
Appeal Decision

Site visit made on 6 June 2018

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2018

Appeal Ref: APP/Z5060/C/17/3180125

21 Sherwood Gardens, Barking IG11 9TH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Siddharth Mahajan against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The enforcement notice was issued on 27 June 2017 under ref. 17/00144/NOPERM.
 - 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 of Multiple Occupation.*
 - The requirements of the notice are set out as follows:
 - *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 these 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 1990 Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be varied by deleting the text in the second bullet point at paragraph 5 in its entirety. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Matters concerning the enforcement notice and its issue

2. Where a property that was formerly a single-family dwelling house has been changed to use as a house of or in multiple occupation (HMO), such as has occurred at No. 21 Sherwood Gardens, a requirement to simply cease that use (as set out in the first bullet point at paragraph 5 of the notice) is sufficient. A positive requirement to restore the use of the property to a single-family dwelling house, as set out in the second bullet point, is excessive. For that reason, I have deleted the text in that second bullet point. I am satisfied that this variation would not cause any injustice to the parties.
3. At the request of the appellant, the Council attached the relevant evidence of corporate authority for the issue of the enforcement notice. No further

response from the appellant was made on this matter. I am satisfied that the officer who signed the notice had the authority to do so.

Background and matters of clarification

4. No. 21 Sherwood Gardens is a mid-terraced, two-storey residential building with further accommodation in the roof space. Sherwood Gardens is a relatively narrow, one-way street and is attractively landscaped. It is within a controlled parking zone where residents' permits are required on weekdays.
5. I saw that the HMO is laid out with six bedrooms. There is a shared kitchen at first floor level and a shared washing machine at ground floor level. The HMO may benefit from a licence issued under the Housing Act 2004 but it should be recorded here that the Planning and Housing Acts are two entirely separate regimes, with different underlying purposes. Consequently, the fact that the appeal property may have a HMO licence under the Housing Act does not in itself justify the grant of planning permission under the Planning Act.
6. The appellant withdrew his ground (c) and ground (d) routes of appeal by email dated 12 November 2017.

The appeal on ground (a) and the deemed planning application

7. The main issues in deciding whether planning permission ought to be granted are the implications of the development for: (1) the stock of family housing in the borough; (2) the residential amenities of neighbouring residents with specific regard to the matters of noise, disturbance and waste; and (3) parking.
8. The development plan for the area comprises the London Plan (LP), the Council's Core Strategy (CS) and the Council's Borough Wide Development Policies Development Plan Document (DPD). The latter was adopted in March 2011 and contains a set of detailed policies that build upon the CS adopted in July 2010. Paragraph 1.3 of the DPD says that they will be of particular use in determining planning applications during the plan period 2010-2025.
9. The appellant has referred to CS Policy CC1. He has not supplied a copy of it or of its reasoned justification. I am reluctant to read too much into a selective quotation from it. He acknowledges that it is a general policy and that DPD Policy BC4 on residential conversions and HMOs is of more relevance to the issue relating to the stock of family housing to which I now turn.

Stock of family housing in the borough

10. With regard to proposals for changes of use from housing and the subdivision of larger homes, DPD Policy BC4 says that 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. The reasoned justification explains that a strict approach to preserving family housing and particularly four-bedroom homes has been adopted given the current shortage in the borough (as highlighted in the Housing Strategy 2007-2010) as well as in London as a whole.

11. I read that policy as making a general presumption against the subdivision of larger homes (three or more bedrooms) into HMOs and I agree with the Council that if this fundamental criterion is not met, the detailed criteria for other proposals for flat conversions or HMOs set out in the second limb of the policy are of little relevance.
12. Currently, the existing property has six rooms that could be classed as bedrooms. The Council says that the existing property has five bedrooms. However, it is most important to gauge whether the appeal property provided three or more bedrooms when it was configured as a single-family dwelling house. The appellant accepts that the authorised use of the property is most likely to be as a three-bedroom dwelling house. The property falls squarely within the scope of DPD Policy BC4. Whilst the property may not have had four bedrooms as a single dwelling, the breach of planning control has nonetheless resulted in the loss of family housing as defined in Policy BC4.
13. My attention has been drawn to three appeal decisions in the same borough, two from 2017 which support the Council's approach (24 Salisbury Avenue and 21 Somerby Road) and one from 2016 which supports the appellant's case (12 St Erkenwald Road) in that it did not withhold permission on the basis of the first limb of DPD Policy BC4.
14. The Inspector in the 2016 appeal decision was concerned that the property in that case was of modest scale and may only have had two bedrooms, queried whether the term "resist" was necessarily the same as "refuse," apportioned weight to the particularly strict approach which is applied to the conversion of dwellings with four bedrooms and did not have up-to-date information on the particular housing needs of the area bearing in mind DPD Policy BC4 was adopted prior to the National Planning Policy Framework (the Framework).
15. I have been provided with a copy of the Council's Housing Strategy 2012-2017 and an extract from the Outer North East London Strategic Housing Market Assessment showing *Full Objectively Assessed Need for Housing; Size and Tenure Mix across Outer North East London 2011-33*. As alluded to by the Inspector in the appeal decision for 21 Somerby Road, the former document 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. The latter extract suggests that about 59% of overall objectively assessed housing need in this borough between 2011 and 2033 is for family-sized accommodation, with three-bedroom units being particularly required. This up-to-date information lends weight to the policy approach advocated in DPD Policy BC4 and had this evidence been available to the Inspector in the appeal decision for 12 St Erkenwald Road, there must be some doubt as to whether the same decision would have been reached.
16. Taking into account all other matters raised in relation to this issue, I find that the Council was correct to resist a grant of planning permission because the HMO unacceptably reduces the stock of family housing in the borough in conflict with DPD Policy BC4. For the same reason, there is a failure to respect the principles set out in paragraph 50 of the Framework which requires local planning authorities to deliver a wide choice of high quality homes having identified the size and type of housing that is required in particular locations.

Residential amenities of neighbouring residents

17. The Council is concerned that the HMO results in significant impacts for neighbouring residents, with an intensity of use and levels of activity beyond those which may reasonably be expected in association with a single-family dwelling.
18. However, there is no evidence available to substantiate that view in terms of noise and disturbance, for example, through a log of complaints to the police or to the Council's environmental health service. There is no mention of noise in the single third party objection submitted in response to this appeal. Neighbours would have been most affected by noise disturbance if such has occurred. The appellant suggests that a planning condition could be imposed to restrict the occupation of the property to no more than six people. This would allay any fears about additional noise and disturbance being made at and around the property since that level of occupation would be akin to a fully occupied three-bedroom house. Such an approach found favour in two of the appeal decisions I have been referred to.
19. The occupier of No. 25 Sherwood Gardens seems to raise genuine concerns about the arrangements for waste disposal at the property. The planning condition limiting the number of people in occupation would help in this respect as would another one requiring the prompt implementation of an agreed scheme of refuse storage and management.
20. Subject to conditions, I find that the use of the property as a HMO would not have an unacceptable effect on the residential amenities of neighbouring residents with regard to the potential for noise and disturbance and waste. The development is sufficiently respectful of Policy BP8 of the DPD which seeks to protect residential amenity.

Parking

21. In response to this appeal, no local residents have reported any problems in relation to parking pressures generated by the HMO. The Council provides no direct evidence to demonstrate that such pressures are being caused.
22. DPD Policy BR9 says that the car parking standards set out in the LP will be used as maximum parking standards for new developments. These state that all developments in areas of good public transport accessibility (in all parts of London) should aim for significantly less than one parking space per unit. It is an easy five-minute walk to the appeal site from Barking town centre so the HMO is well placed for local shops, services and public transport provision. Indeed, the parties acknowledge that with a Public Transport Accessibility Level of 6a, the accessibility of the site is excellent. Occupiers would not be reliant on private motor vehicles. In any event, there is a general tendency for relatively low private car usage to be associated with the occupants of HMOs.
23. With an occupation limit of six people I would not expect the parking demands of the HMO to exceed those of a fully-occupied, three-bedroom house. I find no adverse implications for parking, no requirement for a car-free unilateral undertaking and no conflict with the aims of DPD Policy BR9.

Conclusion on ground (a) and the deemed planning application

24. My findings on the second and third main issues do not outweigh the material harm the development is having on the stock of family housing in the borough, as I found under the first main issue. The breach of planning control alleged in the notice is contrary to the development plan. I find no material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. The Council's representations about intentional unauthorised development were not included in the reasons for issuing the enforcement notice and my decision does not turn on this matter. Even so, to the extent that planning harm has arisen, this evidence, which remains unchallenged, must count as a material consideration that further weighs against a grant of planning permission.
25. Taking into account all other matters raised, the appeal on ground (a) does not succeed and I refuse to grant planning permission on the deemed planning application.

The appeal on ground (g)

26. This ground of appeal is that the time allowed for compliance with the notice falls short of what should reasonably be allowed. Three months have been given. The appellant requests a period of six months. The gist of the appeal on ground (g) is that six months would be more reasonable and proportionate given that the tenants will need time to find alternative accommodation and that the appellant will need time to revert the property to use as a single dwelling house. It is said that such a period would be in line with what many local planning authorities stipulate in similar circumstances.
27. I have not been referred to any tenancy agreements for the existing tenants or to any break clauses they may contain. The Council points to the standard two-month notice the landlord can give to the tenants to vacate the property. Removing the fittings and alterations relating to the HMO may take some time but I have no detailed estimates for the time this work may take. I would be surprised if such works could not be carried out in the month after the tenants have vacated the property. It is important that the steps required by the notice (as now varied) are carried out within a reasonable time period in order to overcome the harm that has been identified.
28. The Council says that it could exercise discretion in enforcing compliance should there be any difficulties, for example, with a recalcitrant tenant. Section 173A (1)(b) of the 1990 Act as amended allows the Council to extend the period for compliance with the notice at its own discretion, should good reasons be found for doing so. Given these circumstances and on the basis of the evidence available to me, I consider that the compliance period of three months is a reasonable and proportionate response to the breach of planning control that has occurred. The appeal on ground (g) therefore fails.

Andrew Dale INSPECTOR