
Appeal Decisions

Hearing held on 17 January 2017

Site visit made on 17 January 2017

by Katie Peerless Dip Arch RIBA

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

Decision date: 1 February 2017

2 Appeals at 18 Eric Road, Romford RM6 6JJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Ghazanfar Ejaz against enforcement notices issued by the Council of the London Borough of Barking & Dagenham.
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Appeal A: APP/Z5060/C/16/3149381

- The enforcement notice, numbered 16/00096/NOPERM, was issued on 1 April 2016.
 - The breach of planning control as alleged in the notice is the unauthorised change of use of a single family dwelling house to that of a House in Multiple Occupation at first and second floor level of the property.
 - The requirements of the notice are: Cease use of the property as a House of Multiple Occupation. Return the use of the property to a single family dwelling house. Remove all fittings and alterations related to unauthorised use as a house of Multiple Occupation. Remove all subsequent waste material from the property.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (e) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/Z5060/C/16/3149374

- The enforcement notice, numbered 14/00075/NOPERM, was issued on 1 April 2016
 - The breach of planning control as alleged in the notice is the creation of an unauthorised residential unit at ground floor level.
 - The requirements of the notice are: Cease use of the ground floor residential unit. Return the use of the property to a single family dwelling house. Remove all fittings and alterations related to the unauthorised ground floor residential unit. Remove all subsequent waste material from the property.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (e) of the Town and Country Planning Act 1990 as amended.
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Decisions

APP/Z5060/C/16/3149381

APP/Z5060/C/16/3149374

1. The appeals are dismissed and the enforcement notices are upheld. Planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.
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Main Issues

2. I consider that the main issues in the appeals are
on ground (c): whether the works that have been carried out represent a material change of use and, if so,
on ground (a): the effect of the development on:
 - (i) the supply of family housing in the Borough
 - (ii) the living conditions of present and future neighbouring occupiers and occupants of the property and
 - (iii) the availability of parking spaces in the vicinity.

Site and surroundings

3. The appeal property is a mid-terraced house in a residential area of the Borough. It has been extended at ground floor level at the rear and the loft space has been converted into living accommodation through the addition of a rear dormer. Since these works were carried out, the property has been sub-divided into a self-contained residential unit on the ground floor, with 2 bedrooms, a living room, kitchen and bathroom, and 3 bedrooms on the upper floors, with a kitchen and bathroom on each floor. All the rooms on the first floor lead off the common stairway which also serves the second floor. At that level, the kitchen leads off the hallway and the bathroom is contained within the studio bed/sitting room.
4. Externally, there is a garden to the rear to which the ground floor unit has access and there is a hard surfaced front area where refuse bins are kept, separated from the pavement by a low wall. There is on-street parking on each side of Eric Road, limited to permit holders between 0830 and 1730.

Reasons

Ground (e)

5. At the Hearing, the appellant accepted that he had not been disadvantaged by any perceived failure of the Council to serve the enforcement notices in the proper manner and he has been able to appeal against them within the specified time frame. He apparently made the appeal on this ground because he was under the impression that he should have been allowed 28 days prior to the service of the notices to address any issues raised by the Council.
6. In the event, he agreed that the time between the service of the notices and the date they would have come into effect, had he not appealed against them, was not less than the 28 days required by s172(3)(b) of the Town and Country Planning Act 1990 (as amended).
7. He also claimed that the manner in which the notices were issued was confusing, in that one was withdrawn and reissued. This might have been so, but the notices that are the subject of these appeals are now clear on their face and have been correctly issued. The appeal on ground (e) consequently fails.

Ground (c) (Appeal A only)

8. The appellant's case on this ground of appeal relies on the fact that he has been granted a license for a House in Multiple Occupation (HMO) by the Council for the property. He also notes that all the extension works were carried out under permitted development rights and were passed by the Council's Building Regulations department.

9. However, the planning regime is different and separate from the Council's licensing and Building Regulations departments and, whilst it is unfortunate that this did not appear to have been drawn to the appellant's attention, it is nevertheless his responsibility to ensure that he has all the required permissions to sub-divide the building in the way that he has.
10. There is an Article 4 direction across the Borough that came into force in 2012, prior to the date the sub-division took place, which removes permitted development rights for changes of use from a single dwelling house into an HMO. The way the property is now used contravenes this Direction.
11. However, changes of use are not necessarily classed as development requiring planning permission to authorise them unless they are considered to be material in planning terms. In this Borough there is a need to retain family dwellings and policy BC4 from the Borough Wide Development Policies DPD 2011, which is part of the Council's Local Development Framework (LDF), supports this aim and resists the loss of units of 3 bedrooms or more. The existence of the Article 4 Direction is further evidence of the Council's concern over this matter.
12. The Council has therefore identified the problems that uncontrolled subdivisions of existing single dwellings could create in relation to the supply of family housing in the Borough. Although the loss of one such dwelling might not seem significant if considered on its own, an accumulation of such alterations could have a detrimental impact on the Council's ability to meet demand for such accommodation.
13. I therefore consider that the alterations in this case amount to a material change of use when considered against the policy background outlined above and this needs a grant of planning permission to authorise it. No such permission has been granted.
14. The appellant considers that the whole of the property is being used as an HMO but also queried whether, if the allegations in the notice that is the subject of Appeal B are correct, the use on the upper floors would then still be as an HMO. It seems that the occupiers of the unit on the ground floor are able to enter the first floor bathroom in order to access the boiler controls that also run their heating/hot water. However, I consider that this does not prevent the ground floor unit from being a self-contained flat. No other residents have access to this unit and the existence of a shared facility such as this outside the unit does not, in my view, change its status.
15. I also find that the rooms on the upper floors should be classified as an HMO. There are 3 double bedrooms and the occupiers of these rooms have shared facilities in the form of bathrooms and kitchens. This meets the criteria for an HMO and, even if there are 6 or fewer occupants, the Article 4 Direction covers both 'small' HMOs as defined in Class C(4) of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and 'large' HMOs (which are those with more than 6 occupants and are classed as *sui generis* by the UCO).
16. Therefore, I find the enforcement notices are correct in their allegations, there has been an unauthorised material change of use and the appeal on ground (c) consequently fails.

Ground (a)

17. The appellant asks that planning permission is granted for the sub-division. Any such applications should be considered against the provisions of the Development Plan unless material considerations indicate otherwise and, as noted above, the change of use conflicts with policy BC4. As explained above, while one conversion might seem immaterial, it is the cumulative effect of such changes that could disrupt the Council's housing strategy.
18. The appellant also notes that there is clearly a need for 1 and 2 bedroom units as some new build units have been granted permission in proximity to Eric Road. However, the Council explained that the calculation of the number of larger units needed was based on the assumption that existing units would be retained through the application of policy BC4 and the Article 4 Direction.
19. The Council is also concerned that the use as a flat and HMO would be more disturbing for neighbours than use as a family house in terms of the comings and goings of the occupants and would put additional pressure on the availability of parking spaces in the road. However, the appellants considers that a 5 bedroom property, which is what would exist if the notices were complied with, could be occupied by to 10 adults, whereas at present the HMO license limits the occupied by no more than 8 people.
20. Whilst I accept that there are instances where a family home of this size and in this location could have 10 or more adult occupants, I consider that this would be an unusual situation and it is more likely that the property would house a mix of adults and children. However, in terms of comings and goings, and any resulting disturbance, that is a matter that might not depend solely on the number of occupants, but rather on their lifestyle and work patterns. I am not therefore persuaded that the current use would necessarily create unacceptable living conditions for future or neighbouring occupiers.
21. In respect of parking provision, a development of this type would be expected, through LDF policy BR9 and the London Plan, to have 2 allocated parking spaces, whereas at present there are none. Although on-street permit parking is available, the number of permits issued to an individual dwelling is limited to 3. This would mean that the HMO/flat use could have 6 permits, whereas a single family house would only have 3. This would increase the pressure on spaces in the vicinity.
22. The appellant points out that some houses in the road have garages and off-street parking, which reduces the demand for on-street spaces and that his tenants generally rely on public transport. He notes that the site has access to bus route and the nearest station is a short walk away. Nevertheless, the site's PTAL rating of 3 is relatively poor, and there is no guarantee, or means of ensuring that, although the appellant is careful in his selection of tenants, a future owner would ensure that the property is rented to tenants who would not own private cars. For these reasons, I am concerned that the current use would prove detrimental to on-street parking provision and, whilst on its own this factor would not necessarily result in a refusal of planning permission, it nevertheless add to the objections to the scheme.

23. I note that the current arrangement would provide small residential units in a Borough where the 5 year housing land supply has not yet been identified. However, although the lack of a 5 year housing land supply means that the Council's policies for the supply of housing are out-of-date, as defined in the National Planning Policy Framework, the property is already in a housing use and policy BC4 is not, therefore, restricting the supply of housing sites. Neither would upholding the enforcement notices reduce the amount of available residential floorspace in the Borough.
24. The Council has confirmed that there is a need for larger single dwellings and I find that the adverse impacts arising from the conflict with the Development Plan through the sub-division of the unit and the consequent loss of a family dwelling, combined with the increased pressure on parking availability, significantly and demonstrably outweigh any benefits arising from the development.

Conclusions

25. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notices and refuse to grant planning permission on the deemed applications.

Katie Peerless

Inspector

