



Appeal Decision

Site visit made on 7 January 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 February 2020

Appeal Ref: APP/Z5060/C/19/3232676

Land and premises at 90 Upney Lane, Barking IG11 9LR

- 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 Sohan Rai against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 13 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised conversion of the property into 4 self-contained units of accommodation.
 - The requirements of the notice are:
 - Cease the use of the property as four self-contained units of accommodation.
 - Remove all alterations and fixtures enabling the conversion to four self-contained units of accommodation.
 - Remove all consequent waste material from the land.
 - 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. The prescribed fees have been paid within the specified period. Hence the application for planning permission deemed to have been made under section 177(5) of the Act, as amended, falls to be considered.
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Decision

1. 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

2. The appellant quotes a number of paragraphs from the previous 2012 National Planning Policy Framework (the 'Framework'). However, the Framework was revised in July 2018, and subsequently updated on 19 February 2019. Whilst the sentiments in the quoted paragraphs have not fundamentally changed, for the avoidance of doubt, quoted Framework paragraphs 6 and 7 are now 7 and 8; paragraph 14 is now paragraph 11; paragraph 56 is now paragraph 124; paragraph 64 is now paragraph 130; paragraphs 186 and 187 are now combined into paragraph 38, and paragraph 207 is now paragraph 58.

Background

3. Planning permission¹ was refused for the retrospective change of use of the dwelling into 4 self-contained flats.

¹ LPA Ref: 19/00467/FUL

Appeal on Ground (a) and the Deemed Application

4. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice.

Main Issues

5. I consider the main issues are:

- The effect of the loss of a family dwellinghouse on the housing stock,
- The effect on the living conditions of the existing occupiers with particular regard to the internal floor area,
- The effect of the proposal on existing and future occupants and those in neighbouring properties, with particular regard to noise and disturbance, and
- The effect on highway safety with regard to parking.

Housing stock

6. The appeal property comprises a two-storey linked semi-detached dwelling with living accommodation in the roof. It is located in a residential road and area with dwellings of similar design fronting the highway. Some properties, including the appeal property, have made a hard surfaced forecourt at the front for the parking of 1-2 cars.
7. The building has been configured internally into 4 self-contained flats, access to all of which is gained via a single front door facing Upney Lane, that opens into a small lobby. Flat 90A occupies the ground floor, which gives access onto a good sized rear garden. Stairs lead from the front door lobby to 2 flats on the first floor (flats 90B and 90C) and a further flight of stairs leads to Flat 90D in the roof space.
8. Policy BC4 of the Borough Wide Development Policies Development Document (DPD) seeks to resist proposals that involve the loss of housing with three bedrooms or more in order to preserve and increase the stock of housing in the Borough.
9. The property was originally a single dwelling, but has been altered over time to create habitable accommodation in the roof and convert the garage into habitable accommodation, as is evident from the detailed planning history and my visit. This has increased the size of the dwelling. Whilst it may now be a bigger property, this does not necessarily mean it is suitable for sub-division.
10. I acknowledge that the flats provide a different type of housing for some groups of people. However, I have not been presented with any substantive evidence to demonstrate a housing need, windfall or otherwise, for small flats in subdivided houses in the area to justify a departure from the development plan, which must be the starting point for decision-making when determining planning applications.
11. I therefore find the appeal proposal would result in the loss of a family dwelling, which would adversely affect the provision of housing contrary to DPD Policy BC4, whose aims are outlined above.

Living conditions with regards to internal floor area

12. Policy 3.5 of The London Plan (March 2016) replicates the March 2015 Technical Housing Standards – nationally described space standards (the national standards) which set out minimum internal floor areas. Policy 3.5 seeks to ensure that housing development is of the highest quality internally and externally so that residents have adequately sized rooms and that layouts are convenient and efficient to be fit for purpose.
13. I have not been presented with any floor plans or dimensions of the flats or any of the rooms, or told by how much any of the rooms or internal layouts or storage space falls short of the national standards, or which two bedrooms are not wide enough. However, from my site visit I observed that the flats on the upper floors were much smaller than the ground floor flat and overall felt cramped, and apart from the ground floor flat there was little sitting room space. Flat 90B was particularly small as it did not have a separate bedroom – only a small room that doubled as a sitting room with a sofa bed and very small shower room off this. When the sofa bed would be pulled out in use as a bed, there would be little room to walk round it due to the other living furniture in the room. There was also very little space to accommodate adequate storage space in any of the upper floor flats.
14. Based on the limited evidence before me, I conclude there is inadequate internal floor area available for existing occupiers of the proposed upper floor flats, which results in substandard accommodation detrimental to the living conditions of occupants. The appeal proposal is therefore contrary to Policy 3.5 of The London Plan, whose aims are outlined above.

Living conditions with regards to noise and disturbance

15. I accept that single dwellings can be occupied by a large family. However, daily activity in a single dwelling is generally shared with other family members and is likely to be limited to particular parts of the house at any particular time. The creation of 4 flats in close proximity to each other within the property would likely result in a proportionate increase in noise and general disturbance arising from 4 separate and unconnected households coming and going, with their own friends and family visiting.
16. However, the property is already in use as 4 flats in an established residential area. I have not been presented with any substantive evidence from the Council, local residents, occupiers of adjacent properties or their representatives that the existing flats are causing unacceptable noise and disturbance to the general area or to occupiers of neighbouring properties including between the walls of the property where there are living rooms adjacent to bedrooms. There is no dispute between the parties relating to overlooking, privacy, light or outlook.
17. Accordingly, based on the evidence before me, I find the proposal would not conflict with DPD Policy BP8, which seeks amongst other things to ensure existing occupiers are not exposed to unacceptable levels of general noise and disturbance.

Highway safety

18. The property has space at the front for 2 on-site parking spaces, although the dropped kerb does not extend across the full width of the driveway. This was

not dissimilar to a number of other properties along Upney Lane where I observed on-site parking for 2, sometimes 3 cars. If each flat required 1 parking space, then the property would be two short.

19. The Council has not submitted any substantive evidence to demonstrate that there is a material shortage of parking that is resulting in excessive on-street parking or inconsiderate parking that is causing highway safety issues. I have not been directed to, or provided with, any parking standards that apply to the area in order to fully gauge the required provision for off-street parking and hence the shortfall. There is no comment from the Highway Authority.
20. There are yellow lines along Upney Lane and outside the property restricting parking. Upney Lane is a main route with bus stops in close proximity to the property giving convenient access to public transport links, local shops and facilities. It was also evident from my visit to the area that the site was approximately a 10 minute walk to Upney tube station. The accessibility to public transport would mean occupants would not need to rely on the car for all of their day-to-day needs and this would help reduce the need for occupants to have cars.
21. I therefore conclude, based on the evidence before me, that there is provision for some off-street parking, but that the absence of off-street parking for all of the flats would not give rise to significant highway safety issues. Accordingly, I do not find conflict with DPD Policy BR9 which seeks to determine parking provision for each development to reduce impact on highway safety.

Other matters

22. I acknowledge that the four flats would increase the number of homes in an existing residential area and contribute to meeting the Borough's housing need. However, the sub-division and loss of family sized dwellings to create higher density homes of a substandard size would not accord with the national standards or the development plan and its intention to create attractive environments for people to live in.
23. The appellant is willing to have a condition imposed requiring additional sound insulation. This would need to be retro-fitted. However, this would not overcome the harm I have identified resulting from the loss of family housing.

Conclusion on ground (a) and the deemed planning application

24. Whilst I find there is no noise and disturbance to the general area and no harm to highway safety, this does not outweigh the harm to the living conditions of occupiers from substandard accommodation or the loss of family housing. For the reasons given above, and having regard to all relevant matters raised, I find the proposed development would not accord with the development plan and there are no other considerations which outweigh this finding.
25. I therefore conclude that the appeal on ground (a) fails and the deemed planning application is refused.

Appeal on ground (f)

26. An appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f) it is necessary to understand

the purpose of the notice. Section 173(4) of the Act provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity. In this case, the Notice alleges that there has been a material change of use and it requires the unauthorised use to cease and removal of the alterations and fixtures that facilitate the use. Therefore, the purpose of the Notice is to remedy the breach.

27. That being the case, the appellant must show that the requirements of the notice are excessive to remedy the breach and that lesser steps would achieve the same end. The appellant has not specified alternative steps that could be taken because he considers planning permission should be granted on ground (a).
29. As I have found the appeal on ground (a) fails, then the use must cease. Therefore, I find the requirements of the Notice do not exceed what is necessary. The appeal on ground (f) therefore fails.

Appeal on ground (g)

30. Ground (g) is that the period specified for compliance with the Notice falls short of what is reasonable. The Notice gives 6 months for all the requirements of the Notice to be complied with.
31. The appellant suggests that the compliance period should be at least 9-12 months in order to source a reputable builder to undertake the physical alteration works, and 6 months to give current occupiers time to find an alternative place to live.
32. The appellant has not provided any information regarding the tenancy agreements he has with the existing occupants. However, for example an Assured Shorthold Tenancy is the default legal category of residential tenancy in England and Wales, in which a landlord can terminate a tenancy and must give the tenant a minimum of 2 months' written notice to leave the premises. The 6 month compliance period would therefore exceed this and give existing occupants ample time to find alternative accommodation.
33. Sourcing a reputable builder to undertake the works, including getting quotes, should not take long especially when there are various methods of finding builders, such as word-of-mouth, the internet with various websites with approved tradesmen such as 'Checkatrade', 'Trusted Traders' or other similar groups that may operate locally, as well as the local press. The appellant does not need to wait until the tenants have vacated the flats before he starts sourcing a builder of his choice – he can do this with immediate effect.
34. The works would involve removal of partition walls, kitchens and bathrooms and making good to restore the property back to a single dwellinghouse. Assuming tenants have 2 months' notice to vacate the flats and the appellant has sourced his builders, that would leave 4 months to undertake the works. The building works could of course start sooner if tenants vacated individual flats sooner.
35. For the reasons above I conclude that 6 months is a reasonable time with which to comply with the Notice. The appeal on ground (g) therefore fails.

Conclusion

36. 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.

K Stephens
INSPECTOR