
Appeal Decision

Site visit made on 24 January 2017

by Simon N Hand MA

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

Decision date: 31 January 2017

Appeal Ref: APP/W0340/X/16/3156175

466A London Road, Benham Hill, Thatcham, Berkshire, RG18 3AD

- 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 made by Mr and Mrs Nicholas Drewe against the decision of West Berkshire Council.
 - The application Ref 15/03512/CERTP, dated 21 December 2015, was refused by notice dated 15 February 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is "External - the addition of a small porch (less than 3m²) under permitted development to front of property. Internal – repositioning of front and rear doorsets; addition of new inner lobby; redesign of G/FL to create dayroom and new wc/cloakroom and F/FL to create new bathroom + en-suite".
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Decision

1. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful. That part of the appeal referring to the addition of a porch is refused.

Main Issue

2. Whether the proposal would be lawful given the Council's policy to resist the loss of housing units.

Reasons

3. The lawful development certificate applied for covers two elements of work. Firstly the erection of a porch and secondly the conversion of two flats back into a single dwelling. Flats do not benefit from permitted development rights and so it is obvious that the addition of a porch to a ground floor flat cannot be permitted development. However, if the conversion of the flats to a single dwelling is lawful then the resultant dwelling would benefit from permitted development rights and so the proposed porch could, from then on, also be lawful. However, the certificate that I can grant can only be that at the date of the application the works would have been lawful. As the works for the porch could not be lawful until after the works to convert the flats into a single dwelling have been undertaken then I cannot issue a certificate for the porch

regardless of the outcome of the main issue regarding the lawfulness of the conversion from flats to a dwelling. This part of the appeal is refused.

4. The Council argue the conversion of 2 flats to a dwelling in this case is a material change of use which therefore requires planning permission and this argument rests on the Richmond¹ judgement. That judgement made it clear that one of the factors to weigh in the balance when determining whether there would be a material change of use is the extent to which the use fulfils a recognised planning purpose. In the Richmond case the loss of flats by their conversion back to single dwellings was resisted in the local plan in order to conserve the Council's stock of flats. It was held the loss of the flats could undermine a recognised planning purpose and so could be a material change of use.
5. However, that Court decision did not determine that if there was a council policy relevant to the issue of the loss of flats then a lawful development certificate could not be issued, but that the loss of flats could be a recognised planning purpose and that a Council policy to that effect was a relevant material consideration.
6. In the more recent Kensington & Chelsea² case it was held the lack of such a policy was not by itself determinative. The judge set out a helpful list of legal principles two of which I quote here "*whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;*" and "*whether or not a planning policy addresses a planning consequence of the loss of an existing use is relevant to, but not determinative of, [the] issue above*".
7. In this case the Council does have a policy that is relevant to the loss of dwellings, policy CS1 of the core strategy³. The last paragraph of this policy states "*There should be no net losses from the existing stock of homes in West Berkshire*". It goes on to discuss the loss of existing houses when large sites are redeveloped and it seems that is what the first sentence quoted above is meant to refer to, although in the explanatory paragraph quoted below it does mention changes of use. There is no mention of the loss of flats, which I therefore assume is not an issue in this district. Nevertheless, the first sentence is unequivocal there should be no net loss and converting 2 flats into 1 dwelling will cause a net loss of 1.
8. The policy explanation at paragraph 5.8 says the policy also aims to retain the existing stock "*to avoid a net loss of existing homes as a result of redevelopment or change of use, and so minimise the need to build additional dwellings to meet housing requirements*". There is no suggestion that the housing stock in the district has too few flats, it is merely a question of housing numbers. The appellant provides uncontested evidence from the Council that at December 2015 they had a 6.67 year supply of housing and that the main demand for dwellings lies in the 2 plus bedroom market, not for single bedroom dwellings.

¹ Richmond upon Thames v SSETR & Another CO/483/99

² Royal Borough of Kensington & Chelsea v SSCLG and others [2016] EWHC 1785

³ West Berkshire Council Core Strategy (2012)

9. Consequently, as the proposed works would lead to the loss of one single-bedroom dwelling in a district with comfortably more than a 5 year supply of housing and where two plus bedroom dwellings are more in demand than one-bedroom flats, such a loss would not have any significant planning consequences and would not be contrary to policy CS1. The loss of the flat would not therefore amount to a material change of use and a lawful development certificate can be issued to that effect.

Simon Hand

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 21 December 2015 the works described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: the works are in order to effect a change from 2 flats to a single dwelling and such a change would not, in this instance, amount to a material change of use.

Signed

Simon Hand

Inspector

Date **31 January 2017**

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First Schedule

Internal – repositioning of front and rear doorsets; addition of new inner lobby; redesign of G/FL to create dayroom and new wc/cloakroom and F/FL to create new bathroom + en-suite

Second Schedule

Land at 466A London Road, Benham Hill, Thatcham, Berkshire, RG18 3AD

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.