
Appeal Decision

Site visit made on 21 February 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 25 April 2017

Appeals Ref: APP/Z5060/C/16/3159386 (Appeal A) and

Ref: APP/Z5060/C/16/3159387 (Appeal B)

21 Somerby Road, Barking, Essex IG11 9XH

- 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 Miss Agne Lilionyte (Appeal A) and Mr Valdas Jurgelionis (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 24 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of a single family dwelling house to a house in multiple occupation.
 - The requirements of the notice are:
 - Cease the mixed use of the single dwelling house as a house in multiple occupation;
 - Remove the fittings and alterations (including locks on doors and kitchen and bathroom fittings) that have been installed to achieve the mixed use of the single family dwelling house as a house in multiple occupation; and
 - Remove all waste and refuse from the site.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended and Appeal B is proceeding on ground (g).
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by the deletion of the word 'four' from paragraph 4.1. and the substitution of the word 'ten'. 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.

Appeal B

2. It is directed that the enforcement notice is corrected by the deletion of the word 'four' from paragraph 4.1. and the substitution of the word 'ten'. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. The first reason for issuing the enforcement notice is that it appears the breach of planning control has occurred within the last four years. In this respect the Council are mistaken. Only a material change of use to a single dwelling house is immune from action after four years (section 171 of the Town and Country Planning Act 1990) and a house in multiple occupation (HMO) is not a single
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dwelling house. It is open to me to correct the notice to put it in order but this can only be done provided there is no injustice to either party. In this case I believe no injustice would be caused to the appellants as they state the use has only taken place since February 2016 and as such, they have not submitted a ground (d) appeal. I will therefore direct that the notice be corrected.

The ground (a) appeal and the deemed planning application (Appeal A)

Main Issues

4. The main issues are the effect of the development on i) the stock of family housing in the borough; and ii) the living conditions of the existing occupiers having regard to the standard of accommodation.

Reasons

Housing stock

5. The appeal site is an end of terrace property situated mid-way along Somerby Road which is a short residential street running between Salisbury Road and Cecil Avenue. The building is two storeys in height with an additional room in a loft extension. There are three rooms on the ground floor, four rooms on the first floor, three bathrooms and a rear garden.
6. For the purpose of my determination under the Planning Acts I am required to have regard to the development plan, unless material considerations indicate otherwise. The development plan in this instance is the Council's Borough Wide Development Policies Development Planning Document, adopted March 2011 (DPD). Policy BC4 of the DPD seeks to preserve and increase the stock of family housing in the borough and the Council does this by resisting proposals which involve the loss of housing with three bedrooms or more.
7. The appellant submits, within her Final Comments, that she accepts the proposal is not in accordance with Policy BC4 and that she relies on a strong set of material considerations to outweigh the policy position. In addition, she submits that regard should also be had to Policy 3.8 Housing Choice of The London Plan (TLP)¹ which is referred to by the Council in the second reason for issuing the notice. This requires that Londoners should have a genuine choice of homes that they can afford and which meet their requirements for different sizes and types of dwellings. The appellant asserts that this is a more up to date policy than Policy BC4 as it was adopted after the publication of the National Planning Policy Framework (the Framework).
8. The Council's position is that as the dwelling at the appeal site had more than three bedrooms it falls into a category of housing that it wishes to protect. The appellant's use of the property conflicts with this objective and is therefore unacceptable. This position has been upheld on appeal.² Furthermore TLP neither encourages nor supports the material change of use of family housing to HMO use.
9. Within the Facts and Grounds submission the appellant states that the property is a 'seven room' property occupied by five tenants with each bedroom being occupied by a single person. However, within the Statement of Case this

¹ The London Plan: The Spatial Development Strategy for London Consolidated with Alterations since 2011, March 2016

² Refs: APP/Z5060/C/14/2225868, 14/3000237, 15/3040475 and 16/3146657

changes to 'Four of the bedrooms have one permanent occupant and the largest room is occupied by a couple, so the total number of occupiers is six'. The Council advise that the property 'is licensed³ to house up to 8 individuals'. At the site visit I saw two bedrooms with single beds, two bathrooms and a kitchen on the ground floor and three bedrooms with double beds and a storeroom on the first floor. The loft room contained a fitted kitchen, sofa and another bathroom all of which the appellant stated was a communal facility.

10. I am advised when laid out as a dwelling that the building had three or more bedrooms. I therefore find its use as a HMO conflicts with the objective of Policy BC4 as it has resulted in the loss of part of the stock of family housing in the Borough. The supporting text to the policy emphasises that the Council will take a 'strict approach' to preserving larger units and this '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'.
11. Policy 3.8 of TLP is a strategic policy and states that boroughs should ensure that, amongst other matters 'the planning system provides positive and practical support to sustain the contribution of the Private Rented Sector (PRS) in addressing housing needs'. The supporting text advises where new proposals for HMO use come forward and are constrained by, for example, Article 4 Directions⁴, that boroughs should take into account the strategic as well as the local importance of HMOs.
12. As such, I find there is no conflict between the requirements of Policy 3.8 and Policy BC4. This is because the Council have found a balance between addressing their need for family housing as well as recognising the role of the PRS in considering HMO uses can be suitable subject to various criteria set out in Policy BC4.
13. Policy BC4 also remains up to date. Within the supporting text to the policy, reference is made to the current shortage of family housing as highlighted in the Council's Housing Strategy 2007-2010. The strategy has now been refreshed for the period 2012-2017 and maintains that there is still a requirement for large family housing units and the supply of new housing in the borough has declined over recent years. I therefore give weight to Policy BC4 as it is consistent with the Framework which sets out the need to boost significantly the supply of housing. It stresses Councils should use their evidence base to ensure that their local plan meets the need for housing in the housing market area which is the approach taken by the London Borough of Barking and Dagenham.
14. On the first issue whilst the development does not conflict with Policy 3.8 of TLP, I find that it does conflict with Policy BC4 of the DPD. The appellant submits though that there are other material considerations which indicate that planning permission should be granted for the development and I now deal with each of these in turn.

³ This is disputed by the appellant who states that she has not received the licence.

⁴ The Council has made a borough wide Article 4 Direction which has removed permitted development rights for the change of use from a use falling within Class C3 to a use falling within Class C4. This came into force in May 2012.

Recent appeal decision

15. This decision⁵ was made in respect of an enforcement notice with the same allegation as the current appeal. In that case the appellant argued that use as a HMO was no different from use as a single household. The Inspector looked at the planning consequences of the HMO use though and concluded there was a difference. In the current appeal the appellant seeks to make the same argument relying on the criteria listed in Policy BC4. She submits that as the Council have raised no objections to the manifestation of the HMO use there are no planning consequences and that this is a material consideration. However, the Council do take issue with one aspect of the HMO use, namely the standard of accommodation and the occupiers of the neighbouring property also raise concerns about refuse, noise and disturbance. I will deal with these matters in due course.

Article 4 Direction

16. The appellant refers to the reasons for the making of the Article 4 Direction to support her case and includes a copy of the Council's Cabinet report from March 2011 that dealt with the matter. In particular, she relies on a point made in the report that the Direction is necessary to retain a reasonable stock of small/medium sized dwellings for families moving out of 'flatted' accommodation. As the appeal site would not be a small/medium sized dwelling if the HMO use were to cease, this demonstrates that the HMO use does not conflict with the Council's general housing strategy and is a material consideration. However, when read as a whole, the Cabinet report presents a more holistic argument for the making of the Direction and there are references to the need to preserve the stock of family-sized houses.

HMO licence

17. The appellant states she applied for a HMO licence in March 2016, as required by the Housing Act 2004. She submits that the licencing system complements planning policy by ensuring a good standard of accommodation and that this is a material consideration. I find such licences ensure that there are suitable facilities such as toilets, bathroom and cooking provision within a property and that rooms are of an adequate size but their scope does not address whether use as a HMO affects the stock of housing in an area.

Barking and Dagenham's Housing Strategy 2102-2017 and Annual Monitoring Reports 2013/2014, 2014/2015

18. From these documents the appellant submits that the Council is failing to meet its housing targets and the delivery of affordable housing. Therefore the Council needs to rely on other sources of housing such as HMOs. The development at the appeal site has been built to a good standard and therefore its contribution towards meeting housing need should be considered. However, I find that these reports indicate that the number of HMOs in the borough was 400 in 2011 which was 0.6% of the housing stock. Whilst it is predicted that this number will rise, I consider compared to other types of housing, that the contribution of HMOs towards meeting the overall housing needs of the borough is limited.

⁵ Ref: APP/Z5060/C/16/3146657 & APP/Z5060/W/16/3146936 dated 2 November 2016

Conclusion on the first issue

19. Taking all these submissions into account I find that there are no material considerations in this case to indicate that the acceptability or otherwise of the development should be determined other than in accordance with Policy BC4. This is the case even though the appellant submits that the development meets the requirements of the Framework for development to be sustainable. This does not override my conclusion on the first issue which is that the development conflicts with Policy BC4.

Standard of accommodation

20. The Council are concerned that the layout of the property fails to meet minimum standards for the provision of internal space and to provide for the changing needs of future occupiers. They refer to Policies BC2, BP6, BP8 and BP11 of the DPD as well as Policy 3.8 of TLP.
21. However, Policy BC2 Accessible and Adaptable Housing and Policy BP6 Internal Space Standards are directed at the creation of new dwellings and are therefore not relevant to this appeal. Furthermore, Policy BP6 is no longer consistent with government policy and has been replaced by the Nationally Described Space Standards for dwellings (adopted by the Mayor of London in 2016⁶). As such, there are no minimum planning standards for the layout of HMO accommodation and as a converted building there is no requirement to make provision for accessible and adaptable dwellings.
22. The appellant makes a comparison with the TLP standard for a five bedroom, six person, single household to support her case that the standard of accommodation at the appeal site is acceptable. She submits that the size of single and double bedrooms exceed the specified minimum floor areas. Whilst her approach might be considered to be pragmatic in the absence of anything else, I find that these standards are designed for dwellings used by single households which may be different from occupation by multiple households. Furthermore, the Council's HMO licence permits occupation for up to eight people. The appellant states the gross internal floor area of the property is 119 sq m whereas the minimum standard for a six bedroom, seven person household spread over three floors, (the maximum size of property envisaged in Table 3.3), is 129 sq m. Having regard to the appellant's approach, there is therefore a shortfall in overall floor area notwithstanding the size of each of the bedrooms.

Conclusion on the second issue

23. In the absence of anything else, I consider the issue of the HMO licence is a useful indication that an acceptable standard of accommodation has been provided at the appeal site. One of the core planning principles of the Framework is that planning should always seek to secure a good standard of amenity for all existing and future occupants of buildings. For these reasons I conclude that the development does not cause harm to the living conditions of existing occupiers, having regard to the standard of accommodation.

⁶ Set out in Table 3.3 attached to Policy 3.5 of TLP

Other matters

24. Policies BP8 and BP11 are directed at the effect of development on the wider area and the Council have made submissions on this, referring to noise, disturbance and parking. Whilst these matters do not form part of the reasons for issuing the notice, the occupier of No 23 Somerby Road raises concerns about noise, disturbance and overflowing refuse bins.
25. The appellant has submitted layout plans of No 23 which show that in the main these adjoining properties have a stairwell either side of a shared party wall. At first floor level a storage room at the appeal site abuts a bedroom at No 23 and the most rear bedroom at the appeal site abuts a bathroom at No 23. The potential for the transference of noise and disturbance between the properties is therefore limited. In addition, the appellant advises that adequate provision has been made for the storage and collection of waste. I am therefore unable to give much weight to the matters raised by the occupier of No 23.
26. The appellant also suggests that a condition could be imposed to restrict the occupation of the property to no more than six people. This is on the basis that this level of occupation would be similar to occupation by a large household and would allay any fears about additional noise and disturbance made outside the property. If the ground (a) appeal were to succeed then this would be a necessary and reasonable condition, in the interests of protecting the living conditions of neighbouring occupiers. It could also be enforced as the property would be subject to inspections.
27. With regard to parking, I find that the Council's submissions fail to have regard to the fact that the site is within walking distance of multiple transport links and this reduces the desire to own a car and apply for a parking permit.
28. The Council also submit that the appellant sought to conceal her development by not applying for either planning permission or building regulation approval. However, in order to succeed in this respect they would need to demonstrate that the appellant acted in such a way as to positively deceive the Council with the aim of deliberately undermining the planning process. On the evidence before me I consider she did not as she applied for a HMO licence which would have alerted the Council to the development.

Overall conclusion on the ground (a) appeal and the deemed planning application

29. I find that the development does not have an unacceptable effect on the living conditions of the occupiers, having regard to the standard of accommodation. However, this consideration does not outweigh the material harm the development has on the stock of family housing in the area. I therefore conclude, having regard to all other matters raised, that the appeal on ground (a) fails and that planning permission will not be granted.

The ground (g) appeal (Appeals A and B)

30. The ground (g) appeal is that the three month time period given to comply with the requirements of the notice is too short. The appellants request that this be increased to six months to give the tenants, who all have different contracts, time to find suitable alternative accommodation. The Council submit that it could exercise discretion in terms of seeking compliance with the notice should there be any difficulty with the tenants and that the minimum period required to give Notice to Quit is two months.

31. The time period given for compliance within the enforcement notice is to allow for the unauthorised use to cease and for the physical works associated with the use to be removed. I consider the three month period is sufficient as it allows for the issue of Notices to Quit and for the physical works to be carried out once the property is vacated. These works should be carried out within a reasonable time period to overcome the harm identified by the Council in its reasons for issuing the notice. The appeal on ground (g) therefore fails.

Conclusions

Appeal A

32. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Appeal B

33. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

D Fleming

INSPECTOR