



Appeal Decision

Site visit made on 30 January 2024

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2024

Appeal Ref: APP/C4235/X/23/3322999

15 Greenthorne Avenue, Heaton Chapel, Stockport, Cheshire SK4 5NY

- 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 Dr S Wilson, Clyde House Nursing Homes Ltd, against the decision of Stockport Metropolitan Borough Council (the LPA).
- The application Ref DC088194, dated 14 March 2023, was refused by notice dated 4 May 2023.
- The application was made under section 192(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 proposed conversion of property in 2 flats back to a single dwelling.

Decision

1. The Appeal is dismissed. See formal decision below.

Background information

2. The appeal site is a 2 storey, end-of-terrace dwellinghouse on Greenthorne Avenue in Heaton Chapel, to the north-east of the town centre. The area is identified as a '*Predominantly Residential Area*' in the Proposals Map of the Stockport Unitary Development Plan Review (UDP). The site is close to other residential properties within an estate of houses of a similar age and design.
3. In December 2003 planning permission was granted for the conversion of the single dwelling into two flats. The ground floor flat is accessed via a door on the side elevation and the first floor flat is accessed from the front door of the property. The planning permission included the provision of a car parking space within the front garden. However, I noted on my site visit that this had not been provided and there was quite a high level of on-street parking on the estate. There are small, gravelled garden areas to the front and rear of the house.
4. Within the LDC application it was stated that, '*Planning permission is not required to convert the current use of the property from two flats back to its original use as a single dwelling*'. The LPA and the Appellant are in agreement that no external alterations to the property will be carried out. It follows that planning permission is not required with regard to any operational development.
5. However, the LDC application was refused on the basis that the proposal constituted a material change of use (COU) and, therefore, that planning permission is required for the amalgamation of the two flats back into a single dwellinghouse. The Reasons for Refusal were as follows:
 1. *The proposed change of use would give rise to material planning considerations including the loss of residential accommodation contrary to saved UDP HP1.3 'Avoidance of the Loss of Dwellings', which is a material*

consideration that has to be taken into account. The amalgamation of 2 no. flats into one single dwellinghouse would constitute a material change of use for which the grant of express planning permission is required, as the proposals would result in the removal of a housing unit from the site and from the Borough's overall housing stock in a time of housing under supply contrary to Development Plan policies.

2. *The same use class exception cannot be relied upon in this residential amalgamation case because the wording of the Use Classes Order defines a C3 use as a 'Dwellinghouse' (a single dwellinghouse). In this case, two separate dwellinghouses are proposed to be amalgamated, and as such the same use class exception does not apply because the original use of the two units to be amalgamated are not in use as a 'dwellinghouse'. Without the benefit of the same use class exception, the amalgamation of two dwellinghouses into one dwelling constitutes a material change of use that requires consideration through a formal planning application.*

6. In considering the question of whether or not a COU has occurred, both parties refer to the cases of *The London Borough of Richmond-upon-Thames v SSETR and Richmond- upon-Thames Churches Housing Trust (2000)* (Richmond case) and *The Royal Borough of Kensington & Chelsea v Secretary of State for Communities and Local Government 2016* (RBKC case). In reaching my decision I have considered the findings of the courts the with regard to all of the case law referred to by the parties.

My Assessment

7. In the Richmond case it was held that the nature of the uses, both before and after a LDC application, needed to be examined. The court found that whether or not a material COU had occurred relied upon the particular planning considerations of the situation. It was found in that case that the material planning considerations included the loss of accommodation. In the RBKC case it was held that an LPA was entitled to rely on an analysis of the effect of the conversion on housing supply. Whilst acknowledging that the Richmond case involved 7 flats, as opposed to just two, the principle and findings set out in the judgement are equally relevant in this appeal.

8. Therefore, what must be examined and compared is the character of usage before the application, that is as two flats, with the situation afterwards which would be use as a single dwellinghouse. The particular planning considerations, relating to the overall situation, will be determinative as a matter of fact and degree, as to whether the application proposal, under section 192(1)(a) of the Act, was lawful on the date of the LDC application on 14 March 2023.

9. Turning to the existing use of the property, the normal character of usage as two flats is significantly different to that of a single dwellinghouse. If the flats are occupied by separate households, which is likely to be the case, there would be a different pattern of comings and goings to the two flats, as opposed to those normally relating to one dwellinghouse. There would also be other material planning matters to consider, including possibly different on-street parking patterns, the collection of refuse, the storage of cycles and the dual use of amenity/garden space.

10. Irrespective of whether or not these planning considerations would result in positive or negative effects, these differences would, in my view, be material in planning terms. It could be argued that amalgamating two flats back into a single dwelling could be a positive planning benefit in some respects. For example, there could be less comings and goings to the property, there would be a single use of the amenity/garden space and it could result in less pressure relating to the on-street parking situation in this tight urban streetscene.

11. However, turning to the other planning considerations of any amalgamation, the LPA has made it quite clear that the proposed change of use from the existing 2 self-contained flats to a single dwellinghouse would give rise to the loss of residential accommodation contrary to saved Policy HP1.3 of the UDP.

12. This policy states that, in determining planning applications which would involve loss of land allocated for residential purposes or existing dwellings, whether by change of use or demolition, the Council will have regard to various factors. These factors include the restricted housing land supply in Stockport; whether the change of use or redevelopment is for some form of community facility; whether the development is small-scale and is a source of employment or service for the local community; the extent to which dwellings suffer from adverse environmental conditions and whether the loss of dwellings would be justified to facilitate regeneration or the environmental.

13. The policy goes on to state that *'The loss of dwellings or residential land to other uses will not be permitted unless a justification can be shown taking into account the above factors'*.

14. In this case, I agree with the Council that Policy HP1.3 is relevant and should be afforded weight in the determination as to whether the proposed change from two residential units to one would be a material COU and, therefore, that a formal planning application is required. In my view, there would be significant material changes and, having considered the relevant case law, these planning considerations must be determinative that the refusal of a LDC was justified.

15. In conclusion, therefore, I agree with the LPA that the amalgamation of the 2 flats into one single dwellinghouse would constitute a material change of use for which the grant of express planning permission is required. This is because the proposal would result in the loss of a housing unit on the appeal site and from the Borough's overall housing stock in a time of housing under supply.

16. It would also result in other material changes in relation to the overall usage of the property to which I have referred above. It follows, therefore, that on 14 March 2023 I do not consider that the proposed conversion of No 15 Greenthorne Avenue, from 2 flats back to a single dwelling, was lawful.

17. I acknowledge that because this was a LDC application, no justification had been required with regard to satisfying the requirements of Policy HP1.3. However, the fact that I have concluded that a material COU would occur, means that justification would now be required in relation to any future planning application.

Other Matters

18. In reaching my conclusions I have considered all other matters raised by the parties. These include the full planning history; all references to relevant local and national planning policies, the Use Class Order and case law; references to the Council's latest Housing Needs Assessment (dwelling type tenure and mix); and final comments. However, none of these carries sufficient weight to alter my conclusions and nor does any other factor change my decision.

Formal Decision

19. The Appeal is dismissed, and a Lawful Development Certificate is not issued.

Anthony J Wharton
Inspector