The Planning Inspectorate

Appeal Decision

Site visit made on 28 January 2021

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2021

Appeal Ref: APP/Z5060/W/20/3254248
2 & 2A Freshwater Road, Dagenham, RM8 1SP

- 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 Balhar Singh Benning against the decision of the Council of the London Borough of Barking & Dagenham.
- The application Ref 20/00058/FUL, dated 20 January 2020, was refused by notice dated 31 March 2020.
- The development proposed is the conversion of Nos 2 and 2A Freshwater Road to create a House in Multiple Occupation, the erection of a small single storey rear extension and internal alterations.

Decision

1. The appeal is allowed and planning permission is granted for conversion to a House in Multiple Occupation (HMO), erection of a single storey rear extension and internal alterations at 2 & 2A Freshwater Road, Dagenham, RM8 1SP in accordance with the terms of the application, Ref 20/00058/FUL, dated 20 January 2020 and the plans submitted with it, subject to the following conditions:

   1) The development hereby permitted shall not be occupied by more than 11 residents at any time.

   2) Prior to the first occupation of the two street facing ground floor bedrooms hereby permitted, full details of a scheme of acoustic protection for these rooms shall be submitted to and approved in writing by the local planning authority. The scheme of acoustic protection shall be sufficient to secure internal noise levels no greater than:

   a. 35 dB LAeq between 07:00 hours to 23:00 hours with windows closed; and
   b. 30 dB LAeq between 23:00 hours to 07:00 hours with windows closed.

   Additionally, where the internal noise levels will exceed 40 dB LAeq in these bedrooms (07:00 hours to 23:00 hours) or 35dB LAeq (23:00 hours to 07:00 hours) with windows open the scheme of acoustic protection shall incorporate a ventilator system which is commensurate with the performance specification set out in Schedule 1 paragraphs 6 and 7) of The Noise Insulation Regulations 1975 (as amended).

Following approval, the scheme shall be implemented before the first occupation of the rooms to which it relates and retained thereafter.

3) Prior to its first occupation as an HMO, secure storage facilities for refuse and bicycles shall be provided within the side/rear garden of the dwelling and shall be retained thereafter.

Main Issues

2. There are two main issues. Firstly, the effect of the proposed change of use on the living conditions of neighbouring occupiers, including the character of the area, with respect to traffic, noise, refuse and general disturbance; and secondly, the effect of the proposed change of use on the supply of housing in the area.

Reasons

3. The appeal site comprises two existing dwellings which form part of an extended semi-detached pair. No 2A adjoins No 2 which in turn adjoins 87 Valence Avenue. The dwellings lie in a predominantly residential area on the corner between Freshwater Road and the busy dual carriageway, Valence Avenue. The existing layout plan shows that Nos 2 and 2A each comprise three bedrooms on the first floor and a further bedroom in the roof space. It is clear from the evidence that the work to convert the dwellings to a single 11 bedroom HMO has been carried out but the property was neither furnished nor occupied at the time of my site visit. The outside space has been paved to create parking for some four vehicles on the frontage and a courtyard garden to the side and rear with space for refuse and cycle storage.

4. The property is situated in an accessible location, close to a convenience store and some ten minutes walk from a comprehensive range of shops and services on the A118, High Road. Valence Avenue is on a frequent bus route and Chadwell Heath station lies close by.

5. The proposed development includes a single storey rear extension that would enlarge and link existing rear extensions at both dwellings. The Council has raised no objection to this and I agree it would be acceptable.

6. With respect to the living conditions of neighbours, including the character of the area, the Council asserts that noise and general disturbance, refuse and traffic generation resulting from the proposed HMO would have an unacceptable impact on the amenity of occupiers of neighbouring properties. No specific evidence is provided to support this but it is suggested that the increase from two households to 11 would lead to more waste, noise, comings and goings and general disturbance which, it is suggested, would significantly impact on neighbouring amenity.

7. The appellant points out that the two existing dwellings, each with four bedrooms, could comfortably accommodate in total 10 -12 people. Any number of these could be adults. Whilst there are likely to be more comings and goings from 11 unrelated adults, the location of the site on a busy junction and within close proximity to good public transport links makes it likely that most movements would be on foot and would be unlikely to create any material disturbance to neighbours. Even if some journeys were by car, the off-street

parking spaces have direct access to Freshwater Road without passing other dwellings and in this busy location additional noise is unlikely to be readily noticeable from general traffic in the area.

8. The submitted plans indicate an enclosed storage unit to the side of No 2A within the now paved side garden area. This area which is screened from the street by a close boarded fence and gate would readily accommodate both secure cycle parking and adequate refuse storage facilities which would both encourage sustainable transport and ensure that refuse did not create nuisance to neighbouring occupiers. As suggested by the appellant, the provision and retention of these facilities could be required through a planning condition.

9. Whilst noise from use of the rear courtyard garden would be audible at neighbouring properties there is no reason to expect this to be significantly greater than the noise generated by two large families or to result in an unacceptable level of noise or disturbance.

10. Finally, the dwellings would remain in residential use and retain the appearance of houses. Although it is proposed to block the front door at No 2A this would not result in a material change to the character or appearance of the property or the surrounding area which is characterised predominantly by family dwellings. The evidence does not therefore substantiate the Council's concerns and overall I am satisfied that the proposed change of use would not lead to any material loss of amenity or character to the area.

11. It is concluded on the first main issue that the proposed change of use would have no materially harmful effect on the living conditions of neighbouring occupiers, including the character of the area, with respect to traffic, noise, refuse or general disturbance. In consequence, there would be no conflict with the relevant parts of Policies BC4, BP8, or BP11 of the Borough Wide Development Policies Development Plan Document (DPD) 2011 which taken together expect, amongst other things, residential conversions and HMOs to have regard to the local character of the area, ensure that existing occupiers are not exposed to unacceptable increases in traffic, noise or general disturbance and make adequate provision for the storage of refuse and recycling such that they protect or enhance the character of the area and maintain residential amenity.

12. The Council refers to emerging policies in the Draft Local Plan 2037 (Regulation 19 Consultation Version) 2020 (Draft LP). Although this is at a relatively early stage and carries limited weight the policies are a material consideration. Emerging Policies DMD 1 and DMSI 3 are relevant and seek similar protection to the adopted policies. I therefore find no conflict.

13. Turning to the effect on housing supply in the area, Policy BC4 of the DPD resists the loss, including change of use, of housing with three bedrooms or more, citing a need to preserve and increase the stock of family housing. This policy was adopted before the National Planning Policy Framework (NPPF) was introduced in 2012 and before the London Plan was adopted in 2016. The NPPF not only supports the Government's objective of significantly boosting the supply of homes, it makes clear that the range of homes as well as the number is important in order to meet the needs of present and future generations. The NPPF does not therefore resist changes to existing housing stock where this

would meet a demand for another form of residential accommodation in the area.

14. The London Plan in Chapter 3 notes that although there is uncertainty as to precise figures not only is London's population expected to grow over time but household size is expected to fall slightly from 2.47 to 2.34 by 2036. Policy 3.8 expects that Londoners should have a genuine choice of homes that they can afford and which meet their requirements for different sizes and types of dwelling. Paragraph 3.55 recognises that shared accommodation and houses in multiple occupation (HMOs) are a strategically important part of London's housing offer, meeting distinct needs and reducing pressure on other elements of the housing stock. It goes on to advise that in considering proposals that might constrain this provision boroughs should take into account the strategic as well as local importance of HMOs. I therefore consider that the blanket restriction in Policy BC4 on the change of use of dwellings with three or more bedrooms is not in conformity with either the NPPF or the London Plan because it does not allow for a flexible approach. In consequence, this part of the policy is considered to be out of date and cannot be afforded full weight. Moreover, NPPF paragraph 11 d) ii., relating to the presumption in favour of sustainable development is engaged.

15. The appellant provides evidence from the Strategic Housing Market Assessment and Housing Needs Survey (SHMA) for the borough which shows that in 2016-2017 Barking and Dagenham had, amongst the private rented sector stock, a considerably smaller proportion of HMOs than most neighbouring authorities with only 2.4% of dwellings being HMOs compared with 17-24% in neighbouring boroughs and 13.3% in England overall.

16. He also points out that the SHMA identifies that there are likely to be around 6,000 students studying in the borough and requiring independent accommodation as well as students studying in more expensive areas. Overall, it suggests that students may place pressure on the private rented sector, competing with other users, such as low paid workers.

17. In addition, the appellant provides a survey of housing stock in the vicinity of the appeal site derived from census data. This shows that the area is dominated by terraced, semi-detached and detached dwellings but that almost a third of households comprise one person with only about 10% having five or more people. Moreover, I have no evidence of any other HMOs in the area.

18. The Council does not dispute the appellant's evidence which points towards a likely demand for smaller units of accommodation, including in HMOs. Neither does it provide up to date evidence to show what the relative mix of market housing need is in the borough or that the current need for larger family housing in the private sector would outweigh the need for low cost, 1 bed accommodation, including HMOs. Having regard to the NPPF, the London Plan and the evidence, and in the absence of any evidence to show that there is a materially greater need for private larger family housing compared with shared accommodation, including HMOs, I find no reason, in principal, to resist the proposed change of use.

19. In accordance with NPPF paragraph 11.d) ii. planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the

Framework taken as a whole. The lack of any up to date evidence demonstrating that the need for the existing two four-bedroom dwellings would significantly outweigh the benefit of providing additional low cost single person accommodation in the area or that the proposed development would be significantly detrimental to meeting the housing needs of different groups in the community, indicates that the development benefits from the presumption in favour of sustainable development and this weighs in its favour. This is a material planning consideration.

20. It is concluded on the second main issue that, notwithstanding the loss of two four-bedroom dwellings, the proposed development would have no materially detrimental effect on the supply of housing in the area. Although there would be a conflict with DPD Policy BC4, material planning considerations outweigh this and indicate that the appeal should be determined other than in accordance with this policy due to the engagement of the presumption in favour of sustainable development set out in the NPPF. The Council refers to emerging Policy DMH 4 of the Draft LP. This carries limited weight but, taken in the context of emerging Strategic Policies SPDG 1 and SP 3, it has the same thrust as Policy BC4. Overall and in the absence of any other harms the appeal should therefore succeed.

21. The Council does not suggest any conditions. The conversion of the dwellings has taken place and therefore in accordance with section 56 (1) (c) of the Town and Country Planning Act 1990 the development has been commenced. In consequence, neither the statutory commencement condition nor a condition requiring the development to be carried out in accordance with the approved plans is necessary. I consider that, for the avoidance of doubt and to ensure satisfactory living conditions for future occupiers, a condition limiting the number of residents to 11 is required. In addition, as set out above, a condition requiring the provision and retention of cycle and refuse storage facilities is necessary to ensure satisfactory living conditions for existing and future occupiers.

22. Due to the location of the site and the addition of ground floor bedrooms, the Council's Environmental Protection Officer suggests a condition requiring acoustic protection of habitable rooms from external noise such as traffic. As the building is and would remain a dwelling it would not be reasonable to impose the suggested condition on existing ground floor living rooms or bedrooms at first and second floor. Of the proposed ground floor bedrooms, two are at the rear of the property and are unlikely to experience undue noise from traffic. However, I am satisfied that to ensure that the two proposed ground floor street facing bedrooms are adequately protected from noise it would be reasonable and necessary to impose a condition relating to these rooms. I have adjusted the suggested wording to reflect this and that the development has commenced.

23. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

K E Down
INSPECTOR