The Planning Inspectorate

Appeal Decision

Site visit made on 24 March 2017

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 13 April 2017

Appeal Ref : APP/H1515/X/16/3157560
Land at 107 Ingrave Road, Brentwood, Essex, CM15 8BA.

- 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 lawful development certificate by Brentwood Borough Council dated 11 May 2016.
- The appeal is made by Mr Graham Gurnett.
- The application ref 16/00285/S192 was dated 22 February 2016.
- The application was made under section 192 (1) (a) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is amalgamation of two dwellings (107 and 107A Ingrave Road) into a single dwelling.

Summary of Decision: the appeal is dismissed

Preliminary Matter

1. For the avoidance of doubt I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

3. The appeal site is a two storey property comprising two attached dwellinghouses and their residential curtilages. No 107 is a three bedroom dwelling whilst the smaller unit (107A) is a single bedroom unit.

4. Section 55 of the 1990 Act (as amended) defines development to include the making of a material change in the use of land. The Act provides that use of a single dwellinghouse as two or more dwellinghouses constitutes development but it does not follow that the reverse is true.

5. The Appellant argues that as the uses both before and after the change are within Use Class C3 no material change of use can be considered to have taken place. But a building in use as more than one dwellinghouse is not use as a

dwellinghouse and therefore in this case the 'before' use does not fall within Use Class C3.

6. It is established law that whether the amalgamation of planning units has resulted in a change in character so as to constitute a material change of use is a matter of fact and degree.

7. In considering the materiality of the change of use I have considered the nature of the uses before and after the change. The Council states that amalgamation of the two units would have no material effect on the external appearance of the property and no harm to the character and appearance of the building or surrounding area and I have no reason to conclude otherwise.

8. The Richmond upon Thames[1] case which involved the conversion of seven flats into one dwellinghouse established that the extent to which a land use fulfils a legitimate planning purpose is relevant in deciding whether a change in use is material. I therefore consider the Council's policy objection to the loss of housing stock to be a material consideration.

9. The development plan includes saved policies in the Brentwood Replacement Local Plan (the Local Plan). There is no argument before me that these policies conflict with the National Planning Policy Framework and I have no reason to consider it otherwise. My attention is drawn to the Brentwood Draft Local Plan 2013 – 2033 but as this has not been adopted this limits the weight that I attach to it.

10. Policy H6 of the Local Plan provides that in a new housing development the Council will seek the provision of a mix of units. But this policy concerns new housing development and is not in my view on all fours with the appeal proposal. Consequently, I do not find the proposal to be contrary to policy H6.

11. Policy CP1 of the Local Plan provides that any new development needs to satisfy a list of criteria which includes that the proposal should not give rise to the net loss of a residential unit, except as provided for in policy TC19. There is no dispute that the exception is not triggered in this case. The appeal proposal would result in a net loss of a residential unit it is therefore contrary to policy CP1. Whilst I recognise that the net loss of one unit makes a limited contribution to the wider housing market the development plan does not set a minimum threshold and its purpose is to prevent adverse cumulative impact on the Council's housing stock. The policy indicates a legitimate planning purpose for the use of the two properties as separate dwellings. A conversion to one dwelling would be likely to have planning consequences as a result of the loss of a residential unit in a Borough where planning policy seeks to maintain the diversity and numbers of existing housing stock. I therefore find the proposal to conflict with policy CP1 of the Local Plan and there is no justification before me that warrants an alternative conclusion.

12. My attention is drawn to other appeal decisions. I am not bound by these decisions and make this determination based on its particular facts. In any event the Inspector in the Kensington and Chelsea appeal found no conflict with policy unlike in this case where I find the proposal to conflict with policy

[1] Richmond upon Thames LBC v SSETR [2001] JPL 84

CP1 of the Local Plan. Similarly, the other decisions brought to my attention are not on all fours with the circumstances of this case.

13. On the facts of this case I find that the policy objection to loss of housing stock is a material consideration of considerable weight. I conclude that the amalgamation of the two units to create one residential unit, as a matter of fact and degree, is a material change of use of land and constitutes development as defined in section 55 of the Act. Planning permission is therefore required for the proposed use.

14. Accordingly, for the reasons given above and on the evidence now available, I conclude that the Council's refusal to grant an LDC in respect of the amalgamation of two residential units to one residential unit was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Other matters

15. The Council makes reference to the refusal of planning permission for the proposed development and suggest that this was acceptance by the Appellant of the need for permission. I do not consider this to be relevant and I have not taken this into account.

Formal Decision

16. The appeal is dismissed.

S.Prail

Inspector