



Appeal Decision

Site visit made on 9 September 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th October 2019

Appeal Ref: APP/Z5060/W/19/3232492

122 Salisbury Avenue, Barking, IG11 9XU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mukesh Kanbi against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application Ref 18/00904/FUL, dated 24 May 2018, was refused by notice dated 3 June 2019.
 - The development proposed is change of use of a single-family dwelling house C3 to a house of multiple occupation C4 use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has submitted revised plans as part of the appeal, proposing two alternative schemes which would see a reduction in the number of bedrooms used to 6 and the number of occupants being either 10 or 6. However, the appellant has not proposed to withdraw the original proposal but instead has requested that the revised plans be given consideration in the event of the appeal proposal being unacceptable. The revised plans were not therefore submitted for consideration as substitutes for the original proposal but as additional options.
3. Whilst, in certain circumstances, a proposal can be amended through revised plans during an appeal in line with the Wheatcroft principles¹, I have been asked to consider the merits of three different options concurrently. I am mindful that it is not the purpose of the appeal process to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority.
4. I have therefore proceeded to determine the appeal on the basis of the plans as originally submitted. The merits of the reduced scale schemes would, if necessary, be a matter for the main parties to consider as part of a fresh proposal/s away from this appeal. In any event, given my findings in respect of the effect on the stock of family housing in the borough, neither alternative proposal would have altered my conclusion.
5. The property is already in use as a house in multiple occupation (HMO), laid out as shown on the originally submitted plans however, I understand that it is

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

currently occupied by only 5 adults and 1 child. I have therefore determined the appeal on the basis of the submitted plans and my site observations.

Main Issues

6. The main issues are the effect of the proposal on:

- the stock of family housing in the borough,
- the living conditions of future occupiers with particular regard to the standard of accommodation,
- the living conditions of neighbouring residents with particular regard to noise and disturbance and waste; and
- the availability of on-street parking.

Reasons

Family housing

7. Policy BC4 of the Borough Wide Development Policies Development Plan Document (March 2011) (the DPD) relates to residential conversions and houses in multiple occupation and, seeks to preserve and increase the stock of family housing in the borough by resisting proposals which involve the loss of housing with 3 bedrooms or more.
8. The second paragraph of the policy deals with a different situation; proposals for the conversion of properties other than those which are houses with 3 bedrooms or more. It is criteria-based and identifies some factors for consideration where the use of a property as an HMO is proposed.
9. The appellant considers that Policy BC4 of the DPD is out-of-date, an assertion which appears to be made primarily based upon the policy's age and perceived lack of consistency with the National Planning Policy Framework (the Framework). However, paragraph 213 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
10. I find there is no conflict between Policy BC4 of the DPD and the Framework because the Council have found a balance between addressing their need for family housing as well as recognising that HMO uses can be suitable subject to various criteria set out in Policy BC4. I also consider that Policy BC4 is consistent with paragraph 61 of the Framework which states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. As such, I afford significant weight to this policy in decision making terms.
11. In support of Policy BC4, the Council state that the Outer North East London Strategic Housing Market Assessment (2016) (the SHMA) illustrates that 59% of overall objectively assessed housing need in the borough, between 2011 and 2033, will be required for family sized accommodation. The SHMA states that a total of 27,800 houses are needed in the Borough between 2011 and 2033 and, out of this total, 16,300 are needed to be 3 bedroom or more houses.

12. The appellant contends that there is not an over-supply of HMOs in the area, that housing needs change daily and there is a high percentage of young professionals, students and single people and therefore a high demand and need for this type of accommodation however, no substantive evidence has been provided to support these assertions and as such they are of limited weight in my assessment.
13. Prior to the additional rooms being created the Council states that there were 3 bedrooms on the first floor. Whether the house was occupied as a family dwelling following the loft conversion and addition of 2 bedrooms is a matter which has no bearing on the planning merits of the proposal.
14. The appellant refers to the existing occupants right to have a home. In this respect I have had regard to the occupants rights under Article 8 of the Human Rights Act 1998. However, these are qualified rights. Whilst the current occupants could lose their home, in this case, I am satisfied that the legitimate planning policy aims to protect the stock of family housing in the borough can only be adequately safeguarded in this instance by a refusal of permission. This course of action would be a proportionate response necessary in the wider public interest and, as such, would be a justified interference with the occupants human rights.
15. The development has resulted in the loss of a family house contrary to Policy BC4 of the DPD, and there is no evidence before me which would justify setting the requirements of the policy aside.

Standard of accommodation

16. There are no minimum standards for the layout of HMO accommodation set out in the development plan. The Council have therefore used those standards set out in Policy 3.5 of The London Plan (2016) and the National Technical Housing Standards – Nationally Described Space Standard (2015) (the Nationally Described Space Standard) which relate to bedrooms in dwellings.
17. The communal areas consist of a large kitchen/dining area and a yard outside. Whilst the kitchen/dining area is large it seems unlikely to me that the occupants could comfortably spend a significant amount of time in that space together. In the absence of alternative amenity space such as lounge areas, it seems occupants would spend a reasonable amount of time in their bedrooms.
18. The Council state that bedrooms 1 and 5 do not meet the standards set out in the London Plan (2016) or the Nationally Described Space Standard and the appellant acknowledges that 2 rooms do not meet the standards.
19. In respect of room 5 this falls short of the standards, considering the need to utilise bedrooms due to the limited communal space available outside of the open plan kitchen and yard, it is my view that this bedroom is not adequate to comfortably accommodate an adult.
20. Room 2 has a window which overlooks the kitchen/dining area and room 3 has no windows, neither room therefore has any outlook or receives daylight and sunlight. This results in dark, gloomy rooms which would have significantly adverse impacts on the living conditions of future occupants.

21. Room 7 whilst only served by rooflights, is on the basis of my site observations, a reasonably sized space which experiences significant levels of daylight and sunlight and provides an acceptable standard of accommodation.
22. Room 1 consists of two rooms, the smaller of the two being accessed via a larger double room, with a shower room being accessed off the smaller room. The size of the smaller room is inadequate and would not provide a good standard of accommodation alone. However, given the access arrangements it seems unlikely that the smaller room would be occupied independently of the larger room. On balance given this arrangement I find no harm in respect of the overall size of room 1.
23. Overall, for the reasons set out above, I conclude that the proposed development would not provide satisfactory living conditions for future occupiers contrary to Policy 3.5 of the London Plan (2016) and the Framework which together seek to ensure a high standard of amenity for existing and future users of buildings.

Living conditions of neighbouring residents

24. As already stated above, in the absence of alternative amenity space such as lounge areas, it seems occupants would spend a reasonable amount of time in their bedrooms. The result would be a number of individuals carrying out tasks and spending time in bedrooms that would normally be associated with a ground floor living space. This is a very different pattern to that of a family, or possibly a household with a more generous and functional communal space.
25. Furthermore, the use would result in an increase in comings and goings due to the movements generated by a collection of individuals occupying the property, rather than a single family, due to different timetables, working and socialising patterns.
26. Whilst the property may have been in use as an HMO since 2013, this and that there were only 2 objections, only one of which was from a resident living in close proximity, have little bearing on my judgement, given that I cannot be certain that the property was occupied during this time as proposed.
27. Consequently, I conclude that there is an unacceptable risk that the use would result in materially harmful levels of noise and disturbance to neighbouring residents. Furthermore, it would put pressure on matters such as bin storage. The proposal therefore conflicts with Policy BP8 of the DPD which seeks to ensure that existing occupiers are not exposed to unacceptable levels of general disturbance. It would also conflict with the Framework which seeks to ensure a high standard of amenity for existing and future users of buildings.
28. The Council referred to Policy BC4 of the DPD in respect of this main issue however, given that the criteria in the second paragraph of the policy is not relevant to the proposal, I find it weighs neither for nor against the proposal in respect of this main issue.

Parking

29. The Council states that the property is located in an area with a Public Transport Accessibility Level (PTAL) score of 0 – the worst level of accessibility. At my site visit I observed that two cars were parked off-street to the front of the property however, the proposed plans show provision for one vehicle.

Whilst most of the houses in the surrounding area have off-street parking for one or two vehicles, I observed at my site visit, which was in the middle of the day, that there were a reasonable number of vehicles parked on the street.

30. The appellant considers that the property is located in a sustainable location with excellent public transport in the area and, that people living in such accommodation are less likely to have their own cars. However, beyond generalised assertions, no substantive evidence has been provided to support these views.
31. Given the proposed number of bedrooms it seems likely to me that there could be at least 2 cars associated with the use. Whilst the parking standards set out in the development plan are maximum standards, given the low PTAL rating and in the absence of substantive evidence about parking stress levels in the area, I conclude that the proposal would result in an increase in competition for on-street parking to the detriment of highway safety. The proposal would therefore conflict with the overall aims of Policies BR9 and BR10 of the DPD which together aim to encourage sustainable transport choices and minimise the detrimental impact that on-street parking can have on safety.

Other Matters

32. The Framework states that there are three overarching objectives to achieving sustainable development which are mutually dependent; these are economic, social and environmental. The loss of family housing, harm to the living conditions of future occupants and neighbouring residents and the harm to highway safety means that the social objective of sustainable development would not be achieved. As such the proposal does not represent sustainable development when considered against the policies in the Framework taken as a whole.
33. That the house could have been converted to use as a 6 bedroom HMO as permitted development if the Article 4 direction had not been in place, the property could easily be returned to use as a dwelling if required, that the Council approved the use of the garage as habitable accommodation and has known that the property has been in use as a HMO for 6 people since 2013 and that there is no harm in respect of external amenity space standards and no external alterations proposed, are matters which do not alter my judgement on the planning merits of the proposal.
34. The Planning Practice Guidance states that it is important for local planning authorities to monitor any Article 4 directions regularly to make certain that the original reasons the direction was made remain valid. However, it is not for me in the context of an appeal made under section 78 of the Town and Country Planning Act 1990 to determine whether the Article 4 continues to be necessary.
35. The appellant has referred to an appeal decision in Milton Keynes however, no details have been provided. As such this has no bearing on the planning merits in this case and in any event, I have considered the appeal proposal on its own merits.

Conclusion

36. For the reasons given above, having had regard to all other matters raised, the appeal is dismissed.

Felicity Thompson

INSPECTOR