



Appeal Decision

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by Simon Hand MA

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

Decision date: 01 June 2021

Appeal Ref: APP/E0345/X/20/3250600

85 & 87 Longships Way, Reading, RG2 0AJ

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jassim Mohamad Al-Kuwari against Reading Borough Council.
 - The application (Reference:191969) is dated 13 December 2019.
 - The application was made under section 191(1)(a) 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 into one.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Background to the Appeal

3. 85 and 87 are adjacent properties in a terrace of new development in Reading. Each is a 4 bedroom house and the appellant has knocked them through to form 1 large 4 bedroom house. In early 2019 an application¹ for full planning permission was made to the Council it was described as "*A single orangery to the rear of two adjoining, single family dwellings under the same ownership. The dwellings are to remain as separate addresses but will be joined inside to make one large property, for a single family. No change of use*". This was refused on 20 March 2019 for the single reason that the loss of a family dwelling would have a negative impact on the available family housing stock within the Borough and there were no exceptional circumstances.
4. The appellant argues that this application made no concession that planning permission was ever needed for the amalgamation of the two dwellings, which seems to be accurate, but also that the Council did not pronounce on the issue of the change of use to a single dwelling. I think that too is accurate as far as it goes, but as the sole reason for refusal is the loss of one of the dwellings

¹ Reference 190023

caused by the amalgamation then it seems the Council simply assumed the amalgamation was development.

5. The appellant went ahead and amalgamated the two dwellings and as a result in October 2019 the Council wrote threatening enforcement action. This application is an attempt to determine whether or not the amalgamation actually is development and so requires planning permission.

Reasons

6. In this case there is no dispute that the amalgamation of two dwellings into one can amount to a material change of use and so would be development requiring planning permission. There is also no dispute that the external changes to the property and the individual effects of one family occupying the two adjoining dwellings as one do not have any material consequences for neighbours or the locality. The issue is solely one of Council policy.
7. The appellant has helpfully provided a detailed review of case law. Richmond² determined that the extent to which a use fulfils a legitimate or recognised planning purpose is relevant in deciding whether there has been a material change of use. More recently Kensington & Chelsea³ held that whether or not there was planning policy involved did not matter, so a use could have a planning purpose even if that purpose was not supported by a specific policy. That case is particularly instructive in that it featured the amalgamation of two flats into one. The Council argued there was a history of amalgamation of flats in the Borough and this was having an impact on the housing stock. That was a planning consequence of sufficient weight to render the amalgamation a material change of use. The Inspector found that as there was no planning policy relevant to the issue of the loss of flats that could not be a material change of use. The Court held that wasn't the case, the Council's arguments on loss of housing stock were capable of amounting to a planning consequence that would make the proposal a material change of use.
8. This appeal turns on the reverse of the argument. The Council have relied on a policy but have provided no evidence to suggest the loss of the dwelling caused by the amalgamation would actually have any planning consequences. The appellant argues that without such evidence, policy alone cannot be sufficient to determine there has been a material change of use.
9. The policy in question is H7 contained in the Reading Borough Local Plan, adopted November 2019. This policy states that "*planning permission will not be granted for any loss of residential accommodation or land unless there are exceptional circumstances. Planning permission will not be granted for a net loss in the number of residential units or gross floor area*". The reason for this is given as "*as demonstrated in this plan, there are substantial needs for additional housing in Reading, and every effort should be made to meet those needs in line with the NPPF. Therefore, net loss of existing housing would only serve to exacerbate this problem*". Exceptional circumstances are not specifically defined, but examples are where the loss of dwellings would help to meet another specifically identified need, such as accommodation for vulnerable groups or to restore a heritage asset. In his application for planning permission the appellant suggested the exceptional circumstances

² Richmond upon Thames LBC v SSETR & Richmond upon Thames Churches Housing Trust [2001]

³ R (oao Kensington & Chelsea RBC) v SSCLG & Reis & Tong [2016] EWHC 1785 (Admin)

would be that the bedrooms are too small. The Council however, noted they were commensurate with a large 4 bedroom house, and this argument has not been repeated in this appeal. Even if it had, there is no evidence the rooms are so small as to make them not viable as bedrooms. There are thus no exceptional circumstances and so the amalgamation of the two dwellings into one is contrary to policy H7.

10. The appellant argues that this is not enough. The purpose of the policy is to protect the housing stock, but it does not need protecting as Reading has more than a 5 year housing land supply. The loss of a single dwelling could not therefore be said to have any actual planning consequences.
11. The most up to date housing figures are in the December 2019 Annual Monitoring Report. This shows the Council has a 5.56 years supply against the target contained in H1 of the new Local Plan. It would have been interesting to have had the 2020 report to see whether the current pandemic had affected build out rates at all, but in any event I note that 2019-20 was not predicted to be a bumper year as 2018-19 had been with supply falling considerably below the 689 Local Plan target, which itself is lower than the objectively assessed need of 699 houses per year. The Council have abandoned the considerably lower core strategy housing figures which have become out of date.
12. In my view the housing supply position is balanced close to the 5 year requirement. The local plan is up to date and recently adopted and H7 went through the exhaustive local plan process and was found sound by the plan Inspector. I agree, that the mere existence of the policy does not necessarily mean the loss of a single dwelling would have planning consequences for the Council. A policy in an old plan could be found to be out of date, or a series of years of strong housing growth could demonstrate the policy could be relaxed without any planning consequences, but neither is the case here. The policy was included in the plan precisely to protect the existing housing stock because of the housing pressure on the Borough. While one less dwelling might not be significant on its own it would certainly set a precedent that could help to undermine the Council's housing strategy. In my view therefore, the amalgamation of two dwellings into one does have planning consequences and does amount to a material change of use.
13. The appellant argues that policy cannot be the determining factor in turning something that is not development into development. I agree, but it is the potential planning consequences that flow from the policy that are important and in this case they suggest the policy to protect the housing stock fulfils a legitimate planning purpose and so the loss of the dwelling is a material change of use. I note the various other appeal decisions that have been provided by both sides but while useful, none of them deal directly with the issues in this appeal.
14. I conclude the amalgamation of Nos 85 and 87 into a single dwelling amounts to a material change of use and so does require planning permission.

Simon Hand

Inspector