
Appeal Decision

Site visit made on 30 August 2018

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2018

Appeal Ref: APP/Z5060/C/17/3179084

59 Morley Road, Chadwell Heath, Romford RM6 6UX

- 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 Amandeep Kandola 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. 17/00046/NOPERM.
 - The breach of planning control as alleged in the notice is: *Without planning permission, the unauthorised subdivision of the property into two residential units.*
 - The requirements of the notice are set out as follows:
 - *Cease use of the property as two residential units.*
 - *Return the use of the property to a single-family dwelling house.*
 - *Remove all fittings and alterations related to unauthorised use as two residential units.*
 - *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 corrected by replacing the word "subdivision" with the words "material change of use" in paragraph 3 and be varied by deleting the text in the second bullet point at paragraph 5 in its entirety. Subject to this correction and variation, the appeal is dismissed, 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.

Matters concerning the enforcement notice

2. Paragraph 3 of the notice alleges that there has been a "subdivision". This term is imprecise. What has really occurred at the property, with reference to the meaning of development in section 55 of the 1990 Act as amended, is the making of a material change of use of the property to two residential units.
3. A positive requirement to restore the use of the property to a single-family dwelling house, as set out in the second bullet point of paragraph 5, is excessive. It is sufficient to simply require the unauthorised use to cease as set out in the first bullet point.

4. I have corrected and varied the notice to reflect the matters raised in paragraphs 2 and 3 above. This will not alter the notice in substance or make it more onerous to comply with or cause any injustice to the parties.

Background and matters of clarification

5. No. 59 Morley Road is a two-storey residential property which has been configured and occupied as two flats, one on each floor and each with one bedroom. Both flats (known as 59a and 59b) benefit from a valid selective private rented property licence (issued under the Housing Act 2004) which permits a maximum of one household with two persons to occupy each flat. Neither these licences nor the payment of Council Tax for the two flats should be taken to imply acceptability under the Planning Acts.
6. On the day of my visit, the first floor flat was not actually occupied or subdivided from the ground floor accommodation. There is no dispute that it was once subdivided and occupied as a separate flat. This flat does not have access to the rear garden. No. 59 appears to be the last house on Morley Road to benefit from a rear vehicular access off the unmade, unlit track which leads off the northern end of Kelly Way. There is a garage in the back garden.
7. There have been various planning applications in the last year or so in connection with the conversion of the property to two flats. Some of the schemes have proposed alterations and additions to provide a one-bedroom flat and a three-bedroom flat. All the applications have been refused by the Council. The first application (ref. 17/01251/FUL) was a retrospective one for the current layout as two flats each with one bedroom. Whilst I have noted these applications, this appeal is against the issue of the enforcement notice and it is the alleged breach and the reasons given in that notice which I must focus on when considering the ground (a) appeal. Moreover, I cannot consider any proposed enlargements to the property.

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

8. The main issues in deciding whether planning permission ought to be granted for the use of the property as two residential units are the implications for: (1) the stock of family housing in the borough; (2) the residential amenities of neighbouring residents and occupiers of the appeal property in terms of noise and disturbance; and (3) parking.
9. The development plan for the area includes the London Plan (LP) and the Council's Borough Wide Development Policies Development Plan Document (DPD). The National Planning Policy Framework (the Framework) was revised on 24 July 2018 but it does not change the fundamental concept that applications for planning permission are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The stock of family housing

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). I agree with the Council that if this fundamental criterion is not met, the detailed criteria for other proposals for flat conversions set out in the second limb of the policy are of little relevance.
12. There is no dispute that the authorised use of the property in planning terms was, and is, as a single-family dwelling house with three bedrooms. The property falls squarely within the scope of DPD Policy BC4 and the breach of planning control has resulted in the loss of family housing as defined in that policy. Moreover, the two one-bedroom flats do not provide accommodation suitable for family occupation.
13. The appellant says he could alter the property to make it a two-bedroom house or put in place other regimes of occupation and in so doing there would be a loss of a three-bedroom house. This sort of argument could be repeated too often when a property was originally built as a three-bedroom house and the Council has an adopted development plan policy which seeks to restrict the loss of family housing. The appellant's private rights to convert his property must be balanced against any identified public harm. In this case the balance of judgment rests in favour of preventing the harm which arises from undermining the Council's objective and priority to maintain a balanced supply of family dwellings. This will be achieved, in part, by preserving the existing supply of family homes and resisting conversions. The provision of one-bedroom flats, however much the accommodation is valued by the occupiers, carries less weight in the context of the housing priorities for this borough.
14. There is no evidence to show that the loss of the family dwelling has no effect on the supply of family houses in the area. On the contrary, the *Outer North East London Strategic Housing Market Assessment*, published in September 2016, shows the full objectively assessed need for housing by size and tenure mix across Outer North East London for 2011-2033. This suggests that about 59% of the overall housing need in this borough is for family-sized accommodation, with three-bedroom units being particularly required in both market housing and affordable housing. This up-to-date information lends weight to the policy approach advocated in DPD Policy BC4.
15. My attention has been drawn to four properties in the borough on the register kept for houses in multiple occupation (HMO). The Council says the appellant appears to have confused the HMO register with planning permission. As it is, no planning permissions for the properties referred to have been provided.
16. There is also a need for affordable housing in the borough. However, just because one-bedroom flats are cheaper to buy or rent than three-bedroom houses does not mean that affordable housing has been provided in the appeal property. Insofar as I can see, the appellant has not sought to address the definition of "Affordable housing" given at Annex 2: Glossary to the Framework. In particular, if this is to be affordable housing for rent, the conditions in paragraph (a) of that definition would need to be complied with. There is simply no evidence that they could be or have been complied with.

17. I find that the development has unacceptably reduced 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 61 of the Framework which requires the size, type and tenure for different groups in the community to be assessed and reflected in planning policies.

Residential amenities and noise and disturbance

18. The Council's statement does not provide any commentary on this issue. No third party representations, for example from neighbours, have been submitted in response to this appeal.
19. As a three-bedroom, single-family house, there could be five persons in occupancy based on the sizes of the first floor rooms I saw at my site visit. The occupation of each flat is restricted by the licences to two persons. I see no reason why a planning condition could not be imposed to the same effect.
20. I have no information about whether soundproofing work has been carried out inside the building but it would be possible to require such works by planning condition along any party walls at first floor level and in the floor of the first floor lounge which is stacked over a ground floor bedroom. This would be preferable to creating a small lounge on the first floor in the room that is currently a bedroom.
21. Subject to conditions, I find that the use of the property as two flats would not have unacceptable effects on the residential amenities of neighbouring residents or occupiers of the appeal property in terms of noise and disturbance. The development is sufficiently respectful of Policy BP8 of the DPD which seeks to protect residential amenity.

Parking

22. There has been no response from neighbours to this appeal in relation to parking pressures generated by the development. Even though the site has a Public Transport Accessibility Level of 1b (poor), the Council offers no direct evidence to show that such pressures are being caused. There are no parking restrictions on this road in the vicinity of the appeal site. I saw that a number of on-street parking spaces were available in the early afternoon on the day of my site visit. I would not expect the parking demands of two, one-bedroom flats to materially exceed those of a fully-occupied, three-bedroom house.
23. DPD Policy BR9 says that the car parking standards set out in the London Plan will be used as maximum parking standards for new developments, with the final levels of provision for each development being agreed having taken into account such criteria as the local environment and accessibility of the site and on-street parking availability.
24. Parking was not a reason for refusal of application ref. 17/01251/FUL (or indeed for later applications for a one-bedroom flat and a three-bedroom flat). The Council's Transport Development Management section has not opposed those applications as the view has been taken that an extra car parking space could be found on Morley Road or Lansbury Avenue without any significant highway safety implications. This would presumably be for the occupiers of the first floor flat, as the ground floor flat has access to the rear garage which, through planning conditions, could be altered to make it more functional or

cleared away to leave an off-street parking space with a turning area.

25. Subject to conditions, I see no reason to depart from the advice provided by the Council's relevant internal consultee on this matter. I find no adverse implications for parking and no conflict with the aims of the DPD Policy BR9.

Conclusion on ground (a) and the deemed planning application

26. 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. The Council's representations about the lack of access to the rear garden for the first floor flat and the possibility of intentional unauthorised development are noted. However, they were not included in the reasons for issuing the enforcement notice and my overall decision would not be affected by those other matters. I find no material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Taking into account all matters raised, I conclude that the appeal on ground (a) and the deemed planning application should not succeed.

The appeal on ground (g)

27. This ground of appeal is that the time allowed for compliance with the notice falls short of what should reasonably be allowed. A period of three months has been given. The appellant has not suggested an alternative period. On the appeal form he indicates that the compliance period is too short as there are tenants in the property and the work required can only begin once the tenancy agreement expires in February 2018.
28. I have not been presented with copies of any tenancy agreements. The first floor flat was not occupied at the time of my visit and of course February 2018 has come and gone. The Council points to the standard two-month notice a landlord can give to tenants to vacate a property. Removing the fittings and alterations relating to the unauthorised use may take some time but 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.
29. 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