

Appeal Decisions

Site visit made on 2 November 2016

by George Mapson DipTP DipLD MRTPI

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

Decision date: 19 December 2016

Appeal Ref 1: APP/Z5060/C/16/3146657

Appeal Ref 2: APP/Z5060/W/16/3146936

10 Wilthorne Gardens, Dagenham, Essex, RM10 9TR

- The appeals are made by Ms D Stanimirova against decisions by the Council of the London Borough of Barking & Dagenham.
- **Appeal 1** is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
- The Council's notice (Ref. 15/00251/NOPERM) was issued on 10 February 2016.
- The breach of planning control as alleged in the notice is: *"Without planning permission, the unauthorised material change of use of a single family dwelling house to that of a House in Multiple Occupation."*
- The requirements of the notice are: "[1] Cease use of the property a House in Multiple Occupation. [2] Return the use of the property to a single family dwelling house. [3] Remove all fittings and alterations related to the unauthorised use as a House in Multiple Occupation. [4] Remove all subsequent waste material from the property."
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
- **Appeal 2** is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The application Ref 15/01444/FUL, dated 21 September 2015, was refused by a notice dated 27 January 2016.
- The development proposed is described on the application form as *"Application for HMO"*. On the Council's decision notice and appeal form, the development is described as *"Use of single dwelling as house in multiple occupation"*. The appeal is determined on the basis of that description.

Decisions

APP/Z5060/C/16/3146657

1. The enforcement notice is corrected by deleting from section 4, paragraph 1, the words *"four years"* and substituting *"ten years"*. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

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2. The appeal is dismissed.

Application for costs

3. An application for costs was made by the Council of the London Borough of Barking & Dagenham against the appellant, Ms D Stanimirova. This application is the subject of a separate Decision.

Preliminary matters

Time limits for taking enforcement action

4. The enforcement notice refers to the time limit for enforcement action in this case being 4 years. In the appellant's grounds of appeal he says that the correct period is 10 years.
5. In April 2010 the UCO¹ was amended² and changes introduced to planning regulations for dwellinghouses and houses in multiple occupation [HMOs]³.
6. A concurrent amendment to the GPDO⁴ allowed a change of use from Class C4 (HMO) to Class C3 (dwellinghouse) as permitted development. In October 2010 a further change to the GPDO allowed a change of use from Class C3 to Class C4. These changes were explained in DCLG circular 08/2010, which was issued in November 2010 but cancelled on 7 March 2014 by the PPG⁵.
7. Before the introduction of Class C4, it was generally accepted that the 10-year rule applied to multiple occupation. The introduction of Class C4 and consequent permitted development rights to switch to Class C3 do not affect this.
8. In *Gravesham Borough Council v The Secretary of State for the Environment and Michael W O'Brien* (1982) 47 P&CR 142 [1983] JPL 307, it was held that a property has to have all the facilities to support normal residential occupation to be regarded as a dwellinghouse. Multiple occupation bedsits would not meet this test.
9. It might seem anomalous that one can switch between uses with different immunity periods as permitted development but this is the result of the relevant provisions. There is a difference between a self-contained unit that has all the attributes to which the 4-year rule applies, and a situation where basic facilities are shared with other households. The question is whether the building, or the relevant part of the building, has been used as a single dwelling house. This applies to a flat but not a bedsit.
10. Consequently, the appellant is right; the correct time limit for enforcement action against a material change of use to an HMO is 10 years.
11. Although this is a defect of the enforcement notice, having regard to the particular facts and circumstances of this case, I am satisfied that it is correctable without injustice being caused to any party. I shall correct it as set out in paragraph 1 above.

¹ The Town and Country Planning (Use Classes) Order 1987.

² The UCO was amended by the Town and Country Planning (Use Classes) (Amendment) (England) Order 2010.

³ Under the UCO amendment, Class C3 was split into 3 parts. These were: C3(a) - a single person or people living together as a single household, as defined by the Housing Act 2004 (basically a 'family'); C3(b) - not more than 6 people living together as a single household and receiving care; and C3(c) - not more than 6 people living together as a single household with no care provided and who do not fall within the C4 definition of a house in multiple occupation. In addition, a separate Class C4 (HMO) was added which covers small shared houses or flats occupied by between 3 and 6 unrelated individuals who share basic amenities.

⁴ Town and Country Planning (General Permitted Development) Order 1995, as amended, was in force in 2010, when the circular was issued and in 2014 when it was cancelled. The 1995 Order was replaced in April 2015 by the Town and Country Planning (General Permitted Development) (England) Order 2015.

⁵ 'Planning Policy Guidance', DCLG's web-based resource.

Background

The appeal site and surroundings

12. No. 10 Wilthorne Gardens is a 2-storey semi-detached house located in a residential cul-de-sac. Originally built as a 3-bedroomed dwellinghouse, the building has been significantly altered and extended. The works carried out include the erection of a large 2-storey side extension for which planning permission was granted in June 2007. The plans showed that the extended 1st floor would have 5 bedrooms, a bathroom and a shower room.
13. The appeal property is now used as an HMO. I saw that a single storey side extension has been added to the 2-storey side extension and that 6 rooms are used as bedrooms; 1 on the ground floor and 5 on the 1st floor.

Article 4 direction

14. Paragraph 3 of circular 08/2010 explained that in certain circumstances local planning authorities are able to issue 'directions' that require applications for planning permission to be submitted where they would not normally be needed.
15. Directions to remove permitted development rights are made under article 4(1) of the GPDO. Some London Boroughs, including Barking & Dagenham, have made borough-wide article 4 directions which have removed permitted development rights for the change of use from a use falling within Class C3 to a use falling within Class C4. In this Borough, the direction came into force in May 2012.

Planning policy

National planning guidance

16. The National Planning Policy Framework [NPPF] maintains the statutory status of the development plan as the starting point for decision making. It states that proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise⁶.

The development plan

17. The London Plan (2016) and the adopted Local Development Framework [LDF] Borough Wide Policies Development Plan Document [DPD] (2011) contain development plan policies that are cited as relevant to this appeal. The Council has drawn attention to several DPD policies⁷, particularly policy BC4 (*Residential Conversions and Houses in Multiple Occupation*).
18. Paragraphs 3.4.1 – 3.4.4 of the supporting text to this policy explain that the advantages to be gained by the subdivision of existing housing needs to be balanced against the need to protect and increase the supply of family housing, given the shortage in Barking & Dagenham (as highlighted in the Barking & Dagenham Housing Strategy 2007 - 2010), as well as in London as a whole.
19. Policy BC4 helps to address the loss of family homes and aims to ensure that the current deficit is not worsened by further flat conversions and HMOs. Furthermore, restricting the number of flat conversions and HMOs is important for residential character and amenity.

⁶ This statement reflects the statutory duty imposed by Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, except that in the Acts "must (be made in accordance)" is used in place of "should".

⁷ In addition to policy BC4 (*Residential Conversions and Houses in Multiple Occupation*), this cited policies include BP5 (*External Space Standards*); BP8 (*Protecting Residential Amenity*); BP11 (*Urban Design*); BR9 (*Parking*); and BR10 (*Sustainable Transport*). I have taken account of the objectives of all these policies.

20. The policy has 2 sub-headings; the 1st is 'Changes of Use from Housing and Subdivision of Larger Homes', the 2nd is 'Changes of Use from Other Uses to Residential'. Only the part of the policy that follows the 1st sub-heading is directly applicable to these appeals.

21. Under the 1st sub-heading there are 2 paragraphs, the 1st of which says:

The Council is seeking to preserve and increase the stock of family housing in the Borough. Consequently, when planning permission is required, the Council will resist proposals which involve the loss of housing with three bedrooms or more.

22. The 1st sentence sets out the objective of this policy; the 2nd explains how this objective will be achieved. This paragraph is directly relevant to No. 10 Wilthorne Gardens, because it is a house with 3 bedrooms or more and the "proposal" (already implemented) to use it as an HMO has resulted in the loss of part of the stock of family housing in the Borough.

23. The 2nd paragraph of the policy deals with a different situation; proposals for the conversion of properties other than those which are houses with 3 bedrooms or more. It is criteria-based and identifies some factors for consideration where the use of a property as an HMO is proposed. It says:

Other proposals for flat conversions or homes in multiple occupation (HMOs) will only be considered acceptable provided that:

- *The number of houses that have been converted to flats and / or HMOs in any road (including unimplemented but still valid planning permissions) does not exceed 10% of the total number of houses in the road. No two adjacent properties apart from dwellings that are separated by a road should be converted.*
- *No significant loss of character or amenity occurs to the area as a result of increased traffic, noise and/or general disturbance.*
- *Regard is had to the appropriate design, transportation, and internal and external amenity space standards policies.*
- *The internal space standards required by Policy BP6 can be met for all of the proposed new dwelling units.*
- *Adequate space is provided to store refuse and recycling ready for collection.*

Appeal 1 on ground (a), the deemed planning application, and Appeal 2

24. For the reasons set out in paragraph 22 above, there is a clear conflict with the objectives of development plan policy BC4. Consequently, the next step in the decision-making process is to assess the merits of any material considerations that have been put forward to support an argument that the appeals should be determined other than in accordance with the development plan.

25. The appellant contends that there is no material difference, in terms of planning consequences, between the use of the appeal property as a single household family dwellinghouse and its use as an HMO occupied by unrelated people.

26. As a matter of planning principle, it is right to take the view that a change of use becomes material only if, as a matter of fact and degree, it results in the original planning unit being used in a way that has "planning consequences". If there is clearly a lack of planning consequences, that might be a material consideration which weighs in favour of the appeal development.

27. In support of his 'materiality' argument, the appellant claims that the HMO use does not conflict with any of the criteria set out in policy BC4 (see paragraph 23 above). The Council refutes that claim, arguing that the unauthorised use conflicts with criterion 2, because it gives rise to a significant loss of character or amenity in the area as a result of increased traffic, noise and/or general disturbance.

Main issue

28. Given the clear policy conflict, the main issue in these appeals focuses on the 'material considerations' argument. It involves an assessment of the effect of the HMO use firstly, on the living conditions of occupiers of nearby dwellings, in terms of noise and disturbance; and secondly, on traffic generation and the increased demand for on-street parking space on the convenience and safety of road users and pedestrians.

Reasons and conclusions on Appeal 1 on ground (a) and Appeal 2

29. The Council points out that the HMO use is a more intensive form of residential use than use as a single household family dwellinghouse. The Council had been told that the property was occupied by 1 family and 2 single people, but as it contains 5 bedrooms it has the space to accommodate up to 10 people. As mentioned earlier, 6 rooms now serve as bedrooms.
30. The Council's case is that occupants of the HMO are likely to have different lifestyles, with different day-to-day activity routines, from occupants of a single household family dwellinghouse. There is likely to be a greater number of comings and goings by the occupants of and visitors to the property, which would generate greater levels of noise and disturbance.
31. The Council has drawn attention to the current Public Transport Accessibility Level [PTAL] rating for this locality, which is poor. On a scale of 1-6 (where 6 is 'excellent'), the PTAL is 1b, indicating that residents have a significant reliance on private vehicles for transport.
32. The Council's assessment of high private vehicle use appears to be borne out by the representations received from some local residents. The local residents complain about high levels of vehicle activity associated with the HMO use. More vehicle movements, including the use of 'white vans', have led to incidents of indiscriminate parking in the narrow cul-de-sac. This has occurred despite the fact that the forecourt of the appeal property is hard surfaced and available for occupants to park their vehicles.
33. The appellant questions the assumption that these effects are attributable to the HMO use of the appeal property. However, I consider that there is a greater likelihood that such effects would arise from the HMO use than would arise from its lawful use as a single household family dwellinghouse, even if the occupants of the single household were to use several vehicles. Local residents say that these significant adverse effects have arisen only since the HMO use of the appeal property began.
34. Whilst these complaints seem to relate to the activities of previous, rather than current occupiers of the HMO, they are evidence of tangible planning consequences that have arisen from this use. They reveal materially different characteristics from the lawful use of the property.
35. I find that the HMO use has led to increased activity at the site which has, at times, eroded the living conditions of occupiers of nearby houses, in terms of noise and disturbance. The HMO use has also led to an increased demand for on-street parking space and has the potential for these adverse effects to continue or recur. High levels of indiscriminate parking have occurred in the past, as witnessed by local residents, and this poses a risk to the convenience and safety of road users and pedestrians.
36. I conclude that the unauthorised HMO use of the appeal property is contrary to the development plan because it conflicts with policy BC4. It has resulted in the loss of a house with 3 bedrooms or more and has thus diminished the stock of family housing in the Borough. I find no material considerations in this case that would indicate that the planning and deemed planning applications should be determined other than in accordance with the development plan. No conditions have been suggested that would overcome the harm the HMO use has caused in the past and has the potential to cause. For these reasons, Appeal 1 on ground (a) and Appeal 2 both fail.

Appeal 1 on ground (g)

37. The appellant's case is that 3 months provides existing tenants with insufficient time to find alternative accommodation. The compliance period should be extended to 9 months.

Reasons and conclusions on Appeal 1 on ground (g)

38. The Council points out that the Housing Act 1988 has provisions that enable a private landlord to regain possession of their property. Section 21 gives a landlord an automatic right of possession without having to give any grounds (reasons) once the fixed term of the tenancy has expired. The appellant has supplied a copy of a rental agreement that was signed by a tenant in August 2013. It states at paragraph 22 that the landlord may end the tenancy by a 30-day written notice to terminate.
39. Whilst I have some sympathy for the predicament of the present tenants, no evidence has been submitted to show that 9 months would be needed to serve them with notices to terminate and for the unauthorised use to cease. In the absence of such evidence, or any other good reason for extending the compliance period, I find that 3 months provides adequate time to meet the requirements of the notice. Accordingly, Appeal 1 on ground (g) fails.

Overall conclusions

40. I have taken account of my observations at the site and in the surrounding area, and of all the matters raised in the written representations. For the reasons given above I conclude that the appeals should not succeed and I shall uphold the enforcement notice. Planning permission is refused on the planning application, and on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

George Mapson

INSPECTOR