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## Appeal Decision

Site visit made on 21 June 2018

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 July 2018**

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**Appeal Ref : APP/Z5060/C/17/3178975**

**Land at 19 Cowbridge Lane, Barking, IG11 8LQ.**

- 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 Kazi Arif against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
- The notice was issued on 31 May 2017.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of a single family dwellinghouse to a house in multiple occupation.
- The requirements of the notice are to cease the use of the single dwellinghouse 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 use of the single family dwellinghouse as a house in multiple occupation; remove all waste and refuse from the site.
- 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 (c) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: the appeal is dismissed and the enforcement notice upheld.**

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### Ground (c) appeal

1. This ground of appeal is that there is no breach of planning control. A breach of planning control comprises development without planning permission. Development is defined in section 55 of the 1990 Act (as amended) to include the making of any material change in the use of any buildings or other land. The onus of proof rests on the Appellant and the test of evidence is the balance of probability.
2. The Appellant argues that planning permission is not necessary as he has a Building Control completion certificate and has been in positive dialogue with the Council concerning an HMO licence. He argues that the change of use is approved by the Council and therefore not a breach of planning control. But the completion certificate and licence are issued for the purposes of different legislation and they do not determine whether planning permission is required for the use of the property.
3. Consequently, this ground of appeal fails.

## **Ground (a) appeal and deemed application**

### **Main Issues**

4. The main issues in the determination of this appeal are the effects of the development on (i) the Council's aim to ensure a suitable range of housing types and maintain mixed and balanced communities, (ii) parking and (iii) the living conditions of the occupiers of nearby residential properties with particular regard to noise and disturbance and the living conditions of current and future occupiers with regard to adequacy of the standard of accommodation.

### **Housing Stock**

5. The appeal site is an end of terrace dwellinghouse. It is located near the busy North Circular Road. The surrounding area is predominantly residential.
6. The development plan (including the London Plan and the Borough Wide Development Policies Development Plan Document (the DPD)) mirrors the National Planning Policy Framework (the Framework) in emphasising the importance of a balanced housing stock. Policy BC4 of the DPD aims to preserve and increase the Borough's stock of family housing. It specifically seeks to prevent the conversion of three or more bedroom properties to flats or HMOs.
7. The appeal site is a three bedroom dwelling. The Council's records indicate occupation by 8 persons. It therefore falls to be considered in the context of policy BC4.
8. I am concerned that to allow the conversion would undermine the Council's objective of maintaining a balanced supply of family dwellings and preventing inappropriate loss of family housing stock. It is contrary to the development plan and has a cumulative effect increasing the imbalance in the mix of available housing types.
9. The Appellant argues that it is not practical to restrict individual landlords in order to prevent loss of family housing. He says the Council should focus instead on increasing family housing not restricting landlord development. But the Council has adopted a development plan policy to restrict the loss of family housing in order to ensure balanced housing communities. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The private rights of land owners to convert their properties must be balanced against any identified public harm. In this case the balance rests in favour of preventing the identified harm.

### **Parking**

10. Policy BR9 of the DPD provides that parking provision for development will take into account specified criteria. These criteria include the local environment and on street parking availability.
11. The appeal site sits within an area the subject of restricted residents parking. It provides no on-site parking provision and no immediately adjacent street parking. The Council report existing high demand for parking in the area.
12. The Appellant says that the increased demand should have been considered when he made a licensing application. But as explained earlier in this decision

matters concerning the licensing regime do not affect the need to consider the planning merits of the development in this appeal.

13. The potential demand for resident parking places a demand on an area with an existing high demand and fails to meet policy BR9.

### **Living Conditions**

14. The development plan mirrors the Framework in seeking to protect the amenities of neighbours from undue disturbance. Policy BP8 of the DPD provides that conversions should seek to minimise noise and general disturbance.
15. The level of activity from a group of unconnected people is likely to result in more frequent comings and goings and different patterns of behaviour than a typical family. Whilst I recognise that there are no complaints before me this is not conclusive of the absence of harm. I note the location of the property near the busy North Circular but local people have a legitimate expectation that development will not create undue harm by reason of additional noise and disturbance. Bedrooms are spread across the ground and first floors with two reception rooms on the ground floor. The property is semi-detached sharing a party wall with the neighbouring property increasing the potential for the transmission of noise to neighbours. Living and sleeping space is in close proximity and communal living space is minimal. There is real likelihood of undue harm to the living conditions of occupiers of neighbouring properties with regard to noise and disturbance and the development fails to accord with the development plan, including policy BP8.
16. The notice cites failure to meet minimum standards for internal space and failure to conform to Lifetime Homes criteria. The Appellant does not provide any evidence to counter this. I found some of the property to be cramped and lacking in adequate communal and storage space for day to day living for current and future occupiers.
17. I conclude that the development causes undue harm to the living conditions of (i) occupiers of nearby properties with particular regard to noise and disturbance, contrary to policy BP8 of the DPD and the Framework and (ii) current and future occupiers with regard to the adequacy of the standard of accommodation.

### **Conclusion**

18. I have taken into account the potential demand for shared housing in the locality and the business interests of the Appellant in developing his property. But the balance rests in favour of preventing the identified harm to the Council's aims for balanced housing types, parking and protecting the living conditions of neighbours and occupiers.
19. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. The parties do not suggest conditions in the event the appeal is allowed and I conclude that no conditions could overcome the identified harm.
20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

### **Other matters**

21. The Appellant comments that up until December 2016 there were tenants in the property. There is no ground (d) appeal before me and no evidence that the unauthorised use is immune from enforcement action.

### **Formal Decision**

22. 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.

*S. Prail*

**Inspector**