



Appeal Decision

Site visit made on 7 January 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2020

Appeal Ref: APP/Z5060/C/19/3232483

Land and premises at 122 Salisbury Avenue, Barking, Essex IG11 9XU

- 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 Mukesh L Kanbi 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 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. 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. It is directed that the enforcement notice be varied by:

- *Deletion* of "6 months" and *substitution* with "9 months" as the period for compliance.

Subject to these variations the appeal is dismissed and 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.

Background

2. The Council refused planning permission¹ for the use of the property as a House in Multiple Occupation (HMO) for 8 bedrooms and up to 13 people. The enforcement notice (the 'Notice') has been served on that basis. Neither party has provided me with any details, reports or floor plans relating to that application. However, the appellant advises that the refusal reasons were the same as those used on the Notice. The appellant states that at the time the Notice was served the property was in use as an HMO for 5 adults and one child.

¹ LPA ref: 18/00904/FUL

3. According to the appellant, an HMO licence was granted in February 2019 for the use of the property for a maximum of 6 households with a maximum of 10 people in 6 bedrooms. What appears to be an extract from the licence is attached as Appendix A to the appellant's Statement and entitled 'Schedule 1 – Schedule of Occupation', but which cites that some rooms are unsuitable for occupation. The appellant states that the premises have been in use as an HMO since 2013. The Council has not disputed this.

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.
5. Whilst planning permission was refused for an 8-bedroom HMO for 13 people, the alleged breach of planning control does not specify the number of bedrooms or people. The appellant requests that I consider alternative internal layout options for planning permission, namely:
 - Option 1 with Plan 1: Linked to schedule 1 of the HMO Licence – 6 Bedrooms. This would be for an HMO with 6 bedrooms for use by up to 10 people as per the HMO licence. The 2 unsuitable bedrooms would be for communal amenity use by the residents. Some rooms would be occupied by 2 people.
 - Option 2 with Plan 2: Plan for Planning Permission – 6 Bedrooms. This would be for an HMO with 6 bedrooms for use by 6 people, with the other two rooms for use as communal amenity space by residents.
6. The *Wheatcroft* principle does not apply to amended plans in enforcement appeals. Section 177(1)(a) only allows the grant of planning permission in respect of matters stated in the Notice as constituting a breach of planning control "whether in relation to the whole or any part of those matters".

Main Issues

7. I consider the main issues are:
 - The effect of the loss of a family size dwelling on the housing stock,
 - The effect of the proposal on the character and appearance of the area with regard to traffic, noise, refuse and general disturbance,
 - The effect on the living conditions of the existing occupiers with particular regard to the internal floor area, and
 - The effect on highway safety with regard to parking.

Effect on housing stock

8. The appeal property comprises a two-storey end of terrace dwelling with additional accommodation in a roof. It is located in a quiet residential road and area with dwellings of similar design fronting the highway.
9. The building has been configured internally as an HMO containing living accommodation on three floors, access to which is gained via a front door facing Salisbury Avenue. Not all of the bedrooms were occupied at the time of my visit, but there were potentially 8 rooms of varying sizes, some without

windows and some with only 'borrowed light' from the kitchen. There was a communal kitchen with a central island for eating at and a small sofa. There was also a separate shower room and separate toilet off the kitchen, and communal shower rooms/WCs on the first floor and in the roof space. The front ground floor bedroom had a second room and its own ensuite bathroom. There was also a rear garden area accessed from the kitchen. I observed the property would be a good sized family house and looked to be in good condition. From my experience of similar properties, it would likely have originally been a 3-bedroom property.

10. 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, as it wishes to preserve and increase the stock of housing in the Borough, due to a shortage throughout London and the Borough. Furthermore, the Council has made a Borough-wide Article 4 Direction that removes permitted development rights that prevents dwellings (Use Class C3) changing use to HMOs (Use Class C4) without first obtaining planning permission.
11. Paragraph 61 of the National Planning Policy Framework (the 'Framework') states that planning policies should reflect the size, type and tenure of housing needs for different groups in the community. HMOs provide a type of housing for different groups of people and can help meet both social and economic sustainable development needs. The appellant refers to there being a high percentage of young professional, students and single people in the area. However, I have not been presented with any substantive evidence or data to demonstrate an acute shortage of, or need for, HMOs in the area.
12. The Development Plan was adopted in 2011 before the Framework was first published in March 2012. Policy BC4 deals with a particular type of housing issue, namely "Residential conversions and houses in multiple occupation" that is relevant in this case. Despite its age I do not find Policy BC4 to be at odds with the Framework.
13. I therefore find the appeal proposal for a change of use into an 8-bedroom HMO, and even as a 6-bedroom HMO under either of the appellant's options 1 and 2, would result in the loss of a family dwelling. Accordingly, the proposal would be contrary to DPD Policy BC4 whose aims are outlined above. The appellant's alternative layouts would also be contrary to the above policy.

Character and appearance

14. The appellant refers to there being very few HMOs in the area so there would be no material harmful effect of one property out of many being used as an HMO.
15. A property of this size could house a large or extended family and there would be some degree of noise and disturbance. However, the nature of HMOs is that they have different activity patterns from family homes and an increased density of households. A concentration of HMOs can have cumulative effects that can change the overall community mix of an area as well as its character. Furthermore, concentrations of HMOs can put pressures on local services including parking and waste disposal, which can also change an area's character and appearance. However, I have not been made aware of an overconcentration of HMOs in the area to suggest that an increase in density

for this property would result in an unacceptable or harmful change to the character of the area.

16. An increase in the number of households, either as per the planning application or as the appellant's two alternative options, would still likely result in a proportionate increase in noise and general disturbance arising from the separate and unconnected people coming and going to and from the property, particularly as the property is terraced and in close proximity to other dwellings. I accept that no external alterations are proposed as part of this appeal, so there would be no change to the appearance of the property in the street in that regard.
17. The property is already in use as an HMO and has been since 2013 according to the appellant. I have not been presented with any substantive evidence from the Council, the Police, local residents or their representatives that during this time the existing HMO has caused, or is causing, unacceptable noise and disturbance, anti-social behaviour issues or other incidents. Nor have I been directed towards any relevant reports or complaints to the Council's enforcement, environmental health or waste collection teams. The appellant refers to one objection from a resident living in close proximity to the property and another from further away. However, neither party have provided details of the nature of these comments.
18. On my visit I observed the appeal property to be well-maintained, as were most properties in the immediate area. I have no reason to believe the appeal property is not well managed or that the appellant does not choose his tenants carefully. Also, I saw no evidence around the property or general area to indicate to me that there were issues of excessive refuse generation, over-spilling bins or inconsiderate waste disposal or even other anti-social behaviours that could have a detrimental effect on the character and appearance of the area.
19. Car ownership levels are generally found to be lower with HMO type accommodation as tenants generally have less money. However, there is nothing to prevent each tenant owning a car, which would bring an associated increase in traffic and pressure for on-street parking spaces in the area. Parking will be discussed in more detail below.
20. In light of my observations and the limited evidence before me I am not persuaded that the property, which is already in use as an HMO, has a significantly adverse effect on the character and appearance of the area. As such, I find there is no conflict with DPD Policies BC4 and BP8, which seek to ensure there is no loss of character or amenity to the area and that existing occupiers of the area are not exposed to unacceptable levels of general disturbance.

Living conditions

21. The property may indeed benefit from an HMO licence, but planning permission is also required for the use of the property as an HMO. Therefore, the application falls to be determined against relevant planning policies, which may require adherence to standards different from the HMO licence.
22. 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.

23. The Notice and the Council's Statement do not specify exactly how the internal floor area and layout of the property or individual rooms falls short of the national standards.
24. The HMO schedule sets out that some of the bedrooms are not suitable for occupation as they are either undersized, open into the kitchen or do not have an escape window. The appellant quotes room sizes in his statement that appear to be taken from a Council report on the refused planning permission for 8 bedrooms for up to 13 people. Whilst the appellant includes extracts of a report in his Statement, I have not been provided with the full report. There is reference to rooms 5 and 1 having unusable floorspace due to inadequate headroom but does not indicate the degree of shortfall, and rooms 2, 3 and 7 having no windows or insufficient levels of outlook or access to sunlight/daylight.
25. I observed from my visit that the layout of the property did not correspond with the appellant's submitted plans and the HMO schedule of accommodation does not appear to fully correspond to Plan 1. The appellant's submitted Plans 1 and 2 do not show that the garage has been converted into habitable accommodation comprising a small second bedroom and ensuite for use by occupiers of Bedroom 1. Nor do they show another room off the kitchen (presumably Bedroom 3 in the HMO schedule). In addition, a separate WC and separate shower room have been created off the kitchen but aren't on the plans and Bedroom 2 does not have doors leading into the kitchen, but instead an obscure glazed window into the kitchen.
26. Notwithstanding these discrepancies, I saw that some rooms were unsuitable for occupation. The only window serving Bedroom 2 was an obscure glazed window that gained borrowed light from the kitchen, such that occupants of this room would have no outlook, direct daylight or sunlight and no means of opening a window for fresh air. The other room off the kitchen only had rooflights, so there was limited outlook and no escape window. The smaller first floor room, intended now as a communal amenity room, appeared small for such a use. I have no reason to disagree that the internal accommodation as a whole is inadequate.
27. Even if I were minded to allow the appeal on ground (a) and grant planning permission for the existing HMO in accordance with the HMO licence, or even one of the appellant's alternative 6-bedroom options, I would not be able to do so because of the discrepancy between the plans and what exists on site.
28. As a result, I am not persuaded that there would be no harmful effect on the living conditions of the existing occupiers. Accordingly, the proposal is contrary to Policy 3.5 of The London Plan and also the national standards.

Highway safety

29. As already mentioned some HMO accommodation can attract a lower level of car ownership. I also accept that some dwellings can have a number of cars. I noticed that some properties, including the appeal property, have made a hard

surfaced forecourt at the front for the parking of 1-2 cars. The dropped kerb does not extend across the entire frontage of the appeal property and because of the distance the dwelling is set back from the road, there would be space for the parking of one small to medium car without overhanging the pavement and aligning with the dropped kerb. I saw other properties had more than one car creatively parked within their frontages.

30. There was limited on-street parking, but there were no parking restrictions in the form of yellow lines. The Council advises there are residential permits, but insufficient spaces if every tenant wanted a permit. The Council could decline to grant more permits if parking levels were deemed excessive and problematic. During my visit, which I accept was a snap-shot in time, there were cars parked along both sides of the road. I would expect this to increase after work and at weekends as people return home from work.
31. If occupants of the appeal property all had cars this would increase pressure for on-street parking in the area, which is already limited. However, I have not been presented with any substantive evidence from the parties, local residents or the Police, 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 or to HMOs in order to gauge the required provision for off-street parking and hence any shortfall. There is no comment from the Highway Authority.
32. Whilst I was in the area I observed that the site was located approximately equidistant between Barking and Upney tube stations and there was relatively easy access to nearby bus routes and local shops and facilities such that occupants would not need to rely on the car for all of their day-to-day needs. This would help reduce the need for occupants to have cars.
33. I therefore conclude, based on the limited evidence before me, that the absence of off-street parking for occupants would not give rise to significant highway safety issues. Accordingly, I do not find conflict with DPD Policies BR9 and BR10, which seek to determine parking provision for each development and reduce the need to travel by directing development to locations easily accessed by public transport.

Conclusion on ground (a) and the deemed planning application

34. I find, based on the evidence before me, that there is no harm to the character and appearance of the area or highway safety in this instance. However, there would be a loss of family housing stock against the evidence-based DPD Policy BC4, to which I attach great weight. Furthermore, the inadequate internal layout and accommodation would have a harmful effect on the living conditions of the existing occupiers. I find there are no material considerations of sufficient weight to justify a grant of planning permission and a departure from the development plan, which must be the starting point for decision-making when determining planning applications.
35. I therefore conclude that the appeal on ground (a) fails and planning permission is refused.

Appeal on ground (f)

36. 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 1990 Act provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity.
37. 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 and can only be achieved in this case by ceasing the use of the property as an HMO and by the removal of items introduced to enable the building to be so occupied.
38. 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.
39. The appellant refers to alterations that have been undertaken to the property under previous planning permissions or authorised internal works carried out under Permitted Development. From the Council's planning history dating between 2014 – 2015, alterations would appear to relate to a dwelling, as the application to change the property from a dwelling to an HMO was not submitted until 2018. However, the appellant refers to the HMO having existed for 6 years prior to the service of the Notice and that the various alterations were undertaken whilst the property was an HMO and therefore do not need to be reverted. It would be a matter between the Council and the appellant to establish what alterations need to be made to revert the premises back to a single dwelling.
40. I find that no clear alternative or lesser steps have been put forward that would remedy the breach. Therefore, the appeal on ground (f) fails.

Appeal on ground (g)

41. Ground (g) is that the period specified for compliance with the Notice falls short of what is reasonable. This needs consideration of what must be done in practice to carry out the remedial steps and how much time is reasonable to allow for that purpose. The Notice gives 6 months for all the requirements of the notice to be complied with.
42. In his statement the appellant correctly acknowledges that the existing occupants would need to find alternative housing if the Notice is upheld. He considers that the compliance period should be extended for up to 2 years. However, in his Final Comments the appellant says that 3 months is inadequate and should be 12 months. Despite this contradiction, his alternatives exceed the 6 months' compliance period set out in the Notice.
43. I accept that the Article 4 Direction may have reduced the number of HMO properties in the area, and this may make it harder for some occupants to find alternative accommodation, especially if they need to remain close to their place of work. Save for the disruption that finding alternative accommodation would cause the residents, with which I have sympathy, I have not been presented with any substantive evidence to suggest that alternative

accommodation could not be found within the 6 month compliance period of the notice.

44. I have not been provided with any information regarding the tenancy agreements of the existing occupants and the period of notice tenants and landlords must give each other. 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. The 6 month compliance period would not place undue burdens on Local Authorities as a result of the Homelessness Reduction Act 2017. In the absence of evidence to the contrary, I find the 6 month period specified for compliance in the notice to be reasonable.
45. However, the recent Covid-19 outbreak has had a profound effect on all areas of life in the UK. The situation is fluid and it is uncertain how long the current restrictions associated with the pandemic, including social distancing, will last. As a result of the restrictions, there may be delays finding alternative accommodation and some tenants may be ill or self-isolating.
46. Views were invited from the parties on whether the current public health emergency has any bearing on the time period for compliance with the enforcement notice. The appellant has not responded. However, the Council considers it acceptable to extend the compliance period although it did not specify by how long. Taking into account all the representations of the parties, the current 'lockdown' situation and uncertainty surrounding its relaxation or lifting, I consider a further 3 months' extension would be appropriate. Therefore, under the current circumstances a reasonable period for compliance would be 9 months. Under s176(b) of the Act, I will vary the notice accordingly.
47. Section 173A(1)(b) provides that local planning authorities may waive or relax any requirement of an enforcement notice and, in particular, may extend any period specified in accordance with s173(9). That would be entirely a matter for the Council subject to normal procedures for reviewing the decisions of an administrative body.
48. The appeal on ground (g) therefore succeeds in part.

Conclusion

49. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

K Stephens
INSPECTOR