Case Name: *Rectory Homes Ltd v Secretary of State for Housing Communities And Local Government* [2020] EWHC 2098 (Admin) (31 July 2020)

Full case: Click Here

Commentary:
An application for statutory review made by Rectory Homes Limited under s.288 of the Town and Country Planning Act 1990 was dismissed.

The central question to the challenge is whether (as Rectory Homes submitted) a proposal for extra care housing within the C2 use class did not fall within the scope of the development plan policy requiring schemes for 3 or more dwellings to provide affordable housing.

The appeal scheme would provide 78 units of residential accommodation. Each unit would have its own front door, between one and four bedrooms, a living room, bathroom and kitchen allowing for independent living. The residential units are referred to as "dwellings" in the s.106 agreement.

Policy CSH3 of the South Oxfordshire Core Strategy (adopted in December 2012 and forming part of the statutory development plan) sets out the circumstances in which development will be required to provide affordable housing; i.e. 40% affordable housing will be sought on all sites where there is a net gain of three or more dwellings subject to the viability of provision on each site.

Both parties agreed that the proposal fell within class C2. The difference was over whether the accommodation could be categorised as "dwellings". "The Claimant's stance was that because it was agreed that the residential accommodation did not fall within Class C3, none of those units could constitute a dwelling. SODC's [the Council's] case was that the "housing with care" units were dwellings in both "form and function", and as such could fall within the C2 Use Class provided that they are not in C3 use." The inspector found that the accommodation fell within C2 but that it comprised "dwellings" for the purposes of the policy.

Rectory challenged the Inspector's decision on the basis that the Inspector had misinterpreted Policy CSH3 and misinterpreted the Use Classes Order in concluding that each accommodation unit represents a dwelling, as well on the basis that the Inspector had:

- failed to give legally adequate reasons for departing from the Shiplake Decision;
- unlawfully applied reg. 122 of CIL Regs in giving the financial contribution no weight; and
- erred in his approach to the Development exceeding the 45 dwelling maximum in the TNP.

Mr Justice Holgate held that there is nothing in the Plan to suggest, nor any reason to think, that the word dwelling, whether in Policy CSH3 or elsewhere, is confined to residential

accommodation the use of which falls wholly within the C3 Use Class. Further, he concluded that on a proper interpretation of the Use Classes Order, Class C2 may include residential accommodation in the form of dwellings as part of the primary use, subject to the provision of care and restrictions on occupation of the kind contained in the s.106 obligation in this case.

Mr Justice Holgate also concluded that:

- the Inspector did adequately explain the departure from the Shiplake Decision;
- the Inspector had carried out a lawful assessment of the "inadequate contribution" towards affordable housing and applied the planning balance; and
- the Inspector did not fail to consider or explain the harm relating to the exceedance of the number of dwelling accepted by policy HA4 of the TNP.

All grounds of challenge therefore failed and the application for statutory review was dismissed.

Summary prepared by Amy Fender. For commentary on this case please see Simon Ricketts' recent blog: https://simonicity.com/2020/07/31/of-use-that-old-c2-number-again/

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