
Appeal Decisions

Site visit made on 19 November 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2019

Appeal A Ref: APP/Z5060/W/19/3233416

213 Salisbury Avenue, Barking, Essex IG11 9XT

- 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 Davinder Singh Basi¹ against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 18/02239/FUL, dated 19 December 2018, was refused by a notice dated 21 June 2019.
 - The development proposed is described on the application form as: "Change of use of an existing house to a simple 5-bed HMO from C3 Use Class to C4. No external changes to the house, changes to the ground floor internal only and the addition of a kitchen to first floor level."
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Appeal B Ref: APP/Z5060/C/19/3233417

Land and premises at 213 Salisbury Avenue, Barking, Essex IG11 9XT

- 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 Davinder Singh Basi against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 28 June 2019.
 - 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 a House of Multiple Occupation.
 - The requirements of the notice are:
 - Cease the use as a house of multiple occupation.
 - Remove all alterations and fixtures enabling the conversion to a house of multiple occupation.
 - Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is 6 Months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177 (5) of the Act, as amended.
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Decisions

Appeal A

1. The appeal is dismissed.

¹ Spelling taken from the appeal form.

Appeal B

2. It is directed that:

- The enforcement notice is corrected in paragraph 3 and paragraph 5 by deletion of the wording "House of Multiple Occupation" and substitution with "House in Multiple Occupation."
- Subject to the corrections above, 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.

Procedural Matters

3. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) is for small shared houses occupied between three and six unrelated individuals as their only or main residence, who share basic amenities within the house. However, a large HMO (those with more than six people sharing) falls outside any specific class of use and is known as sui generis² use. The need for planning consent for a change of use to a large HMO would not be as a consequence of the Article 4 direction the Council has in operation, although a change of use to a small shared house (Class C4) would.
4. The application form for the development the subject of the section 78 appeal, describes the proposal as a "Change of use of an existing house to a simple 5 bed HMO. From a C3 Use Class to a C4." However, the Council's decision notice only refers to "Conversion of single dwelling house to 5 bed house in multiple occupation." In the absence of any evidence before me to confirm that the appellant agreed to a change in the description of the development proposed, I have based my decision on this appeal on the original proposal. Namely, a change of use of an existing house to a simple 5 bed HMO. From a C3 Use Class to C4.
5. There is an existing HMO licence on the property that allows it to be used as a 5 bed HMO for up to ten people, and the appeal submission advises that the property is currently occupied by seven people. There is therefore no doubt that the property is in use as a large HMO. The deemed planning application is for that use.

Enforcement Notice

6. There are errors in the terminology used in both paragraphs 3 and 5 of the notice. The correct terminology is a House in Multiple Occupation and not a House of Multiple Occupation. This is minor matter and I am satisfied that there would be no injustice to either the appellant or the local planning authority by my correcting the notice.

Appeals A and B on ground (a), deemed planning application

Main Issues

7. The main issues in this case are:

² Meaning 'of its kind' when no use classes order category fits.

- the effect of the development on the mix of housing, with particular regard to local and national policy;
- the effect of the development on the living conditions of neighbouring residents, with particular regard to noise and disturbance;
- whether or not the development provides for acceptable living conditions for existing and future occupiers; and
- the effect on parking conditions.

Reasons

Housing Mix

8. Appeals A and B both relate to 213 Salisbury Avenue. As the Council's reasons for refusal (Appeal A) and reasons for issuing the notice (Appeal B) are based on the same issues, I have dealt with the appeals together in one decision letter, whilst recognising that the developments are not exactly the same.
9. The appeal site lies within a residential area which is predominantly characterised by terraced houses. The appeal property, like other residential properties within the street, has a front garden, driveway and generous private rear garden.
10. To support the Government's objective of significantly boosting the supply of homes, the National Planning Policy Framework (the Framework) makes it clear that as well as sufficient land being available, the needs of groups with specific housing requirements need to be addressed. The Outer North-East London Strategic Housing Market Assessment (SHMA) (2016) identifies a high need for family sized accommodation within the Borough.³
11. Barking and Dagenham's Borough Wide Development Policies, Development Plan Document, adopted March 2011 (DPD) seeks to preserve and increase the stock of family housing in the Borough. To this end, Policy BC4 of the DPD states that where planning permission is required, the Council will resist proposals which involve the loss of housing with three bedrooms or more.
12. In this case, the original dwelling had three bedrooms at first floor level and there is also a converted loft space with an ensuite toilet/shower. In addition, the property has a relatively large private back garden, and driveway with parking for at least three cars. It is clearly a property which is suitable for family accommodation and for which there is a demonstrable need.
13. Just because the development plan was adopted some years ago, it does not mean that its policies are out-of-date. Indeed, the SHMA shows a demonstrable need for family sized dwellings and provides support for Policy BC4 and the Article 4(1) Direction which operates in this area. The use of the property as a large HMO or as a small shared HMO (Class C4) conflicts with the Council's objective of trying to protect and increase housing provision for a recognised housing need.

³ Planning Officer's Report, Ref 18/02239/Ful

14. I conclude that the proposals have a significantly harmful effect on the housing mix. There is conflict with the development plan, and in particular with Policy BC4 of the DPD, the aims for which are set out above.

Living conditions of neighbouring residents

15. From my own observations on site, Salisbury Road is characterised by family homes. However, it was also clear that some of the property's have been converted to flats. Furthermore, taking into account comments received from third parties, there are also a number of existing HMO's within the street, although I have not been informed of the precise numbers.
16. The appeal property is an end terrace with a generous private rear garden. The front garden has been hardsurfaced to provide parking and there is a gated driveway to the side of the property which provides additional off-street parking facilities.
17. The use of the property as a small shared house (Class C4) would not to my mind result in a significant increase in activity at the property, over and above that which would be associated with its use as a single dwelling house. Nor would such a use result in a substantial increase in refuse generation.
18. However, whilst I am satisfied that a small shared house would not have a harmful effect on the living conditions of neighbouring residents, a large HMO would have a different character. I appreciate that the property could accommodate a large family, including teenagers who play music and children playing in the garden. I also understand that existing and future occupants may not be students but professional adults living together. However, a single dwelling (C3 Use) would more likely comprise a household of mixed age group living as one family, whereas a large HMO would generally accommodate six or more unrelated adults. That being the case with the existing five bedroom HMO. More than six adults living together would to my mind, result in not only in an increase in the number of comings and goings from the property, but also a different pattern of activity than would be the case with a family, of mixed ages, living as one household.
19. The use as a five bedroom HMO results in an increase in the comings and goings from the property, including visitors and deliveries to the property. This activity takes place throughout the day and late evening. Furthermore, the general noise levels associated with the normal living conditions of a family would be significantly less than that expected of more than six adults, particularly if they are coming and going in cars. In addition, the refuse and waste generated would be much greater than the use of a single dwelling, although I appreciate that there would appear to be sufficient space within the site to provide suitable refuse storage facilities. However, there is no doubt that the five bedroom HMO leads to an increase in general activity and resultant noise and disturbance on Salisbury Avenue which currently contains many properties still in C3 use.
20. I conclude that whilst the use as a small shared house (Class C4) would not have a significantly harmful effect on the living conditions of neighbouring residents, its use as a five bedroom HMO does. The HMO therefore conflicts with the development plan, and in particular with Policies BC4 and BP8 of the DPD which seek to ensure that new development does not expose existing and

proposed occupiers to unacceptable general disturbance and has regard to the local character of the area.

Living conditions of existing and future occupiers

21. The Council has expressed concern over the internal space available within the property for existing and future occupiers. The plans submitted with the planning application show two double bedrooms at ground floor level, each with ensuite facilities and a shared kitchen and laundry facilities. There is no communal living space, but the bedrooms are generous, and the kitchen has a small table within it and seating for two people. This was the arrangement I observed on my site visit.
22. The first floor plans show two double bedrooms and a separate bathroom to serve those rooms. The original smaller bedroom at the front of the property is shown as a kitchen with a small table and seating within it and this was the situation when I undertook my visit. The fifth bedroom is within the converted loft space and provides a double bedroom with shower room and some kitchen facilities. However, the plans submitted with the planning application show the loft area as a utility room.
23. I have had regard to the Council's concern that there is no communal living space available for the existing occupiers. However, the two kitchen areas provide some dining facilities and the bedrooms are of sufficient size to accommodate both a double bed and additional seating. In addition, there is a large garden area with outdoor seating for use in the summer months and where there is also space for outdoor storage.
24. I note the Council's concern about size of one of the bedrooms. However, from the plans before me and my inspection on site, the fifth bedroom is a large double bedroom in the loft space. From the evidence before me I am unable to identify any conflict with the space standards set out in Policy 3.5 of the London Plan, 2016 or the Technical Housing Standards⁴. Overall, I am satisfied that the accommodation provides for acceptable living conditions for use as a five bedroom HMO, whether as a Class C4 HMO or a large HMO.
25. I conclude that the developments provide for acceptable living conditions for existing and future occupiers. There is therefore no conflict with the development plan and in particular no conflict with Policy BP11 of the DPD which seeks to ensure, amongst other things, that the design and layout of new development maintains residential amenity.

Parking conditions

26. The Council has identified Salisbury Road as an area where there is a high demand for on-street parking and advise that the site lies in an area where there is a low level of public transport connectivity (PTAL Level 2). The applicable maximum standard is 'up to 2' spaces for a four (or more) bedroom dwelling. However, the Council advise that a higher level is required due to the low PTAL rating level.
27. It was clear from my site visit, which was mid-afternoon on a weekday, that there is a high demand in the area for on-street parking. However, there is adequate space on the site for the parking of at least three cars which exceeds

⁴ Technical housing standards – nationally described space standard DCLG 2015.

the maximum parking standard. There would also be sufficient space within the garden area of the property to accommodate secure cycle storage. Moreover, the site is within walking distance of Barking Railway Station, local bus routes and close to shops and services.

28. For the reasons given above, the developments make adequate provision for off-street parking and there is no conflict with either Policy BR9 or BR10 of the DPD which seek to reduce car parking dependence and ensure that levels of provision for each development take into account the local environment and accessibility of the site.

Other Matters

29. I understand that the proposals meet the needs of a specific housing sector, however I have not been provided with any substantive evidence to suggest that there is a demonstrable need for this type of accommodation in this location. In addition, the contribution that the development would make to housing land supply would be limited. These considerations do not outweigh the harm that I have identified to the overall housing mix in the locality where there is a demonstrable need for family homes, and conflict with the objectives of local and national planning policy.
30. I have taken into consideration the appellant's willingness to accept a condition to restrict the number of occupants within the HMO. However, given my findings in the first main issue, restricting the number of occupants would not overcome the harm I have identified from the loss of a family home.

Conclusion

31. For the reasons given above, the loss of the family home and conflict with the development plan in this regard is the decisive factor in each of these cases. Therefore, Appeal A and Appeal B on ground (a) must fail.

Appeal on ground (f) (Appeal B only)

32. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
33. Section 173 of the Town and Country Planning Act, 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity that has been caused by the breach. In this case, the purpose of the notice is to remedy the breach of planning control.
34. The appellant is of the view that because the works to install the kitchens and bathrooms have taken place within the property, they are not development requiring planning permission. It is therefore unreasonable for those works to be removed.
35. In view of my conclusions on ground (a) the breach of planning control can only be remedied by the cessation of the unauthorised use and the removal of the works that facilitated that use. I have had regard to the planning history of this property. However, I have not been provided with any substantive evidence to demonstrate that any of the alterations and fixtures required to be removed were in the property prior to the breach of planning control. Indeed,

the ensuite bathrooms within the ground floor bedrooms and the first floor kitchen are not shown on the existing plans submitted with the original planning application. Therefore, there are no lesser steps that would achieve the statutory purpose behind the notice and the appeal on ground (f) must fail.

Appeal on ground (g) (Appeal B only)

36. The issue is whether the compliance period of six months is reasonable. The appellant considers that a period of two years would be a more reasonable time period for the tenants to find alternative accommodation when there is a shortage of suitable housing in the area.
37. However, I have not been provided with any substantive evidence to demonstrate that alternative accommodation is not available. Nor is there any evidence to suggest that the existing tenancy agreements would prevent compliance. In my view six months is sufficient time for the rooms to be vacated and works undertaken to remove the facilities within them. I conclude that the appeal on ground (g) must therefore fail.

Human Rights

38. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most fundamental rights and freedoms contained in the European Convention of Human Rights, and I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and the appellant's rights under Article 1 of the First Protocol. However, given the harm identified in the reasons for issuing the notice, the action pursues the legitimate aim of regulating land use in the public interest and is necessary and proportionate to the situation.

Conclusions

39. For the reasons given above, and having taken into account all other matters raised, I conclude that the appeals should not succeed.
40. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under Section 177 (5) of the 1990 Act, as amended (Appeal B).

Elizabeth Pleasant

INSPECTOR