
Appeal Decisions

Site visit made on 17 November 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal A Ref: APP/Z5060/C/20/3247450 414 Dagenham Road, Dagenham RM7 0NT

- 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 Colin Woodward against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 30 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 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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.
-

Appeal B Ref: APP/Z5060/W/20/3246279 414 Dagenham Road, Rush Green, Romford RM7 0NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Colin Woodward against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 19/01473/FUL dated 12 September 2019, was refused by notice dated 22 January 2020.
 - The development proposed is described as an HMO license.
-

Decisions

Appeal A

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.

Appeal B

2. The appeal is dismissed.

Procedural matters and background

3. The whole of the Borough is the subject of an Article 4 Direction which removes permitted development rights for changes of use from Use Class C3 (dwellinghouses) of the Town and Country (Use Classes) Order 1987 (as amended) to Use Class C4 (houses in multiple occupation [HMO]) of that Order. Therefore, planning permission is required for such a change of use, which is not in dispute.
4. For Appeal B, the Council changed description above to "Change of use from single dwellinghouse to 6-bedroom house in multiple occupation (HMO) (retrospective). However, only 5 bedrooms are shown on the proposed drawings, which was also confirmed during my site visit. Moreover, the appeal form, and the appellant's statement also describe the development as a "change of use from single dwellinghouse to 5 bedroom house in multiple occupation (HMO) (retrospective). Therefore, notwithstanding the description used in the banner heading above, I have determined the appeal on the basis of the change of use from single dwellinghouse to 5 bedroom house in multiple occupation (HMO). This change of use has already occurred and therefore I am considering this appeal retrospectively.

Appeal A on ground (a), the deemed planning application and Appeal B

5. As set out above there are two appeals on this site. I have considered each appeal on its individual merits. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal is against refusal of permission for the identical change of use, and the considerations in that appeal are similar and I have therefore treated both cases together, to avoid duplication, except where otherwise indicated.

Main Issues

6. The main issue in both appeals are:
 - Whether the 5 bedroom HMO use is acceptable, having regard to the effect on the supply of single family dwelling houses; and
 - The effect of the use of the property as a 5 bedroom HMO on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.
7. With regard to Appeal A there is the additional main issue:
 - Whether the 5 bedroom HMO use makes adequate provision for parking and the effect of any lack of provision on highway safety.
8. With regard to Appeal B there is the additional main issue:
 - The effect of the change of use of the property to a 5 bedroom HMO on the character of the area.

Supply of Single Family Dwelling Houses

9. Policy BC4 of the London borough of Barking and Dagenham Borough Wide Development Policies Development Plan Document, 2011 (DPDPD) states that "The Council is seeking to preserve and increase the stock of family housing in the Borough. Consequently, when planning permission is required, the Council

will resist proposals which involve the loss of housing with three bedrooms or more”.

10. The supporting text for this policy highlights that in terms of subdivision of existing homes a strict approach to preserving family housing and particularly 4 bedroom homes has been adopted given the current shortage in Barking and Dagenham (as highlighted in the Barking and Dagenham Housing Strategy 2007 - 2010) as well as in London as a whole. The supporting text further states that this policy helps to address the loss of family homes and aims to ensure that the current deficit is not worsened by further flat conversions and HMOs. This policy accords with the National Planning Policy Framework, 2019 (the Framework), which indicates that planning policies should reflect the housing needs of different groups, including families with children.
11. The appeal site is a two-storey semi-detached house currently in use as a five bed House in Multiple Occupation (HMO). However, the property as originally built had 4 bedrooms¹, and therefore the current change of use has resulted in a loss of accommodation suitable for a family, for which there is an identified housing need in the Borough in conflict with Policy BC4 of the DPDPD.
12. The appellant refers to the Draft Strategic Housing Market Assessment (SHMA²) produced by the Council which states that the recommended breakdown of new dwellings by size is for smaller dwellings. However, this document is in draft form only and therefore I can only attach limited weight to this document. I also note that the appellant states that the HMO has operated since 2014 and provides a better mix of housing types within an area that is predominately single family houses. However, in my opinion this does not justify the permanent loss of a family dwelling.
13. I conclude on the first main issue that the development has an unacceptably harmful impact on the supply of family dwelling houses, contrary to Policy BC4 of the DPDPD, which seek the aforementioned aims.

Living Conditions of Neighbouring Occupiers - Noise and Disturbance

14. The Council consider that the 5 bedroom HMO results in an unreasonable level of noise and disturbance. The bedrooms within the HMO meet the necessary space standards³ and the HMO Licence⁴ confirms that the property would be occupied by a maximum of five individuals. Additionally, the HMO includes a well sized large communal living space and kitchen, and a relatively long rear garden which reduces the likelihood of bedrooms being intensively occupied. As such there would not be any overcrowding, which can otherwise lead to an unreasonable level of noise and disturbance.
15. Furthermore, I have not been presented with evidence to suggest a harmful level of noise would penetrate through the walls into the adjoining property and I have not been directed to any objection from the Council's Environmental Protection team nor neighbouring occupiers. I also note that the appellant's appeal statement⁵ includes letters of support from both immediate

¹ Council ref: 07/00120/FUL approved for the erection of 2 no. four-bedroom semi-detached houses at 412 and 414 Dagenham Road.

² Dated October 2019

³ Taken from the Officer's Report for planning ref: Ref 19/01473/FUL.

⁴ Granted by the Private Sector Housing Team of the London Borough of Barking and Dagenham.

⁵ Enclosures 4 and 5 attached to the appellant's appeal statement.

neighbouring occupiers at Nos 412 and 416 Dagenham Road, which also states that the property has been in use as an HMO since at least January 2015.

16. The comings and goings, and traffic movements from the appeal property, occupied by five individuals is modest and akin to the level of activity that could be similar to a large family with children. If the appeals were allowed, then the number of people occupying the HMO could be limited through a planning condition. Taking these points together, I am satisfied the occupation of the HMO by five people would not harm the living conditions of neighbours.
17. I therefore conclude that the appeal scheme would preserve the living conditions of neighbouring occupiers, with particular regard to noise and disturbance, in accordance with Policies BP8 and BP11 of the DPD. Amongst other things these require that all developments are expected to ensure existing and proposed occupiers are not exposed to unacceptable levels of general disturbance arising from the development, through such activities as traffic movements to, from and within the site; and that the layout of new development should maintain residential amenity.

Appeal A only Parking and Highway Safety

18. The Council consider that the use of the property as an HMO use exacerbates the shortfall of car parking in the area and does not provide adequate parking for the number of residents in the property.
19. However, there is no substantive evidence to show that the area experiences particular problems with regard to high parking stress or highway safety. At my site visit, I did not see any restrictions on parking on the highway in the vicinity of the site nor did there appear to be much on-street parking at that moment which would indicate a clear parking problem. Nor have the Council disputed the appellant's contention that the site is accessible by public transport, which assists in reducing the demand for parking spaces.
20. I also note that the Officers Report for the HMO (Appeal B) raises no objection under car parking and acknowledges that Dagenham Road has substantial on-street parking capacity, and that the vicinity of the application property is not particularly densely built.
21. Furthermore, the car parking standards outlined in Table 6.2 of the London Plan 2016, in conjunction with Policy BR9 of the DPD provides maximum parking standards for residential developments. For dwellings with 4 or more bedrooms, these policies require up to two parking spaces. The development provides 2 off-street parking spaces in the front garden which is consistent with this maximum parking standard.
22. Therefore, I conclude that the HMO use makes adequate provision for parking and does not result in any demonstrable harm to highway safety. As such I find no conflict against Policy BR9 of the DPD and Table 6.2 of the London Plan 2016, which seek to reduce car parking dependence in the most accessible locations.

Appeal B: Character of the Area

23. The Council are concerned that the use of the appeal property as an HMO would harm the residential character of the area. I share the view of the Council that the clustering of HMO's has the potential to harm the established

residential character and quality of an area. This can be through the physical alterations undertaken to achieve the accommodation or from a change in the character of the area due to a more intensive residential occupation and the increase number of bins at the front of the property, and the transiency of occupation, which can undermine a sense of community and the up keep of properties.

24. The conversion of the appeal property to an HMO as it currently stands has been achieved with no external alterations. The building retains little outward indication that it has been converted from a house to an HMO and has retained its architectural continuity and character in keeping with the adjoining semi-detached property. For example, the single main entrance has been retained. Furthermore, there was not an unsightly proliferation of bins or any other physical manifestation of the HMO, which could be considered to harm the residential character of the area, such as a spread of aerials and other paraphernalia and clutter. Additionally, the relatively long rear garden has not been subdivided. As such, there is nothing before me to suggest the existing use of the appeal site as an HMO has resulted in any harm to the character of the area.
25. I therefore conclude that the appeal scheme preserves the character of the area in accordance with Policies BP8 and BP11 of the DPD. Amongst other things these require that all developments are expected to have regard to the local character of the area and help to create a sense of local identity, distinctiveness and place; and that the design of buildings and layout of new development should protect or enhance the character and amenity of the area.

Other Matters

26. I also note that the site is located within the Green Belt. However, the Council has not raised any objection to the change of use on grounds of inappropriate development, loss of openness or harm to the Green Belt, and given that no external works have been carried out to the building, I find no reason to disagree with the Council's assessment on this matter.

Overall conclusion and planning balance for Appeals and A and B

27. Whilst I have found no harm with regards to the living conditions of neighbouring occupiers, character of the area and parking provision, these are neutral considerations that do not weigh in favour of the development and for that reason do not outweigh my conclusion regarding the unacceptable loss of a single family dwelling house, contrary to the development plan and the Framework. No material considerations indicate that planning permission should be granted. For the reasons given, I conclude that the appeal on ground (a) must fail and the deemed planning application and Appeal B, should be dismissed.
28. Dismissal of the appeal will involve some interference with the occupiers' rights to respect for private and family life under Article 8 of the European Convention on Human Rights and the right to protection of property, including peaceful enjoyment of possession under Article 1 of the First Protocol. However, these are qualified rights. The interference will be the minimum necessary and a proportionate approach to the legitimate aim of protecting the supply of family housing.

Conclusions

29. **Appeal A** - 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 application deemed to have been made under section 177(5) of the 1990 Act as amended.
30. **Appeal B** - For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R Satheesan

INSPECTOR