



Appeal Decision

Site visit made on 4 September 2020

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2020

Appeal Ref: APP/Z5060/C/19/3243407

68 Arnold Road, Dagenham, Essex RM9 6AN

- 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 Miss Enwenor against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 21 November 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:
 1. Cease the use as a house of multiple occupation.
 2. Remove all alterations and fixtures enabling the conversion to a house of multiple occupation.
 3. 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.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. Whilst no appeal on ground (d) has been submitted, the appellant argues that at the date the notice was issued no enforcement action could be taken on the basis that the time period for doing so had passed under s171B of the Act. It is said the material change of use of the property from a dwelling to a house in multiple occupation (HMO) occurred before May 2011.
2. However, in order to succeed on that basis the appellant would need to have demonstrated, on the balance of probabilities, that the use had subsisted for ten years or more prior to the issue of the notice in accordance with section 171B(3), not four years as suggested. This is because an HMO is not a single dwellinghouse for the purposes of section 171B(2). Indeed, it should be noted that section 171B(2) refers to single dwellinghouse, not residential units as suggested by the appellant. Thus, the hidden appeal on ground (d) fails.
3. In May 2012 the Council introduced a directive under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2008 (as amended) (as was in force at the time). This withdrew permitted development rights afforded for development under Schedule 2, Part 3, Class I for the

change of use from Class C3 dwellinghouses to Class C4 houses in multiple occupation.

4. The appellant argues that the material change of use subject of the notice occurred before the Article 4 direction came into force. Whilst the appellant does not develop the argument further, one could reasonably suggest it is a hidden argument on ground (c), that those matters stated in the notice to give rise to the breach of planning control, did not constitute a breach of planning control.
5. However, the wording in section 174(2)(c) is in the present tense. What matters is whether the development was lawful at the time the notice was issued, not at the time the development is said to have taken place. Thus, in this instance, an appeal on ground (c) would not have succeeded as the Article 4 direction which revoked any permitted development rights for the change of use was in place at the date the notice was issued.
6. The appellant requests at various points in their evidence that a certificate of lawfulness is issued. However, scope to issue an LDC on an appeal under section 174 is limited to where an appeal on ground (c) has succeeded. That is not the case here.

The appeal on ground (a)

Main Issues

7. The main issues are:
 - the effect of the development on the family housing stock in the Borough;
 - the effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance;
 - whether the development provides acceptable living conditions for existing and future occupiers with particular regard to internal space; and,
 - the effect of the development on highway safety.

Housing Stock

8. The appeal site is a two-storey, semi-detached property which was previously a single dwellinghouse. The appellant argues that the use of the property as an HMO is supported by the National Planning Policy Framework (the Framework). Paragraphs 117 and 118 are highlighted in their promotion of the effective use and development of under-utilised land to meet identified housing needs. The appellant argues that the property is no longer viable as a single dwelling and thus is underutilised. However, no evidence has been provided which demonstrates there is a lack of demand for family housing in the area.
9. Indeed, Policy BC4 of the Barking and Dagenham Borough Wide Development Policies Development Plan Document 2011 (DPD) states that the Council is seeking to preserve and increase the stock of family housing in the Borough and that it will resist proposals which involves the loss of housing with three bedrooms or more.
10. Nevertheless the policy does allow for the conversion of dwellinghouses to HMOs but only where, amongst other things, the number of houses that have

been converted to flats and/or HMOs does not exceed 10% of the total number of houses on the road.

11. The appellant argues that a survey carried out indicates only one property on Arnold Road has been converted and thus the development would not result in more than 10% of the total number of houses on the road being converted to flats or HMOs. However, the survey has not been provided. Moreover, it is said the survey was carried out at the time the conversion took place, which is said to have been May 2011. Thus, the findings of the survey are likely to be out of date and would not necessarily reflect the character of Arnold Road at the time the notice was issued.
12. Moreover, whilst the appellant goes on to indicate that there are only 2 HMOs out of 81 properties on Arnold Road at a rate of 2.5%, this does not include any properties which may have been converted to flats. Policy BC4 requires less than 10% to be HMOs and flats combined. Thus, in the absence of any substantive evidence to demonstrate that is the case, I cannot be satisfied that the development would ensure that no more than 10% of the properties on Arnold Road have been converted to flats or HMOs. I note that the Council's Strategic Housing Market Assessment indicates that 2.4% of the private rented sector stock in the Borough is provided by HMOs which is less than the 10% test set out in BC4. However, the contribution of HMOs to the overall housing stock is not the test set out in Policy BC4.
13. As the appellant acknowledges, the development does not increase the supply of housing in the area. Indeed, it clearly results in the loss of a single family dwellinghouse within the Borough, contrary to the aim of Policy BC4. As it is, whilst I note the property provides low cost housing to individuals who are on low incomes, the purpose of Policy BC4 is to preserve and increase the stock of family housing in the Borough. Fundamentally, the development involves the loss of a single dwellinghouse and as a result, it will fail to preserve or increase the stock of family housing in the Borough.
14. I conclude, therefore, that the development will have a harmful effect on the family housing stock in the Borough in conflict with Policy BC4 of the DPD.

Living Conditions - Neighbours

15. I note that use of the property as a family home could result in it being occupied by a similar number of persons to its use as an HMO. However, its use as an HMO results in it being occupied by people who are unrelated and therefore a greater number of households, in contrast to a single dwellinghouse where the occupants would live as a single household. There is therefore more likely to be a higher level of noise and disturbance arising as individuals come and go independently of one another for work, shopping and other activities. As a result, the levels of noise and disturbance experienced by neighbouring occupiers are likely to be of an increased level.
16. I conclude, therefore, that the development will have a harmful effect on the living conditions of neighbouring occupiers with regard to noise and disturbance, contrary to Policy BP8 of the DPD which states that all developments are expected to ensure existing and proposed occupiers are not exposed to unacceptable levels of general disturbance.

Living Conditions – Existing and Future Occupiers

17. The Council indicates that the development fails to provide communal areas of sufficient size and quality for the number of residents, arguing that it conflicts with Policy 3.5 of the London Plan¹, Policy BP6 of the DPD and the Technical Housing Standards – Nationally Described Space Standards 2015.
18. However, both Policy 3.5 and Policy BP6 are clear that the minimum space standards contained therein relate to the provision of new dwellings as opposed to HMOs. Likewise, the NDSS also applies to new dwellings and not HMOs.
19. In the absence of any defined space standards for HMOs set out development plan policy, I attach considerable weight to my own observations from my site visit. I was able to see from my site visit that each of the 5 bedrooms were of sufficient size for at least one person to have a full-size bed with storage facilities. Two of the bedrooms at first floor had en-suite facilities. Similarly there was also a shared bathroom at ground floor, whilst the communal kitchen and living area was, in my view, of sufficient size to accommodate 5 persons, particularly when bearing in mind that occupiers of the HMO live as separate households and would not therefore all be likely to use the space at the same time. I also noted a large rear garden which was accessible from the shared living area. As a result, I am satisfied that there is internal space of sufficient size and quality for occupiers of the property.
20. I conclude, therefore, that the development provides acceptable living conditions for existing and future occupiers with regard to internal space, in accordance with London Plan Policy 3.5, DPD Policy BP6 and the NDSS.

Highway Safety

21. The Council indicates that the development does not provide adequate parking for the number of residents the property would support and would therefore exacerbate a shortfall of car parking in the area. The Council does not indicate how many spaces it believes should be provided, noting only that if each tenant has a vehicle there would not be enough parking along the street. The appellant indicates that the HMO will support five residents, the Council says eight.
22. The appellant states that the appeal site provides three off-street car parking spaces. Nevertheless, I note from my site visit that there is an on-street parking space to the front of the site which, if occupied, would prevent access and egress from one of those spaces. Thus, it seems to me that the appeal property can provide only two functional off-street spaces.
23. Nevertheless, Policy BR9 indicates that the parking standards are maximum standards, not minimum standards. Moreover, I note the appellant's point that not all residents may have access to a private car, which is more likely given the accessibility to Dagenham Heathway station nearby. Furthermore, even if the off-street parking arrangements result in a shortfall of provision of up to six spaces, there is the potential for on-street parking. The Council indicates that Arnold Road has residential permit parking restrictions. However, I saw from my site visit that there were several spaces where on-street parking could and does occur.

¹ The London Plan – The Spatial Development Strategy for London consolidated with alterations 2016

24. Whilst I appreciate my observations were only a snapshot at a particular time of day, I saw from my visit that those spaces were readily available and I am satisfied there would be sufficient space to accommodate any additional on-street parking demand arising from the development. As a result, in the absence of any substantive evidence before me to suggest there is any issue with on-street parking capacity on Arnold Road, I am satisfied that any parking demands arising from the development would not put undue pressure upon parking in the area.
25. I conclude, therefore, that the development will not have an unacceptable effect on highway safety, in accordance with Policy BR9 of the DPD which states that final levels of provision for each development will be agreed having taken issues into consideration such as on-street parking availability.

Other Matters

26. It is said that planning permission should be given subject to a condition which restricts the number of tenants to five. However, my findings in respect of the effect of the development on the housing stock in the Borough and on the living conditions of neighbouring properties would not be mitigated were the property to be occupied by no more than five people.

Conclusion on the appeal on ground (a)

27. Whilst I have found that the development will provide acceptable living conditions for existing and future occupiers and will not have a harmful effect on highway safety, I have found that it has a detrimental effect on the housing stock of the Borough and the living conditions of neighbouring properties. They are the prevailing considerations. Consequently, for the reasons given above, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (f)

28. The appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
29. The notice does not state which of the two purposes it seeks to achieve. Nevertheless, the requirements are to cease the use of the property as an HMO, remove all alterations and fixtures which have enabled the conversion and remove all subsequent waste material. It seems to me, therefore, that the purpose of the notice is to remedy the breach of planning control by discontinuing the use of the land. The purpose of the notice therefore falls under section 173(4)(a) of the 1990 Act.
30. The appellant argues that the requirements are excessive as the occupants would have to be re-housed and that they would result in exorbitant costs to the appellant. However, whilst that may be the case, it seems to me that the requirements do not go beyond what is necessary to discontinue the use of the land. That is the test of section 173(4)(a) of the Act.
31. Whilst case law has established that it is incumbent on me to consider an obvious alternative that would overcome the planning difficulties at less cost and disruption than total cessation, there is no indication in evidence that there

are any such alternatives. As set out in my reasoning on ground (a) a condition to restrict the HMO to no more than five persons would not overcome the planning difficulties.

32. The appeal on ground (f) therefore fails.

The appeal on ground (g)

33. An appeal on ground (g) is made on the basis that the period for compliance with the requirements of the notice is too short. The notice gives a period of six months for compliance. The appellant argues firstly that a period of nine to 12 months is more appropriate and then goes on to argue a period of 12 to 15 months is suitable.
34. The basis for the appellant's claim is that the compliance period will provide inadequate time for residents to find alternative accommodation and for the appellant to source a builder to undertake the remedial work. However, it seems to me that the extent of work that has been done to facilitate the use as a HMO would be relatively straightforward to rectify and I am satisfied that the six month period would not preclude the necessary work for the use to cease from being done. Moreover, no tenancy agreements have been provided which indicates the current notice period for residents living in the HMO and thus I am unable to establish whether a period longer than six months is justified.
35. The appellant indicates that the residents have disabilities, albeit little evidence to support that claim has been provided. Nevertheless, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 (EA). The EA sets out the relevant protected characteristics which includes disability. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the EA. Nevertheless, having regard to the planning policy aims to prevent harm to the housing stock in the Borough and the living conditions of neighbouring residents, I find those matters of public interest carry greater weight. Dismissal of the appeal and upholding the notice is therefore necessary and proportionate.
36. The loss of a person's home would be an infringement of their rights under the Human Rights Act 1998 (HRA). The cessation of the HMO use would amount to interference and would engage the right for respect for private and family life, home and correspondence set out in Article 8 of the HRA. This is a qualified right, whereby interference may be justified if in the public interest, applying the principle of proportionality.
37. I acknowledge that the consequence of dismissing the appeal would be that any person presently residing in the appeal property would be required to vacate the accommodation. However, the notice provides a six-month compliance period which would allow residents time to find an alternative home. Moreover, there is no indication that those persons would necessarily be made homeless beyond that date.
38. The harm I have identified in respect of the effect on the housing stock of the Borough and on the living conditions of neighbouring occupiers is of such weight that upholding the notice would be a proportionate and necessary response that would not violate those persons rights under Article 8 of the

HRA. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

39. The appeal on ground (g) fails.

Formal Decision

40. The appeal is dismissed, 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.

J Whitfield

INSPECTOR

The appeal on ground (f)

41. The appeal

The appeal on ground (g)

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