is split into four self-contained residential flats. The appeal proposal is to convert the building to a single dwelling. The conversion would entail internal alterations only, with the exterior remaining unaltered.

Main Issues

6. From my inspection of the appeal site and its surroundings and from all that I have heard and read I consider the main issue in the LDC appeal to be whether the Council's decision to refuse to grant a certificate of lawfulness of proposed use or development was well-founded. In that regard the principal question is whether there would be a material change of use of the property that would require planning permission.
7. In the planning appeal I consider the main issue to be the effect of the proposal on housing provision within the Borough in the light of prevailing development plan and government policy and other material considerations.

The LDC appeal

8. All proposed alterations would be internal, and there would be no changes made to the external appearance of the building. The parties agree that the proposals would not therefore be classed as operational development by virtue of the provisions of Section 55(2)(a)(i) and (ii) of the Act. These exclude building works that affect only the interior of the building, or do not materially affect its external appearance.
9. The appellant argues that under Section 55(3)(a) of the Act the use as two or more separated dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and each part of it which is so used. However, there is no reference to the amalgamation of two or more dwellings into one dwelling. On the other hand Article 3(1) of The Town and Country Planning (Use Classes) Order 1987 (the UCO), provides that where a building or other land is used for a purpose of any class specified in the Schedule to the Order, the use of that building or that other land for any other purpose of the same class shall not be taken to involve development of the land. I note that Section 55(2)(f) of the Act makes similar provision. On this basis it is argued that the statutory intention is that

- continued use of the same premises within the same use class does not constitute development, whereas subdivision of a dwellinghouse does.
10. One of the issues in the High Court case of *Richmond*¹ concerned whether a proposed amalgamation of flats would be exempted from the definition of development. The judge came to the conclusion that if one could say that before proposals for amalgamation were implemented the use of the building had been as a dwellinghouse for occupation by one or other of the persons or groups set out in C3(a), (b) or (c) of the UCO, then the provisions of Section 55(2)(f) and Article 3(1) could come into play. However, if that were not the case those provisions would not apply. In this instance the building is not in use as a single dwellinghouse, but as four separate dwellinghouses each in Class C3 use. It follows that those provisions do not apply.
 11. Furthermore, the Council have sought the opinion of Queen's Counsel², and his view is that Section 55(2)(f) and Article 3(1) do not help in determining whether a material change of use has occurred when flats are amalgamated. This is on the basis that these provisions do not address an amalgamation of individual units, but rather invite the comparison of a particular building with the same building, but in different circumstances. Overall, I do not consider the proposals can be excluded from the definition of development on the basis of Section 55(2)(f) of the Act, and Article 3(1) of the UCO.
 12. It is apparent that prior to August 2014 the Council took the view that amalgamation of two or more dwellings into a single dwelling did not constitute a material change of use for which planning permission would be required, but since then have taken the opposite view. This has been justified on the basis of the judgement in the *Richmond* case.
 13. In deciding whether a change of use is a material change or not the judge in *Richmond* adopted the formulation that it depended upon the extent to which a particular use fulfils a legitimate or recognised planning purpose as to whether a change from that use is material. In that regard the character of the existing and proposed uses must be examined against the background of development plan policy and any other material considerations.
 14. It was generally accepted by the parties that the proposals would have no significant effect upon the character and appearance of the area, or upon residential amenity, nor on such matters as traffic generation, or educational and welfare services. The Council's principal concern is the effect upon the provision of housing within the Borough.
 15. In terms of development plan policy, Policy 3.3 of the Further Alterations to the London Plan of 2015 seeks to increase housing supply and to meet the housing need by provision of an annual net average of at least 42,000 dwellings. For Kensington and Chelsea this includes a minimum 10-year target to 2025 of 7,330 dwellings, with an annual monitoring target of 733 homes. Regarding existing stock, London Plan Policy 3.14 seeks to support its maintenance and enhancement, and includes aims to resist loss unless it is replaced at the existing or higher density with at least equivalent floorspace.
 16. Policy CH1 of the CLP seeks to ensure sufficient housing sites are allocated in order to ensure that housing targets are met. Policy CH2 seeks to ensure that

¹ The London Borough of Richmond-upon-Thames v SSETR and Richmond-upon-Thames Churches Housing Trust
² Mr Timothy Straker QC.

- new housing development further refines the grain and mix of housing across the Borough, and includes an aim to resist development proposals that would result in the net loss of five or more residential units. Policy CH3 seeks to protect residential uses and ensure a net increase in residential accommodation.
17. The Norland Neighbourhood Plan 2013-2028 was adopted by the Council following approval at a local referendum in 2013, and forms part of the development plan. It identifies the desirability of the area as a place for a family home, and notes that the demographic profile has changed, providing the opportunity for restoring some of the larger houses to single family dwellings. As part of its vision for the future it identifies Norland as a place for families, where people come to live and stay. And seeks to maintain the conservation area as a place for families.
 18. The appellant argues that the appeal proposals would result in a negligible loss in comparison with the total number of roughly 90,000 dwellings in the Borough. However, in my view the loss should be assessed in the context of the future requirement for housing, and the likely cumulative losses that might occur.
 19. The Council have put forward their Planning and Borough Development Monitoring Report of 2015. Regarding de-conversions and amalgamations it is apparent that these have given rise to the loss of between 40 and 80 residential units for each year from 2010 to 2014, and an estimated loss of 112 units in 2015. A total in the region of 400 for the entire period.
 20. This amounts to a significant number of losses per year in comparison with the target of 600 new dwellings, and is even more significant in comparison with actual residential completions. In this context the loss of three dwellings would, as a matter of fact and degree, have a significant impact in planning terms.
 21. In my opinion, as a matter of fact and degree the existing use as four flats fulfil a legitimate and recognised planning purpose in contributing to the housing stock of the Borough, and that the change to a single dwelling may have significant consequences in reducing that stock. This is a matter that should be properly consulted upon and considered on its merits by means of a planning application.
 22. It is the case that there had been no significant change to the Council's development plan policy at the point when it was decided that proposals for amalgamation of flats amounted to material changes of use. Nor indeed had there been any changes to relevant law. However, the Council had become aware of increasing difficulty in meeting their housing supply targets, and in my view this was a sufficiently material consideration for them to reconsider their stance on such matters.
 23. It may be shown that the proposals accord with various development plan policies. However, it is not the purpose of an LDC application to test the merits of a proposal against development plan policy.
 24. I conclude on the main issue in the LDC appeal that the proposal constitutes a material change of use of the building for which planning permission would be

required. It follows that the Council's decision to refuse the grant of a LDC was well-founded.

The Section 78 planning appeal

25. Policy 3.3 of the Further Alterations to the London Plan of March 2015 sets out an annual monitoring target for the Borough of Kensington and Chelsea of 733 housing units per year. This was increased from the 600 units per year sought in the previous version of the London Plan – and the figure used in Policy CH 1 of the CLP for the period up to 2027/28. I note that Policy CH 1 states that the exact target will be set through the London Plan process.
26. The appellant argues that this is a *net* increase figure that already takes account of potential losses. This is not explicitly stated in London Plan Policy 3.3. However, in the footnote to paragraph B of the strategic section of that policy, it is explained that this net figure includes additional dwellings provided through such things as re-development, and conversion of residential and non-residential property. It is not unreasonable to infer that the net figure may therefore allow for losses as well. However, this cannot take account of the effect of losses in particular Boroughs, where they may be significant in some, but not in others.
27. Against this, London Plan Policy 3.14 seeks to ensure that loss of housing is resisted, and that existing housing should be retained where possible and appropriate. I appreciate that this policy refers to retention of residential floorspace, and of achieving existing or higher residential densities³, where new housing is to replace any that is lost.
28. Paragraph 50 of the National Planning Policy Framework (NPPF) includes the advice that in order to deliver a wide choice of high quality homes, local planning authorities should plan for a mix of housing based on current and future demographic trends, and identify the size, type, tenure and range of housing required in particular locations, reflecting local demand.
29. The Council published their Strategic Housing Market Assessment in December 2015. Regarding the size, type and tenure of housing provision, this comes to the conclusion that the future pattern of requirements suggests that just over 50% of additional dwellings should be smaller, 1-2 bedroom units, and just under 50% larger – 3-4+ bedrooms. Comparing this with the existing profile, the Assessment concludes that slightly more 4+ bedroom units are needed and slightly fewer 1 bedroom units. In these terms it appears to me that the appeal proposal would assist in achieving this balance, and accord with the advice of the NPPF in this regard.
30. It is inevitable that there would be a loss of 3 flats, but residential floorspace would be retained as is, as would the number of bed-spaces and/or habitable rooms. The number of people accommodated could well be the same as at present. In those terms the proposals would accord with London Plan Policy 3.14.
31. While the existing flats are of a decent size and layout, it appears likely that the scheme would result in improvements to the standard of fixtures, finishing and general maintenance of the building. At present the building appears slightly shabby in comparison with the majority of other houses in this part of

³ In terms of bed-spaces per hectare.

Portland Road as a result of general wear and tear, addition of cables to the exterior and things such as broken railings. It could reasonably be expected that the building would be improved if the proposals were implemented, leading to a slight increase in the quality of housing, and a modest improvement to the appearance of the Conservation Area.

32. Furthermore, this proposal would promote one of the specific aims of the Norland Neighbourhood Plan to keep the Conservation Area as a place for families, which is a recurring theme of that Plan.
33. Overall, I conclude that the loss of three flats would slightly reduce the housing stock of the Borough. However, this would not be in conflict with London Plan Policy 3.14, which resists loss of housing unless it is replaced at existing or higher densities with at least equivalent floorspace. Against this must be balanced the increase in the number of dwellings with four or more bedrooms - for which there is a slightly greater need in the Borough than one-bedroom dwellings. Furthermore, the development would promote the aims of the Neighbourhood Plan to make the area more suitable for families, and would enhance the character and appearance of the Conservation Area.
34. Overall, I consider the change of use would on balance cause no significant harm to the provision of housing in the Borough in the light of prevailing development plan and government policy and other material considerations. The proposals would accord with CLP Policy CH 2 in terms of housing mix and type, and would not result in the loss of 5 or more units. In the light of other material considerations I do not consider the proposals would conflict significantly with the aims of London Plan Policy 3.3 and CLP Policy CH 1.

Conclusions

35. I have taken account of all other matters raised, but I have found none sufficient to outweigh the considerations which have led me to my decision.

Decisions

Appeal Ref: APP/K5600/X/15/3133521

36. The appeal is dismissed.

Appeal Ref: APP/K5600/W/15/3136075

37. The appeal is allowed and planning permission is granted for the reversion of all floors to one single family dwelling use, at 118 Portland Road, London W11 4LX, in accordance with the terms of the application ref. PP/15/03330, dated 22 May 2015 and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the following approved drawings: 1406/PD/01 rev A, 1406/PD/02 rev A, 1406/PD/03 rev A, and 1406/PD/04 rev A.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Christopher Lockhart-Mummery	Queen's Counsel, instructed by Bell Cornwell LLP.
Simon Avery BA(Hons) BPhil	Partner, Bell Cornwell LLP
DipUD MRTPI	Chartered Town Planners.

FOR THE LOCAL PLANNING AUTHORITY:

Fiona Rae BSc(Hons) MA MRTPI	Senior Planning Officer The Council of The Royal Borough of Kensington & Chelsea.
Jonathan Wade BSc(Hons) MCD MA(UD) DMS MRTPI MCI	Head of Forward Planning The Council of The Royal Borough of Kensington and Chelsea.

DOCUMENTS

- 1 Attendance list.
- 2 The Council's letter of notification of the appeal dated 29 October 2015, with the circulation list.
- 3 Letter of representation.
- 4 Copy of 'Housing Standards' – Minor Alterations to the London Plan of March 2016.
- 5 Royal Borough of Kensington and Chelsea Planning and Borough Development Monitoring Report 2015.
- 6 Extract from the Glossary to the Council's Consolidated Local Plan of 2015.
- 7 Strategic Housing Market Assessment for the Royal Borough of Kensington and Chelsea – December 2015.
- 8 Transcript of the High Court case '*The London Borough of Richmond-upon-Thames v SSETR and the Richmond-upon-Thames Churches Housing Trust*' [2001] JPL 84.
- 9 Proposed planning conditions.