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17 March 2017

Section 192 Town and Country Planning Act

Appeal against refusal of a Certificate of Lawful Development

No's 2 and 3 Wildwood Grove London NW3 7HU

Conversion of two houses to one single family dwellinghouse.

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1. Introduction

1.1 The site relates to two substantial houses located on the north side of the road. The houses have been combined to form 1 dwelling.

1.2. The applicants have owned both properties since at least 15 September 2009.

1.3. The applicants sought a Certificate of Lawful Use under the provisions of S192 of the Town and Country Planning Act on 23 November 2016 seeking confirmation that the use was indeed lawful under the provisions of S192 of the Act.

1.4. The Council refused the application on 16 February for the reasons outlined within the decision notice.

1.5. To this the appellants say that the Council have asserted that a material change of use has occurred and this, by matters of fact and degree, is incorrect. As such the evidence complies with the requirements of S171, S191 and S192 of the Act.

2. Site Context

2.1. The building comprises two former houses that have been combined into one larger house.

3. Grounds of Appeal.

3.1. The development comprises:

The use of the buildings as a single dwellinghouse.

3.2. Section 192 of the Town and Country Planning Act 1990 (As amended) states:

192 Certificate of lawfulness of proposed use or development.

(1)If any person wishes to ascertain whether—
(a)any proposed use of buildings or other land; or
(b)any operations proposed to be carried out in, on, over or under land,
would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

(2)If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would

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be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(3)A certificate under this section shall—
(a)specify the land to which it relates;
(b)describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
(c)give the reasons for determining the use or operations to be lawful; and
(d)specify the date of the application for the certificate.

(4)The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.]

3.3. My client sets out the following as matters of fact:

3 Wildwood Grove was purchased on 15 September 2009

Building work to amalgamate Nos 2 and 3 commenced on 16 September 2009 and comprised knocking through from No2 to No3 Wildwood Grove.

When completed the development comprised.

The conversion of two properties into one single dwellinghouse by means of internal works only.

3.4. Section 55 of the TCPA 1990 expressly provides that converting a single dwellinghouse to create two or more dwellinghouses will result in a material change of use requiring planning permission. However, the legislation is silent on whether combining dwellings (such as knocking two houses into one) would also constitute development.

3.5. The legislation excludes internal works from the meaning of development, however, combining residential units could still result in a material change of use. This was confirmed by the High Court case of Richmond-Upon-Thames London Borough Council v Secretary of State for Transport [2000] 2 P.L.R. 115, which held that where a change of use gave rise to planning considerations (such as the loss of residential accommodation), those considerations were relevant to determining whether or not the change was material. In that case, the conversion of seven flats to a single family house was a material change of use.

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3.6. Richmond confirms that the amalgamation of two dwellings will not automatically be a material change of use. As confirmed by Richmond deciding whether a material change of use has occurred rests on matters of fact and degree in each case and any other policy considerations.

3.7. Further decisions which have been drawn following Richmond have drawn on the same pattern of decision making. In ref 3028049 (Royal Borough of Kensington and Chelsea) the amalgamation of two self contained flats to form one self contained residential unit was tested. The development involved alterations only. The appeal site was a mid-terraced property that was originally two houses, which had been amalgamated into one dwelling in 1949 and the building was subsequently converted into flats. The proposal involved the amalgamation of the flat at ground floor level and the flat above it on the first floor so as to create a single residential unit.

3.8. The principal issue in this case was whether the amalgamation of the two flats to create one residential unit would constitute a material change of use. The amalgamation of the two flats would have no material effect on the external appearance of the property and no harm would be caused to the character of the building or to the surrounding area. The Council did not allege that the proposed amalgamation of the two flats would have any effect on the character of the use of land other than through the loss of one residential unit. However, they argued that the "…scale of amalgamation currently under way in this Borough is having a material effect on a matter of public interest, namely it is significantly reducing the number of dwellings in the housing stock".

3.9. The Inspector pointed out that prior to 2000 it was commonly accepted that a reduction in the number of dwelling units on land in residential use did not represent, and could not contribute to, a material change in use of the land.

3.10. The Inspector drew attention to the reference in the Richmond judgement to Mitchell v SSE [1994] 2 PLR 23 because it dealt with an application for planning permission and was concerned with the material considerations that had to be taken into account under section 70, and so it would not appear to me to have been an appropriate foundation on which to base the judgment in Richmond. Nevertheless the Inspector accurately quoted the relevant passage from Richmond: "It is undoubtedly the law that material considerations are not confined to strict questions of amenity or environmental impact and that the need for housing in a particular area is a material consideration.....". But he pointed out that, in order for it to be a material consideration, the need for housing must be expressed in and supported by local planning policy.

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3.11. The Inspector observed that the High Court challenge in Richmond was successful because the Inspector in that case had failed to take into account a material consideration, namely the policy factor, which he considered to be "…a question of planning merit than of law". The Inspector stated that Richmond did not establish that the policy factor can be the sole determinative factor in an LDC case but one that must be taken into account with all other considerations. But, in the instant case, the Council was wholly relying on the policy factor.

3.12. Having regard to the Case of 2 and 3 Wildwood Grove and applying the Richmond Tests.

3.13. Policy CS6 of the Council's Core Strategy states that the Council will, inter alia, d) minimise the net loss of existing homes;

3.14. Policy DP2 of the Council's Development Management Policies expands on this stating;

Policy DP2: Making full use of Camden's capacity for housing
The Council will seek to maximise the supply of additional homes in the borough, especially
homes for people unable to access market housing, by:
a) expecting the maximum appropriate contribution to supply of housing on sites that are underused or vacant, taking into account any other uses that are needed on the site;
b) resisting alternative development of sites considered particularly suitable for housing; and
c) resisting alternative development of sites or parts of sites considered particularly suitable for affordable housing, homes for older people or homes for vulnerable people.
The Council will seek to minimise the loss of housing in the borough by:
d) protecting residential uses from development that would involve a net loss of residential floorspace, including any residential floorspace provided:
- within hostels or other housing with shared facilities; or
- as ancillary element of another use, wherever the development involves changing the main use or separating the housing floorspace from the main use.
e) protecting permanent housing from conversion to short-stay accommodation intended for occupation for periods of less than 90 days;
f) resisting developments that would involve the net loss of two or more homes, unless they:
- create large homes in a part of the borough with a relatively low proportion of large dwellings,
- enable sub-standard units to be enlarged to meet residential space standards, or

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- enable existing affordable homes to be adapted to provide the affordable dwellingsizes that are most needed.

As an exception to the general protection of residential floorspace, where no alternative site is available, the Council will favourably consider development that necessitates a limited loss of residential floorspace in order to provide small-scale healthcare practices meeting local needs.

3.15. Para 2.22-2.26 of the DPD go on to provide further clarity to policies CP6 and DP2.

3.16. The amalgamation of the two houses to form one house would result in the loss of only one residential unit and amounts to the creation of a large unit within an area of relatively uniform housing sizes.

3.17. As such, the development has not result in a conflict with policy CS6 of the Core Strategy or DP2 or the Development Management DPD.

3.18. Policy 3.14 of the London Plan states, amongst other things, that the loss of housing should be resisted unless the housing is replaced at existing or higher densities with at least equivalent floorspace. The London Plan is a strategic plan and places an emphasis on the increase or preservation of residential floorspace rather than the number of housing units. This strategic objective is reflected in the LPA's Core Strategy and given the conclusions set out above the proposed amalgamation of the two flats would not result in any loss of residential floorspace and does not conflict with London Plan policy 3.14.

3.19. Having regard to the policy test and given that there is no overriding policy conflict this is reduced to a material consideration with no weight applied. Within the decision notice the Council confirm the same.

3.20. The Second part of the Richmond test relates to demonstrable harm.

3.21. The proposal does not amount to a material change to the exterior of the building or its layout within the street. The proposal does not therefore result in a demonstrable effect to the character and appearance of the area.

3.22. In terms of occupation the proposal has not amounted to a dramatic increase in the number of occupants within the building or an impact on the amenity of adjoining occupiers in terms of noise or general disturbance. Again within the decision notice the Council confirm the same.

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3.23. Given the application of the Richmond tests it is submitted that the development has not resulted in a material change of use of the land and as such is lawful by virtue that it does not constitute 'development' as set out in S55 of the Town and Country Planning Act 1990. It is respectfully requested that the Inspector now grant this application for a Certificate of Lawful Development.

4. Conclusions

4.1. In this instance the appellants have clearly demonstrated that that the proposal does not fall within the definition of 'development' as set out at S55 of the Town and Country Planning Act. .

4.2. Further through the application of Richmond the appellants have demonstrated that the development has not resulted in a material change of use. The works are therefore not subject to the four year time periods as set out in S171B(2) of the Act.

4.3. It is concluded that the Council errered in their determination of this application and that the Certificate of Lawfulness should be issued accordingly.