

SUBMISSIONS ON LOSS OF DWELLING

Introduction

1. I am instructed on behalf of Mr and Mrs Alekseev,¹ the Applicants for planning permission at 7 and 8, Oak Hill House, Oak Hill Park, NW3 7LP, Ref: 2018/6327/P. The Applicants have recently been told that the application is likely to be refused, on the basis of the recently-made Hampstead Neighbourhood Plan. These submissions are made in response to this indication. They contend that Policy HC1 of the Hampstead Neighbourhood Plan should not result in the refusal of this application.

The Proposed Development

2. The proposed development is described in the application as:²

“Conversion of 2 x 2 bedroom flats into a 1 x 4 bedroom flat, creation of a roof terrace with associated works.”
3. The application is supported by a Design and Access Statement by KSR Architects, and a supporting letter from Orcadian Planning. The proposal is for very small-scale development. It has attracted no objections. The deadline for a decision on the application was 30 March 2019. Only on 30 May 2019 did officers state that the application would be refused, on the basis of failure to comply with the Hampstead Neighbourhood Plan.

The Policy Context

¹ Please note the correct spelling of the Applicants’ surname.

² The Applicants reserve their position as to whether Planning Permission is in fact required for the change of use/conversion, see in particular para. 3.75 of the Camden Local Plan.

4. Policy H3 of the Camden Local Plan is one of the strategic policies for the area of Camden. It states:

“Policy H3 Protecting existing homes

The Council will aim to ensure that existing housing continues to meet the needs of existing and future households by:

- a. Resisting development that would involve a net loss of residential floorspace, including any residential floorspace provided;
 - within hostels or other housing with shared facilities; or
 - as an ancillary element of another use, wherever the development involves changing the main use or separating the housing floorspace from the main use;
- b. protecting housing from permanent conversion to short-stay accommodation intended for occupation for periods of less than 90 days; and
- c. resisting development that would involve the net loss of two or more homes (from individual or cumulative proposals), unless they:
 - create large homes in a part of the borough with a relatively low proportion of large dwellings;
 - enable existing affordable homes to be adapted to provide the affordable dwelling-sizes that are most needed; or
 - enable sub-standard units to be enlarged to meet residential space standards.

Exceptionally, the Council may support development that involves a limited loss of residential floorspace where this provides for the expansion of existing health premises to meet local needs.”

5. The Supporting Text states at para. 3.75:

“Net loss of one home is acceptable when two dwellings are being combined into a single dwelling. Such developments can help families to deal with overcrowding, to grow without moving home, or to care for an elderly relative. Within a block of flats or apartments, such a change may not constitute development. However, the Council will resist the incremental loss of homes through subsequent applications to combine further homes within the same building or site.”

6. The proposed development therefore complies with policy H3. The further explanation in para. 3.75 makes clear that the proposal is acceptable.

7. Camden’s Interim Housing CPG, part of Camden Planning Guidance, was published in March 2019. At Section 5, this considers development involving a net loss of homes.

The Key Messages are:

“KEY MESSAGES

- We will generally resist proposals for redevelopment or conversion of housing that involve the net loss of two or more homes.
- The high cost of homes and the incidence of overcrowding in Camden both have negative impacts on health and wellbeing.

- Developments involving the loss of two or more homes may be acceptable in certain circumstances, including the creation of large homes in identified parts of the Borough that have a relatively low proportion of existing large dwellings.
- We will assess proposals taking into account all relevant material considerations and particularly the history of the building since June 2006, including previous developments and valid planning consents involving the loss of homes.”

8. The Interim Housing CPG states at IH5.4-5.5:

“There is some evidence to suggest that where large homes exist in Camden, they are relatively unlikely to be occupied by large households. The 2001 Census showed that across all tenures, 48% of the households occupying a home with 5-or-more rooms were one- or two- person households, with a higher proportion of 54% for owner-occupied homes with 5-or-more rooms. The 2011 Census showed that across all tenures, the proportion of households occupying homes with 5-or-more rooms that were one or two-person households had dropped to 44%, but the proportion for owner-occupied homes (including shared ownership) remained at 54%.

The Local Plan recognises in paragraph 4.14 that the quality of the homes that people occupy, including the incidence of overcrowding and high housing costs, will have a significant impact on their health and wellbeing. The provisions of Policy H2 clause c. therefore seek to achieve an appropriate balance between the retention of small homes (which will generally be less costly) and the creation of larger homes (which may sometimes help to address overcrowding).”

9. There is specific and detailed provision in respect of loss of a single home at paras IH5.6-5.9:

“Loss of a single home

IH5.6 The Council does not generally seek to resist schemes combining dwellings where they involve loss of a single home. This provision creates some scope for growing families to expand into an adjoining property.

IH5.7 However, the provision can also be used to make successive changes to a property combine several homes into a single large dwelling...

IH5.8 To address the impact of successive changes, Policy H3 indicates that we will consider individual and cumulative proposals that would involve the net loss of two or more homes. The Council will therefore apply Policy H3 to resist a succession of developments that involve combining small homes to create larger homes. The Council will therefore apply Policy H3 to resist a succession of developments that involve combining small homes to create larger homes. When considering planning applications we will take into account all relevant material considerations including the cumulative loss of units created by past changes and the potential for further losses from planning consents that have not expired.

H5.9 We will particularly focus on:

- changes in the same building or block of apartments and flats, or in the same sub-divided town house; and
- changes that have been made since 26 June 2006, which is the date on which the Council first adopted a policy to resist development that would involve the net

loss of two or more homes, as part of the Camden Replacement Unitary Development Plan.

10. The proposed development would be the first such combination of apartments in Oak Hill House. The Interim Housing CPG therefore is consistent with the present application. It gives specific consideration to applications resulting in the net loss of a single dwelling. The application would give rise to the loss of a single home. It would be for the purpose of a growing family to expand into an adjoining property.

11. Unlike the Camden Local Plan and the Interim Housing CPG, Policy HC1 of the Hampstead Neighbourhood Plan does not provide any policy or guidance specific to the loss of only a single dwelling. It states:

“Policy HC1: housing mix

1. In order to promote the mix of housing needed within the Neighbourhood Plan area, particularly for social affordable and smaller dwellings, the following proposals will be supported:
 - a. development that increases the provision of social affordable, intermediate and community-led housing in line with the Local Plan (Policy H4) and national planning policy;
 - b. the development of larger, 3 and 4 bedroom units, for social affordable dwellings;
 - c. the inclusion of small self-contained dwellings, either studio or 1 or 2 bedrooms, in all new non-social housing development.
 - d. provision of small units as intermediate affordable housing.
2. Except in exceptional circumstances, housing proposals will not be supported which would result in the loss of small self-contained dwellings, either studio or 1 or 2 bedrooms, in conversions.

12. The Supporting Text states at para. 8.8:

“The Forum supports Camden’s policy of limiting the loss of dwellings during conversions. However, exceptionally, as described in paragraph 3.132 of Camden Local Plan, older accommodation may not meet contemporary and future needs for living space. Exceptional circumstances must be clearly demonstrated with supporting evidence, and arrangements must be put in place to re-house all existing occupiers. Camden Planning Guidance on housing provides information as to what constitutes a small dwelling.”

The Applicants’ Position

13. The Applicants make the following points in relation to the Council’s warning that it will refuse the application on the basis of Policy HC1:

- (a) The application is not contrary to HC1, properly interpreted;
- (b) The application discloses exceptional circumstances;
- (c) The application is in accordance with the Development Plan, interpreted as a whole;
- (d) Even if the application is not in accordance with the Development Plan, material considerations indicate that planning permission should be granted.

The Proper Interpretation of Policy HC1

14. The correct interpretation of Policy HC1 is a matter of law, not a matter of planning judgment: *Tesco Stores Ltd v Dundee City Council* [2012] PTSR 983. On a proper interpretation of HC1 of the Hampstead Neighbourhood Plan, it:
- (a) Does not specifically deal with the loss of a single dwelling;
 - (b) Cross-refers to Camden's policy wider policy;
 - (c) Does not seek to prohibit applications leading to the net loss of only one unit of private housing in buildings which have had no previous amalgamations of flats.
15. Policy H3 of the Local Plan sets a threshold for resisting the loss of units: this is where an application would result in the net loss of 2 or more dwellings. The supporting text refers to the combination of two dwellings into a single dwelling help families to grow without moving home. As is clear from the Applicants' statement, only one apartment would be too small for the needs of the Applicants' family.
16. HC1 refers to resisting "loss of small self-contained dwellings" (underlining added). It does not concern the loss of a single small self-contained dwelling. This interpretation is reinforced by the fact that the supporting text (which can be taken into account when considering the correct interpretation of the policy) indicates that HC1 is to support Camden's policy regarding the loss of dwellings. Camden's policy as expressed in Policy H3 regarding conversions is not infringed by the net loss of only a single dwelling. In the present case, whilst there would be a loss of two small dwellings, there would be a net loss of only one dwelling.

17. There is nothing in Policy HC1 which indicates that it intends to depart from Policy H3 of the Local Plan; indeed, quite the contrary. For Policy HC1 to be made, it would have to meet the basic conditions of a neighbourhood plan. The basic conditions include (Town and Country Planning Act 1990, Schedule 4B para. 8(2) that:
- “the making of the order is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area)”.
18. Policy H3 is a strategic policy for Camden. As the Local Plan states at para. 11.5:
- “The Local Plan sets the strategic context for neighbourhood plans, and these will play an important role in assisting in delivering Camden’s growth...”
19. As stated in the Hampstead Neighbourhood Forum’s Draft Basic Conditions Statement for Draft Hampstead Neighbourhood Plan (15 October 2017), at para. 5.4,³ the passage quoted “implies that the Council considers all of the policies in the Local Plan to be strategic policies for the purpose of producing Neighbourhood Plans”.
20. It can therefore be assumed Policy HC1 is in general conformity with it Policy H3.⁴ Policy HC1 should therefore be interpreted in line with Policy H3. If Policy HC1 is interpreted as preventing conversions which lead to the net loss of only one dwelling, then it is not in general accordance with Policy H3; it is directly contrary to it. Therefore, Policy HC1 must be interpreted as not preventing conversions of a type such as that proposed by the present Application.
21. The main concern of Policy HC1 is avoiding the loss of affordable units. Social affordable dwellings are referred to not only in the text of HC1 itself, but also in para. 8.8 of the Supporting Text (the cross-reference to para. 3.132 of the Camden Local Plan concerns affordable housing stock). The present proposal has nothing to do with

³ Documents preparatory to the preparation of development plan documents should be taken into account in the interpretation of policies only where the policies are ambiguous: *JJ Gallagher Ltd v Chervell District Council* [2016] EWHC 290 (Admin), para. 46. It is submitted that the interpretation of HC1 is unambiguously not adverse to the present Application, but in case this is not accepted, preparatory documents can be taken into account.

⁴ So much was asserted in the Draft Basic Conditions Statement for Draft Hampstead Neighbourhood Plan, Table 3.

affordable housing at all: it involves neither the loss nor creation of affordable housing units.

22. On the proper interpretation of HC1, the present application is not contrary to it. Indeed, it is notable that there is no indication that the Hampstead Neighbourhood Forum considers that the present Application conflicts with the Neighbourhood Plan. Hampstead Neighbourhood Forum's website states:

“PLANNING WATCH: The Hampstead Neighbourhood Forum comments selectively on planning applications that, in our view, support or are at odds with the Neighbourhood Plan's policies.”

23. The Hampstead Neighbourhood Forum has not objected to the present Application.

The Application Discloses Exceptional Circumstances

24. Even if the primary requirement of HC1 extends to preventing the net loss of even a single unit of accommodation, there is a “pressure valve” which permits the loss of small self-contained dwellings in exceptional circumstances.

25. There are exceptional circumstances in the present case (for further detail, see the Applicants' Statement):

- (a) The Application complies with Policy H3 (see above);
- (b) The Application complies with IH5.6-5.9 of the Interim Housing CPG (see above and below);
- (c) The flats were purchased in March 2018 with the intention of converting them to one larger flat to meet a growing family's needs, before the referendum on the Hampstead Neighbourhood Plan which took place in June 2018.
- (d) The Application is for a young family with elderly parents who would frequently visit or stay over to assist with childcare. The Applicants have two young daughters, and are expecting a third child.
- (e) Mrs Alexeev's mother lives in the neighbouring property to the Oak Hill House and it is important that the family can share regular meals together, and that Mrs

Alexeev's mother can assist with childcare and school drop-offs and pickups, fostering a strong family environment.

- (f) The Hampstead Neighbourhood Plan notes (para. 8.4) the cost of local housing stock. The cost of converting the two flats to meet the needs of the Applicants' family is a far more affordable option than buying a 4 bedroom house in the local area. The Applicants note the cost of a family house within the local area is prohibitive and it would result in the family either living in cramped conditions within a smaller unit or having to move out of the area.
- (g) Not allowing the conversion would mean that there are not sufficient options available to be able to provide accommodation locally when Mr Alexeev's parents come to stay.
- (h) The Applicants run a local business in Hampstead and their daughters attend a local school and nursery, and this would provide continuity to their working lives and their children's education.
- (i) The existing roof requires repairs. The present application provides the opportunity to carry out the repair works.

26. These are clearly exceptional circumstances. Whilst a number relate to the needs of the Applicants, this does not mean that they are irrelevant in planning terms. As Lord Scarman stated in *Westminster City Council v Great Portland Estates* [1985] AC 661, at p. 670:

“Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance.”

The Application Complies with the Development Plan as a Whole

27. As stated above, it is Policy H3 of the Camden Local Plan which deals with the specific question of how to approach conversions which would lead to the net loss of only one dwelling. Therefore, when considering an application which would lead to the loss of only one dwelling, it is compliance with Policy H3 which is key. For reasons already

stated, Policy HC1 cannot be determinative against such an application. The position in the National Planning Policy Framework para. 30, that a neighbourhood plan brought into force takes precedence over existing policies in a local plan, applies only to non-strategic policies. H3 is a strategic policy.⁵

28. The London Plan does not descend to the same level of detail as the Camden Local Plan in relation to this point. In short, the Application is not leading to the loss of housing; there will be no less of residential floorspace.

29. For these reasons, an application in which the only issue is the conversion of dwellings, and with the proposed net loss of only one dwelling, complies with the development plan as a whole.

Material Considerations Indicate that Permission Should be Granted

30. Even if the proposed development does not comply with the development plan as a whole (which is not accepted), then that does not mean that planning permission should inevitably be refused. Planning permission can still be granted, if material considerations so indicate.

31. The Interim Housing CPG is an important material consideration in the determination of this application. It is a Supplementary Planning Document which is an additional material consideration in planning decisions (IH1.1). It is capable of carrying greater weight than Policy HC1:

- (a) It is more specific than Policy HC1 in relation to applications which would lead to the net loss of only one dwelling. Indeed, it has an entire headed section and four paragraphs dedicated to this question. Policy HC1 does not deal with such applications in terms at all.

⁵ Paragraph 20 of the NPPF states that strategic policies should make sufficient provision for housing, in line with the presumption in favour of sustainable development. Policy H3 is geared towards that aim.

(b) It post-dates the making of the Hampstead Neighbourhood Plan. It can be assumed that the Interim Housing CPG was drafted with the provisions of the development plan (including neighbourhood plans) in mind. Unless the drafters were mistaken as to the meaning of the development plan, the Interim Housing CPG was therefore either intentionally contrary to the Hampstead Neighbourhood Plan, or is not contrary to it at all.

32. Furthermore, the factors which indicate that exceptional circumstances apply in the present case would also apply to the effect that planning permission should be granted.

Conclusion

33. For all the above reasons, a refusal of this Application on the basis of policy HC1 of the Hampstead Neighbourhood Plan cannot be justified.

ALISTAIR MILLS
Landmark Chambers
Friday, 7 June 2019