
Appeal Decision

Site visit made on 16 January 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 8th February 2020

Appeal Ref: APP/Z5060/C/19/3226668

Land and premises at 79 Westfield Road, Dagenham RM9 5BP

- 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 Petru Cinca against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice, numbered 19/00049/NOPERM, was issued on 14 March 2019.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the property into two units of residential accommodation.
- The requirements of the notice are:
 - Cease the use as two independent units of residential accommodation
 - Remove all alterations and fixtures enabling the change of use to two independent units of residential accommodation
 - Remove all consequent waste material from the land
- The period for compliance with the requirements is 6 months to comply with all three requirements listed in section 5 after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)[a], [d] and [f] of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground [a] and it has been confirmed that the fee is exempt, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decisions

1. The appeal is dismissed, and the enforcement notice is upheld.
2. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (d)

3. An appeal on ground (d) is on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probabilities.
4. This ground of appeal assumes that at some stage there has been a breach of planning control, but that it is immune from enforcement, having subsisted for a four-year period in the case of change of use to a dwelling house.
5. The Council confirm that planning permission was granted for the retention of a part single/part two storey side and rear extension including modifications to the front entrance at 79 Westfield Road under an application submitted in 2013. The plans which have been submitted by the appellant show two

staircases and the potential for the building to form two self-contained dwellings.

6. The appellant argues that 79 Westfield Road has been occupied as two separate dwellings since around 2014 and has provided evidence to support this claim. The Council say that this is the same evidence as was submitted in relation to an application which was made for a certificate of lawfulness for an existing use (Council Ref: 18/01969/CLU_E). That application was refused on the basis that the evidence was insufficient to prove that the property had been converted into two separate dwellings.
7. The appellant has submitted copies of certificates and invoices which show that work has been carried out at 79 and 79A Westfield Road. There are two Domestic Electrical Installation Condition Reports dated 18 December 2014. One refers to 79 Westfield Road and makes reference to 'distribution to flat 79A'. The other which has a consecutive reference refers to 79A Westfield Road. The purpose of both reports is set out as an intention by Mr Petru Cincea to rent out the properties. This evidence demonstrates that in late 2014 there was an intention to let out the site as two properties.
8. Financial documentation has been provided to show that Miss Mirita Capraru's address was 79 Westfield Road between July 2014 and June 2017 and that Mrs Petronella Adam was living at No. 79 between December 2016 and March 2018. A Driving Licence for Miss Andrea Maigut also shows her address as 79 Westfield Road when it was issued in September 2014. However, the statutory declaration provided by Mrs Mirita Abageru (nee Capraru) states that she lived with Miss Andrea Maigut at 79A Westfield Road and Mrs Elena Manolcahe confirms that Miss Maigut's address was 79A Westfield Road. This evidence shows a lack of clarity about which part of the site was occupied by which tenants and there is no evidence to show that there were two separate tenancies.
9. The appellant has drawn my attention to an appeal decision in respect of the use of 36 Sandmere Road, London as 3 flats (Appeal Reference: APP/N5660/X/12/2186548) (the Sandmere Road case). There is no explanation of the relevance of this decision to the current appeal, but I note that the Inspector in that case put weight on the presence of separate gas and electricity meters and billing to individual parts of the building. There is evidence in the form of an invoice for a boiler being installed at No. 79A in 2012. However, there is no further information in the form of separate billing for energy supplies to show that this installation was in connection with a separation of services to two self-contained dwellings. Unlike the Inspector in the Sandmere Road case, I do not find the evidence relating to energy supplies to the site as providing a compelling case for concluding that there have been two separate households at the appeal property for in excess of four years.
10. The photographs provided of Miss Maigut's birthday celebrations are undated and do not provide evidence of occupation of the site as two separate dwellings.
11. The Council refers to a request for a pre-application meeting to discuss conversion of a four-bedroom house into two separate dwellings which was made in 2017. Whilst there are no details regarding this meeting, the submission could indicate that the applicant who made the request was of the opinion that the lawful use of No. 79 was as a single dwelling at that time. The

appellant has had the opportunity to comment on the Council's case but has not provided an explanation of why it appears that, on the basis of the request to the Council, that there was an acceptance that the site was being used as a single dwelling in 2017.

12. Drawing all of these strands together, the appellant has not shown, on the balance of probabilities that the site has been used as two independent units of residential accommodation for four years. Therefore, the appeal on ground (d) fails.

Ground (a) and the Deemed Planning Application (DPA)

13. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.
14. The appellant has not directly responded to the Council's reasons for issuing the notice. He has indicated that if the appeal fails in respect of ground (d) he intends to provide plans to show that a more suitable arrangement can be provided on site, including to ensure that internal spaces comply with standards, altering the access and amenity arrangements and reinstatement of separate front door entrance. However, I have no details before me regarding these alternative internal and external arrangements, therefore I have considered the appeal on the basis of the layout and access which is before me.

Main issues

15. The reasons for the notice and the Council's statement set out the reasons why it considers that planning permission should be refused for the development as described on the notice. On the basis of this evidence, the main issues are:
- The effect of the development on the character of the area and the supply of family housing.
 - The effect of the development on the living conditions of occupiers of the accommodation and neighbouring dwellings with particular regard to the potential for noise and disturbance.
 - Whether or not the development makes adequate provision for car parking.

Reasons

Character and the supply of family housing

16. Policy BC4 of the Local Development Framework Planning for the future of Barking and Dagenham Borough Wide Development Policies Development Plan Document (the Development Policies Document) seeks to preserve and increase the stock of family housing in the Borough. In order to achieve this the policy resists the loss of housing with three bedrooms or more.
17. The plans which form part of the appellants submissions show that as extended No. 79 accommodated four bedrooms on the first floor. It follows that Policy BC4 is engaged. The Council regard the consideration of the impact of the development on character and amenity and the achievement of internal and external amenity standards as relevant matters under Policy BC4.

18. Westfield Road serves an established residential area which is characterised by terraced housing facing the street or grouped around pedestrian only cul-de-sacs. Whilst the houses facing the road have an open aspect, those in the groups have a sense of enclosure particularly where one terrace is perpendicular to its neighbour. No. 79 is one such end of terrace house and it has a very close relationship with the neighbouring house (No. 77).
19. Access to the site is limited to pedestrians only. Nevertheless, the enclosed layout of the group of houses is such that the more intensive use of one property which arises from the comings and goings associated with two rather than a single household is out of character with the area.
20. There is no evidence before me regarding the internal or external space standards or the level of amenity space which the Council seeks to achieve. On this basis I cannot assess whether or not the development achieves those requirements. However, on its own the loss of a four-bedroom house and the impact which the more intensive use has on the character of the area is sufficient to render the development contrary to Policy BC4 of the Development Policies Document.

Living conditions

21. There are two points of access into the building, a front door facing the cul-de-sac serves one unit and a door in the back wall serves the second unit. Access to the second unit involves going around the side of the building to the back. This route runs very close to No. 77 and part of the boundary is not fenced. Consequently, anyone accessing the second unit would be likely to disturb the occupiers of No. 77 who have windows and their access to the side and rear of the house. Whilst there would be a degree of noise and disturbance arising from the use of the back door were No. 79 to accommodate a single household, the fact that one of two households would be using the rear door as sole access would be likely to lead to a level of disturbance which is harmful to the occupiers of No. 77.
22. In terms of the interaction between the occupiers of the two units within No. 79, the two entrances provide a degree of separation however the rear garden area is not subdivided. Consequently, there is likely to also be a degree of disturbance arising from its shared use, adding to the general increase in noise and disruption associated with the more intensive use of the site and this is harmful to residential amenity.
23. I conclude that the use as two independent units of residential accommodation would be likely to have a harmful effect on the living conditions of occupiers of the accommodation and neighbouring dwellings with particular regard to the potential for noise and disturbance. The development is contrary to Policy BP8 of the Development Policies Document which requires that all development ensures that existing and proposed occupiers are not exposed to unacceptable levels of general disturbance.

Car parking

24. On-street car parking is restricted on the streets surrounding the appeal site during the day to resident permit holders only. Although many of the street facing houses have off-street parking in the form of driveways, houses such as No. 79 and its neighbours are not directly accessible from the street and do not

have such facilities. Consequently, the occupiers of these houses are reliant upon the parking spaces provided under the permit scheme. There is no evidence before me regarding eligibility for that scheme, however I did observe that there were spaces available on the street in the vicinity of the site.

25. Whilst there are high levels of both on-street and off-street car parking in the area there is no information before me to demonstrate that any adverse impacts have arisen as a result of any increased demand for parking space as a result of the subdivision of No. 79 into two dwellings. I also have no detailed information regarding the car parking standards which the Council would normally apply.
26. On the basis of the evidence before me and my observations, I conclude that the development makes adequate provision for car parking. It follows that it is in accordance with Policy BR9 of the Development Policies Document which requires that final levels of provision for each development should be based on, amongst other things on-street parking availability.

Conclusion on Ground (a) and the DPA

27. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

28. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
29. The appellant considers that he could undertake alterations to the property to ensure that the internal spaces are compliant with the standards and to change the access and amenity arrangements. In his view these arrangements would be fully compliant with planning policy and likely to be acceptable to the Council.
30. I am not persuaded that these changes, which are not fully detailed in the evidence, would remedy the breach of planning control which has occurred or the injury to amenity which I have found. Furthermore, proposed changes may amount to a materially different development to that which is the subject of the notice. In the case of the latter, the appropriate route would be the submission of a planning application to the Council for consideration in the first instance. On this basis, it has not been demonstrated that there is a viable alternative to full compliance with the requirements of the notice or that the requirements of the notice exceed what is necessary.
31. For the reasons set out, above the appeal under ground (f) fails.

Conclusion

32. 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.

Sarah Dyer

Inspector