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## Appeal Decision

Hearing Held on 9 October 2019

Site visit made on 9 October 2019

**by M Allen BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

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### **Appeal Ref: APP/K5600/W/18/3216277 40-42 Nevern Square, London SW5 9PE**

- 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 Ms Grace Crawford, Family Mosaic against the decision of The Council of The Royal Borough of Kensington & Chelsea.
  - The application Ref PP/17/05694, dated 14 August 2017, was refused by notice dated 16 May 2018.
  - The development proposed is described as the "Internal reconfiguration of existing bedsit accommodation to deliver 20 new self-contained one and two bedroom flats. Number 42 to deliver ten private sale units, enclosed new internal stair and lift. Numbers 40 and 41 combined to deliver ten new homes for affordable rent. Replacement and enlargement of existing 1920s extension to deliver additional floorspace".
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### **Decision**

1. The appeal is allowed and planning permission is granted for the internal reconfiguration of bedsit accommodation to deliver 20 new self-contained one and two bedroom flats. No 42 to include internal stair and lift. No 40 & 41 combined and replacement extension at 40-42 Nevern Square, London SW5 9PE in accordance with the terms of the application, Ref PP/17/05694, dated 14 August 2017, subject to the conditions in the attached Schedule.

### **Procedural Matters**

2. The Statement of Common Ground sets out an agreed, amended description of development and I have used this in the decision above. Such a description of development corresponds with that detailed in the accompanying planning obligation.
3. Since the refusal of planning permission, the Council has adopted The Royal Borough of Kensington and Chelsea Local Plan (September 2019) (the Local Plan). This document brings together policies from the Local Plan Partial Review and the Consolidated Local Plan (July 2015). It was agreed at the hearing that the relevant policies of the Local Plan were CH1 and CH3 and it is against these policies that I have made my decision.
4. The aforementioned completed Unilateral Undertaking (UU) was submitted at the hearing. The Council confirmed it was content for me to take it into account when making my decision. I have no reason to find differently and accordingly have had regard to this undertaking. I comment on the UU later on in this decision. As the Council raise no objection to the content/drafting of the UU,

this does not form part of my main issue below, notwithstanding reason for refusal No 2 as it appears on the Council's decision notice.

### **Main Issue**

5. The main issue is whether or not the scheme would conflict with policies resisting the loss of affordable housing units within the Borough.

### **Reasons**

6. Policy CH1 of the Local Plan aims to boost the supply of homes within the Borough. At the hearing I was specifically directed to criteria b. and f. of this policy, which seek to resist the loss of residential units through amalgamation and resist the loss of affordable housing floorspace and units throughout the Borough, respectively.
7. The appeal site comprises a building that was formerly three houses, but in the past has been utilised as a hotel, a care home and hostel. In January 1981, planning permission<sup>1</sup> was granted for the conversion of the site to provide 38 single room dwelling units. That planning permission included condition number 3 which stated, "This permission shall be personal to Thames Valley Housing Society Ltd for so long as they shall occupy the premises, and shall not enure for the benefit of the land".
8. It is common ground between the parties that Thames Valley Housing Society divested itself of the premises in 1998, to Thames Valley Charitable Association. At that time, the condition which imposed the personal restriction was breached. Since that time there has been no enforcement action taken by the Council. In 2011, the premises were transferred to Family Mosaic, which subsequently merged with Peabody in 2018, and now operate as Peabody.
9. The site currently still comprises the 38 units of accommodation granted permission in 1981. The units are offered at below market rents and to occupiers over the age of 55. It was agreed at the hearing however, that there is currently no mechanism of control in place to ensure that the units are let on these terms. The current terms of occupation are at the discretion of the housing provider which owns the site.
10. The Council and interested parties raised at the hearing that it was clearly the intention of the Council, when granting permission in 1981, that the site be used for the accommodation of those individuals that were in need for affordable housing. Whilst this may indeed have been the intention, it remains the case that due to the passage of time and that it is agreed that there has been non-compliance with a condition which secured the planning permission as a personal permission, that there is now no control over the occupation of the units within the appeal site. It was highlighted at the hearing that the condition does not limit the tenure of the units, only that it stipulated that the permission was for the benefit of a named organisation.
11. The Council maintain that the size and quality of the units themselves limits the rent that they would attract and that this addresses an existing need within the Borough as well as providing for the needs of current residents. It was stated that this is evidenced by there still being some residents occupying the units, notwithstanding that many units are now empty.

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<sup>1</sup> Reference TP/80/1454

12. Whilst I acknowledge that the Borough may currently experience an acute housing need, which was highlighted by the Council and interested parties, I am also conscious, as I have outlined above, that there is no legal mechanism which restricts the current units to providing only affordable housing.
13. I have been referred to definitions of affordable housing, both within the Glossary to the Local Plan as well as the London Plan. Both of these definitions include reference to the provision for accommodation to remain at an affordable price for future eligible households and that rent will be subject to formal control. These requirements are also reflected within the definition of affordable housing as contained within the National Planning Policy Framework. Neither of these criteria apply to the accommodation within the appeal site. Consequently, the existing accommodation does not meet the definitions of affordable housing provided within these documents. Thus, the existing units, whilst let at below market rents, do not comprise units of accommodation that accord with the definitions of affordable housing. Therefore, for the purposes of planning policy, the units do not comprise affordable housing that is protected by criterion f. of Policy CH1.
14. The Council raised at the hearing that the scheme would conflict with criterion b. of Policy CH1, in that it would comprise the loss of residential units through amalgamation. The Local Plan Glossary defines the amalgamation of residential units as *"This is where separate dwellings within an existing building in residential use or in new build residential scheme are amalgamated to form fewer dwellings or one home."* Whilst I appreciate that the proposed development would result in a fewer number of units at the site than currently, the scheme does not in my view comprise an amalgamation of units. The existing units would not be merged or combined to form larger units. Rather, the entirety of the interior of the building is to be reconfigured to provide a different layout and configuration of units. This, to my mind, comprises the re-development of the units, rather than their amalgamation.
15. For the reasons above, I find that the proposal would not conflict with Policy CH1 which prevents the loss of affordable housing within the Borough. Furthermore, the development would not conflict with Policies 3.10-3.13 (inclusive) of the London Plan (2016), as referred to by the Council.

### **Other Matters**

16. Policy CH3 of the Local Plan requires that new residential developments include a mix of types and sizes of housing to reflect the needs of the Borough. Based on the information contained within the 2015 Strategic Housing Market Assessment (SHMA), a local requirement of a 50/50 split between smaller (1-2 bedroom) and larger (3-4+ bedroom) units has been identified. Whilst the proposal would not strictly comply with this desired mix of units, neither do the existing units within the appeal site, which comprise 36 bedsit units and 1 one-bed flat. The development would increase the range in the mix of units and as such do not consider that the conflict with policy CH3 is sufficient to warrant the dismissal of the appeal.
17. Some mention was made at the hearing that the majority of units within the building are no longer occupied as the operator has relocated many of the residents to other accommodation. Whilst I note the contention that the units have been purposefully emptied in order to facilitate the proposed development, this is a management issue for the owner of the site. Reference

has also been made to maintenance of the building, which is also a matter for the site owner. As such, these matters have little bearing on my decision.

18. Interested parties have raised some concern in respect of the effect of the proposal on the character and appearance of the area, given the sites location within the Nevern Square Conservation Area (the CA). The proposal seeks to replace an existing extension to the property with a larger one, by adding an additional storey to it. This is of particular concern to the interested parties as the appeal site comprises a corner plot and is highly visible in the local area. However, the Council has not objected to the scheme on this basis. Whilst there would be an increased bulk as result of this element of the scheme, it would not be of such a size so as to appear incongruous in the area or on the appeal building. The extension would respect the detailing and fenestration pattern of the existing building. As such, I am satisfied that the proposal would preserve the character and appearance of the CA.
19. Some concern has been raised in respect of the effect of the proposal on the living conditions of neighbouring occupiers in terms of overlooking. In this regard I note that there are already windows to the rear of the building which face existing properties. The scheme would not result in any windows being closer to neighbouring properties than those currently existing. Given the degree of overlooking that already exists from the existing buildings, the proposal would not result in any unacceptable overlooking effects. The Council have found the scheme acceptable in this regard and I have no reason to find differently.
20. It has also been suggested that the development should be car-free, in that residents should not be able to obtain parking permits in the local area. It was stated that other developments in the area were required to be car free. The Council highlighted that there was currently no such restriction on the occupiers of the existing units and that there would be no change to the parking situation. No substantive evidence was provided to lead me to disagree with the Council and as such find that there is no requirement for a car-free development in this instance.
21. At the hearing, the appellant submitted a Unilateral Undertaking (UU) which secured 50% of the units as affordable housing. The Statement of Common Ground sets out that it is agreed that this provision is compliant with the requirements of the development plan, in that Policy CH2 seeks a minimum of 35% of residential floorspace to be affordable. I agree that the UU secures the requisite contribution towards affordable housing and accordingly the proposal complies with Policy CH2 of the Local Plan, which seeks to secure the maximum reasonable amount of affordable housing within developments. In this regard, the UU accords with the planning obligation tests as laid out in paragraph 56 of the National Planning Policy Framework 2019 (the Framework) and Regulation 122 of the CIL Regulations.
22. The UU also contains an obligation in respect of preventing the occupation of a number of market units within the proposed development until dwellings in a separate development have been completed. This was intended to provide a benefit weighing in favour of the scheme. As I have found that the scheme would be acceptable on its own merits, this requirement in the UU is not necessary. Therefore, this part of the UU does not meet the planning obligation

tests as laid out in paragraph 56 of the Framework and Regulation 122 of the CIL Regulations

23. The Council has drawn my attention to an Inspector's findings<sup>2</sup> on a different site, where they concluded that an estate built as a social housing development before the establishment of planning control, comprised affordable floorspace. However, I consider that the scheme before me differs in that the buildings of the appeal site were not originally built as affordable housing, the previous restriction on the buildings was imposed by condition of a planning permission and that condition, it is agreed, has been breached for a period in excess of ten years. As such, I do not find that the reasoning of that Inspector provides a reason to dismiss this appeal.

### **Conditions**

24. I have imposed a condition in relation to the commencement of development and, for the avoidance of doubt and in the interests of certainty, I have imposed a condition to ensure compliance with the submitted plans. In order to ensure that the development has a satisfactory external appearance, due its location within a conservation area, it is also necessary to impose a materials condition, as well as conditions requiring windows to be in timber, the roof of the extension to be in natural slate, rooflights to be of conservation grade and railings to be painted black.
25. In order to ensure that the proposal does not adversely affect the current drainage regime, I have also included a drainage condition. In the interests of promoting sustainable transport choices and to protect the living conditions of occupiers of the development, I have included a condition requiring the implementation of cycle and refuse storage. So that the living conditions of neighbouring occupiers are safeguarded, I have also included a condition in respect of the submission of a construction management plan.

### **Conclusion**

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

*Martin Allen*

INSPECTOR

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<sup>2</sup> Ref: APP/K5600/W/17/3177810

## **APPEARANCES**

### FOR THE APPELLANT:

Douglas Edwards QC, of Counsel	instructed by Julian Carter, Savills
Julian Carter	Savills
Rory Stacey	Solicitor
Grace Crawford	Appellant
Jonathan Rees	HTA Design

### FOR THE COUNCIL:

Matthew Woodhead	Planning Officer, The Council of The Royal Borough of Kensington & Chelsea
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### INTERESTED PERSONS:

Cllr Mrs Linda Wade	Councillor, Earls Court Ward
Henry Peterson	Trustee, Kensington Society
Amanda Frame	Chair, Kensington Society

## **DOCUMENTS**

- 1 Copy of planning permission Ref TP/80/1454, dated 26 January 1981
- 2 Unilateral undertaking dated 9<sup>th</sup> October 2019
- 3 Extract from glossary of Local Plan
- 4 Copy of additional Code of Construction condition
- 5 Signed copy of Statement of Common Ground
- 6 Copy of The Royal Borough of Kensington and Chelsea Local Plan, September 2019

## **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - HTA-A\_XX-XX-DR\_0210 REV E,
  - HTA-A\_XX-XX-DR\_0220 REV G,
  - HTA-A\_XX-XX-DR\_0221 REV G,
  - HTA-A\_XX-XX-DR\_0222 REV G,
  - HTA-A\_XX-XX-DR\_0223 REV B,
  - HTA-A\_XX-XX-E1\_0240 REV B,
  - HTA-A\_XX-XX-E1\_0241 REV A,
  - HTA-A\_XX-XX-E1\_0242 REV C,
  - HTA-A\_XX-XX-E1\_0250 REV A,
  - HTA-A\_XX-XX-E1\_0251 REV A,
  - HTA-A\_XX-XX-S1\_0230 REV A,
  - HTA-A\_XX-XX-S1\_0231 REV A
- 3) All work and work of making good shall be finished to match the existing exterior of the building in respect of materials, colour, texture, profile and, in the case of brickwork, facebond and pointing, and shall be so retained.
- 4) The windows hereby permitted shall be framed in painted timber, and be so retained.
- 5) The roof slope of the extension hereby permitted shall be clad in natural slates, and so retained.
- 6) The rooflights shall be of a traditional conservation type, flush with the roof and slim framed, and so retained.
- 7) The railings to the roof terraces shall be painted black, and so retained.
- 8) No development shall commence until full particulars of the following have been submitted to and approved in writing by the local planning authority:

A Sustainable Drainage System (SuDS) Strategy which includes the following information:

  - Drainage layout: type of SuDS, layout and land take
  - Landscape integration strategy
  - Details of surface water management during construction.
  - Run-off before and after construction, overland flow paths and proposed flow control (including different storm scenarios), aiming to achieve greenfield runoff
  - Foul drainage
  - Details on SuDS: type and discharge quantity
  - Adoption of SuDS (ownership), long-term maintenance regime (including maintenance schedule, costs) and communication to residents
  - Compliance with the DEFRA non-statutory SuDS Standards
  - Records of relevant consultations with other interested parties (Thames Water, Canal and River Trust, the Environment Agency when relevant).

The development shall not be completed otherwise than in accordance with the approved details.

- 9) The development shall not be occupied until the cycle and refuse storage facilities indicated on the approved plans have been fully implemented and made available for use. These facilities shall thereafter be retained for use at all times.
- 10) No development shall commence until a Code of Construction Checklist and Site Construction Management Plan (SCMP), in accordance the document "The Royal Borough of Kensington and Chelsea – Code of Construction Practice (April 2019)" have been submitted to and approved in writing by the Local Planning Authority. The development shall at all times be carried out in accordance with the approved details.