
Appeal Decision

Site visit made on 17 April 2018

by Daniel Hartley BA Hons MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2018

Appeal Ref: APP/F5540/X/17/3181424
17-19 Kingsley Road, Hounslow TW3 1PA

- 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 Haris Ali Solicitors against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00667/17-19/LAW1, dated 17 May 2017, was refused by notice dated 19 July 2017.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the amalgamation of two dwellinghouses to a single dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary matter and main issue

2. For the avoidance of doubt, I should explain that the planning merits of the proposed use are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, 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. The main issue is whether the Council's decision to refuse to grant the lawful development certificate was well founded with particular reference to whether or not the proposal would amount to a material change of use.

Reasons

3. As noted above, it is necessary for me to consider whether or not the proposal to amalgamate two terraced dwellings into one dwelling amounts to a material change of use requiring planning permission. In this case, there are no external alterations proposed: only internal works are proposed in respect of the amalgamation. There is no suggestion from either of the parties that the amalgamation of the two dwellings into one dwelling would have any material environmental or amenity consequences.

4. The most recent judgement from the High Court¹ has found that the loss of a unit or units of accommodation in the relevant local area may have a planning consequence in terms of the significant reduction in the number of dwellings available as housing stock. It made clear that the material effect of such conversions may conflict with development plan policy, but this should not be the sole basis upon which a decision is based. In practice, the determination of whether a material change of use would be involved may or may not be supported by a planning policy.
5. The *Kensington* judgement made a number of points which are set out below:

"(1) A planning purpose is one which relates to the character of the use of land;

(2) Whether there would be a material change in the use of land or buildings falling within the definition of "development" in section 55 of the TCPA 1990 depends upon whether there would be a change in the character of the use of the land;

(3) The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. Thus, the need for a land use, such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;

(4) 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;

(5) The issues of (2) and (4) above are issues of fact and degree for the decision maker and are only subject to challenge on public law grounds;

(6) Whether or not a planning policy addresses a planning consequence of the loss of an existing use is relevant to, but not determinative of, an issue under (4) above."
6. I have considered the above judgment and it is clear that the Council's analysis of the effect of the amalgamation upon housing supply should be considered relevant to whether the proposal falls within the scope of planning control. Whether this is the case is a matter for me to decide on a fact and degree basis.
7. In this case, the development plan for Hounslow comprises the adopted Hounslow Local Plan September 2015 (LP); the West London Waste Plan and the London Plan Consolidated with Alterations since 2011 (London Plan). In addition, the Council has drawn to my attention to (i) the draft Public Consultation London Plan December 2017 (Emerging London Plan) which takes into account a London-wide Strategic Housing Market Assessment and Strategic Housing Land Availability Assessment and (ii) the London Borough of Hounslow Housing Market Assessment 2016. I consider that the latter documents, whilst not forming part of the development plan, are nonetheless relevant to the overall consideration of housing land supply in the Borough. I

¹ *R (oao) The Royal Borough of Kensington and Chelsea v (1) Secretary of State for Communities and Local Government (2) David Reis (3) Gianna Tong [2016] EWHC 1785 (Admin)* - the *Kensington* judgement

afford such documents some weight in considering whether the proposal would or would not have planning consequences.

8. Policy SC1 of the LP states that *"we will seek to maximise the supply of housing in the Borough to meet housing need in a manner that is consistent with development principles and is built at a rate that will exceed the London Plan annualised completion targets of at least 12,330 new homes between 2015 and 2030"*. The policy goes on to say that this will be achieved by *"publishing the rate of housing completions and the trajectory of deliverable and developable housing supply against a housing supply target of 822 additional homes per year"*. In respect of annualised completion targets the Council has stated that in 2015/16 only 505 homes were provided. They then estimate that 891 would be delivered in 2016/17 and consequently that there would be an overall shortfall against the LP annualised delivery requirement of 248 homes. The appellant does not dispute this evidence and in this context I agree with the Council that the loss of one dwelling through amalgamation would impact upon the Council's ability to deliver the required number of homes in the Borough.
9. In addition to the above, and as part of my overall consideration of housing land supply, it is of note that the London Borough of Hounslow Housing Market Assessment 2016 and the draft London Plan (Public Consultation) require an increase in housing supply targets to 1,898 dwellings (2015-2035) and 2,182 dwellings (2019/20 – 2028/29) per annum respectively.
10. I have not been provided with any evidence to dispute the housing land supply requirement direction of travel which suggests that there is going to be a need to provide significantly more housing in the Borough. This is in the context whereby the evidence before me indicates that the Council is already underperforming against a lower annual housing land supply target in Policy SC1 of the LP. Taking into account all of the above, I consider that the net loss of one dwelling would have planning consequences from the point of view of delivering houses against the requirements of the LP, but also in terms of delivering houses against the housing target in the emerging London Plan.
11. The appellant has referred to Policy SC6 of the LP which states that the approach is to *"manage the conversion of buildings and the sub division of existing housing stock so as to contribute to housing supply without having an adverse impact on the character of the area or residents' amenity"*. Overall, the policy seeks positive contributions towards the number of housing units and is not, as such, supportive of amalgamations. All it establishes is that houses with a floor area of 130 sqm or more may be suitable for subdivision. Whilst it does not specifically seek to protect the retention of houses with a floor area less than this, neither does it suggest that such units do not contribute to the housing land supply requirement or that they are not needed. Consequently, I conclude that it does not support the appellant's case.
12. The appellant has also referred to Policy 3.14 of the London Plan. This states at 3.14B that the *"loss of housing, including affordable housing should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace"*. I accept that the proposal would not directly conflict with this policy in so far that it would have a neutral impact from a floorspace point of view. However, this does not mean that my views about housing land supply and the delivery of homes is of no significance. In

reaching this view, I also note that Policy SC1 refers to "*maximising the supply of housing*" and not maximising the supply of residential floorspace.

13. Whilst an amalgamation may not necessarily always be harmful to the supply of housing units in the Borough, I consider that they are nonetheless a material change of use when considered against the policy and housing land supply background outlined above. Consequently, and in this context, they should be assessed through an application for planning permission. For the reasons outlined above, I consider that the current proposal constitutes a material change of use and therefore the appeal fails. In arriving at this view, I have taken into account the lack of any perceived impact upon the environment/amenity of the area, existing development plan planning policy with regard to housing land supply and the other evidence supplied to me with regard to housing land supply.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the amalgamation of two dwelling houses to a single dwellinghouse was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Daniel Hartley

INSPECTOR