
Appeal Decision

Site visit made on 13 October 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2020

Appeal Ref: APP/Z5060/C/20/3247418

Land at premises at 41 Victoria Road, Barking IG11 8PY

- 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 Shahlab Baig against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice, numbered 20/00018/NOPERM, was issued on 23 January 2020.
 - 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 six 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.
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Decision

1. 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.

Preliminary Matter

2. The appeal was lodged on ground (d) but the appellant withdrew this ground in his appeal statement and it does not therefore form part of my considerations.
3. Planning permission¹ has been previously refused to use the property as a six room House in Multiple Occupation (HMO). I am aware that an appeal² has been subsequently been dismissed, although the parties have not referred to it or commented on it in their submissions.

¹ Ref 19/00340/FUL

² Appeal Ref APP/Z5060/W/19/3234983

The appeal on ground (a) and the deemed application

4. This ground of appeal is that planning permission should be granted for the breach of planning control. Having regard to the reasons for issuing the notice, the main issues are:
- The effect of the development on the stock of family housing in the Borough;
 - The effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance;
 - The effect of the development on on-street parking.

Stock of family housing

5. Policy BC4 of the London Borough of Barking and Dagenham Borough Wide Development Policies Development Plan Document (March 2011) (BWDP) sets out policy for the change of use from housing and the subdivision of larger homes. It states that in order to preserve and increase the stock of family housing in the Borough, the Council will resist proposals that involve the loss of houses with three bedrooms or more.
6. The property is shown as having six bedrooms as an HMO, including one on the ground floor. If used as a family dwelling it would be reasonable to assume that it would have three bedrooms or more. The change of use therefore results in the loss of a family dwelling.
7. The appellant states that the original dwelling had only two bedrooms. It has been extended using planning permission and householder permitted development rights, but was not lived in prior to the application for the HMO. Therefore, the appellant argues that the restriction in BWDP Policy BC4 on the loss of family dwellings does not apply. However, neither the policy wording nor the reasoned justification state that the policy only applies to houses that provided 3 or more bedrooms in their original state. The lawful use of the property is as a single dwellinghouse, regardless of whether it was occupied as such following the extensions, therefore the restriction in Policy BC4 applies.
8. In support of his case, the appellant refers to a planning permission³ granted at 61 Victoria Road for a similar proposal. In that case, the Council considered that as the original dwelling was a two bedroom property, the restriction in BWDP Policy BC4 did not apply, even though the property had subsequently been extended to provide additional bedrooms. It is not clear to me why the Council applied a different interpretation to the policy, which is inconsistent with its reasons for issuing the enforcement notice in this case. However, as harm to the Borough's stock of family dwelling results from the development, the case referred to does not provide an example that should inevitably be followed.
9. Having regard to the circumstances of this case and the evidence before me, I conclude that the development has had a harmful effect on the stock of family housing in the Borough, and therefore is in conflict with BWDP Policy BC4, insofar as it seeks to preserve and increase the stock of family housing.

³ Ref 18/00599/FUL

Living conditions

10. The site is within a terrace of similar properties on Victoria Road. It is a tight-knit area that is predominantly in residential use.
11. The drawing and appellant's statement provided with the appeal indicates that the property has six bedrooms. The HMO licence identifies five bedrooms, to be occupied by a maximum of eight people. It also states that there are three baths or showers, three WCs and two sets of kitchen facilities, although these are not all indicated on the submitted drawing. Even if the lower figure of five bedrooms and eight people is correct, it is occupied by separate households and is therefore likely to generate a greater level of activity and comings and goings to and from the property than use as a single family dwelling. This is likely to cause noise and disturbance to neighbouring properties, which are in close proximity to the site.
12. I recognise that the property is still in a residential use, meets internal space standards and provides a rear garden for communal use. However, these considerations do not override the harm that is caused. Consequently, the use is harmful to the living conditions of neighbouring occupiers with regard to noise and disturbance, and is therefore in conflict with BWDP Policies BC4 and BP8, insofar as they seek to protect residential amenity.

Parking

13. The area is characterised by terraced properties that are set close to the highway behind small front gardens. Most properties, including the appeal site, do not have off road parking, and on street parking is controlled through residents' permits. The site is in an area which has a Public Transport Accessibility Level of 5, which indicates good public transport accessibility. It is close to bus routes, overground and underground train stations, as well as local facilities and services. I saw on my site visit, which was early afternoon during the week, that there were some parking spaces available on Victoria Road. I appreciate that this is only a snapshot in time, and it would be reasonable to assume that there would be greater pressure on parking spaces during evenings and weekends.
14. BWDP Policy BR9 sets out that the car parking standards in the London Plan will be used as maxima. Final levels of provision for each development will be agreed, having taken into account various considerations, including the accessibility of the site, on-street parking availability and development type. The appellant advises that the London Plan includes a requirement that for units of four bedrooms or more, up to two car parking spaces per unit should be provided, although a footnote advises that developments in areas of good public transport accessibility should aim for significantly less than one space per unit. The Council has not provided any details of specific parking requirements for the property in its use as an HMO, but states that if each tenant had a vehicle there would be insufficient on-street parking for residents.
15. Taking into account the accessible location and the level of parking demand that could be generated by its lawful use as a single dwellinghouse, I consider it unlikely that the use generates a significant amount of additional pressure on on-street parking. I have seen no firm evidence that any additional demand for parking generated by the development cannot be met on Victoria Road with residents' permits, or on other nearby residential roads.

16. I am aware that on this issue I have taken a different view to the Inspector who dismissed the previous appeal on the site. However, as I am dismissing this appeal for other reasons, the issue is not determinative.
17. I therefore conclude that the development does not have a harmful effect on on-street parking, and is not in conflict with BWDP Policy BR9, which, amongst other matters, sets out the approach to parking provision for new development.

Conclusion in relation to the ground (a) appeal

18. Although I have found in favour of the appellant in relation to parking, the harm in relation to the supply of family housing and the living conditions of neighbouring occupiers are sufficient to justify withholding planning permission. For the reasons set out above, I conclude that the appeal on ground (a) should fail and the deemed application for planning permission should be refused.

The appeal on ground (f)

19. The ground of appeal is that the steps required by the notice to be taken, or the activities required to be ceased, exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused.
20. The appellant argues that no physical works are required to the property in order to comply with the requirement that the use as an HMO cease. The second step of the requirements could therefore be removed.
21. However, a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the use. The appellant is likely to be the person with the best knowledge of what, if any, alterations and fixtures have facilitated the change of use. The second step of the requirements is not therefore excessive. The appeal on ground (f) therefore fails.

The appeal on ground (g)

22. The ground of appeal is that the period specified in the notice falls short of what should reasonably be allowed. The period for compliance with the requirements is six months.
23. The appellant states that the period should be increased to twelve months. The reasons given are to allow time for further applications and in case of delays due to Coronavirus (Covid-19) in evicting tenants and finding new accommodation. However, the appellant has not provided any evidence to indicate the period is inadequate to give notice to the tenants and for them to look for alternative accommodation. I have also not seen any specific evidence that there is an alternative proposal that needs to be considered through a planning application. I recognise that there is a balance between bringing the identified harm to an end without unnecessary delay, and the interests of the appellant. Taking into account the representations made by the appellant and the particular circumstances of the case, six months is a reasonable period to comply with the notice.
24. I acknowledge the uncertainty regarding the current restrictions associated with the pandemic which could impact on the appellant's ability to comply with

the requirements. However, I note that the Council has powers under s173A(1)(b) to extend any period for compliance, a matter which is entirely at their discretion, without prejudicing their right to take further action.

N Thomas

INSPECTOR