
Appeal Decision

Site visit made on 11 May 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 June 2021

Appeal Ref: APP/Z5060/C/20/3255790

Land and premises at 45 Campden Crescent, Dagenham RM8 2RS

- 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 Barry Jacobs against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The enforcement notice was issued on 10 June 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 dwellinghouse 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)(c) and (a) of the Town and Country Planning Act 1990 as amended.
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Decision

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.

Preliminary Matter

2. The term 'C4' refers to class C4 or the use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO), as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 (UCO). If a HMO has more than six residents, it is 'sui generis', meaning that it falls outside of any class. In this case the notice refers only to use as a HMO, there is no reference to class C4.
3. The submitted evidence indicates that there are five bedrooms in the property however, neither party has provided evidence about the number of occupants. Since the appellant's case on ground (c) is based upon the view that the use falls within class C4 and since this is unchallenged by the Council, I too have determined the appeal on this basis.

The appeal on ground (c)

4. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant

to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.

5. In terms of the ground (c) appeal, whether planning permission was required to change the use of the building from use as a family dwelling to a HMO, is dependent upon the point at which that change took place. The Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) was amended in October 2010 to introduce permitted development rights for the change from dwellinghouses (Class C3) to small HMOs (Class C4)¹.
6. That change in the GPDO was introduced to coincide with changes to the Town and Country Planning (Use Classes) Order 1987 (the UCO) which was also amended in 2010². The C4 Use Class was created as a result of those amendments. Therefore, from 01 October 2010 changes between Class C3 and Class C4 would have benefitted from deemed planning permission under the terms of the GPDO.
7. However, an Article 4 Direction came into force in the area to which the appeal relates on 14 May 2012. The effect of that Direction was to remove permitted development rights for the change from Class C3 to C4. As such, if the change of use took place between 01 October 2010 and 14 May 2012 it would have benefited from permitted development rights. After 14 May 2012, planning permission would have been required.
8. There is no dispute that the use constitutes a material change of use, the appellant's case on ground (c) is essentially that planning permission was not required to change the use of the property from a dwellinghouse to a HMO at the point when that change took place and as such, the change to a HMO did not amount to a breach of planning control.
9. I note the appellant's explanation regarding the Council's reasons for refusing two previous applications for Lawful development Certificates for the use. I do not have the details of those cases before me however, it appears to me that the Council's assertion that the appellant must be able to demonstrate that use as a HMO has continued for at least 10 years in order for it to be lawful is incorrect.
10. Since the terms of the Article 4 Direction did not take effect retrospectively, if the use of the dwellinghouse had changed lawfully before the Direction came into force, and has remained in that use since, then no breach of planning control will have occurred.
11. The appellant's evidence is limited and consists of estimates and receipts for work on the house. Such work included installing fire doors, basins to all rooms, heat and smoke detectors and locks on all rooms, features which I consider are associated with use as a HMO. The receipt for the final payment is dated 1 September 2011. Consequently, the material change of use would need to have been implemented in the approximately eight months between the completion of works and the Article 4 Direction coming into force.
12. However, the appellant has provided no details about who the occupants were during this period, how many there were or the relationship between them. No

¹ The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2010 (SI 2010/2134)

² The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 (SI 2010/653)

evidence to show who lived there is before me, such as electoral register or council tax details and no tenancy details or bills for the property over that period have been provided.

13. Whilst stating that the Council could have reviewed the electoral register and council tax registry, when making an appeal on legal grounds, the burden of proof rests with the appellant, with the standard being the balance of probabilities.
14. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to dismiss an appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous. Whilst the Council has provided no information of its own to contradict the appellant's version of events, the evidence provided by the appellant is not, of itself, sufficiently precise and unambiguous to demonstrate his case.
15. Consequently, I cannot conclude, on the balance of probabilities, that the property was in lawful use as a HMO at any point prior to the service of the notice. The appellant has therefore failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

16. The main issues are the effect of the development on (i) the stock of family housing in the borough (ii) the living conditions of occupiers and neighbouring residents; and (iii) the availability of on-street parking.
17. Policy BC4 of the Borough Wide Development Policies Development Plan Document (March 2011) (the DPD) relates to residential conversions and houses in multiple occupation and, seeks to preserve and increase the stock of family housing in the borough by resisting proposals which involve the loss of housing with three bedrooms or more. There is no dispute that the dwelling prior to the current use was a family house consisting of at least three bedrooms.
18. The appellant considers that the DPD contains policies which are out-of-date, an assertion which appears to be made primarily based upon the documents age. However, paragraph 213 of the National Planning Policy Framework (the Framework) states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
19. I find there is no conflict between Policy BC4 of the DPD and the Framework because the Council have found a balance between addressing their need for family housing as well as recognising that HMO uses can be suitable subject to various criteria set out in Policy BC4. I also consider that Policy BC4 is consistent with paragraph 61 of the Framework which states that the size, type, and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. As such, I afford significant weight to this policy in decision making terms.

20. The justification to the policy explains that a strict approach to preserving family housing 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.
21. The Council have submitted no recent evidence to indicate what the identified need, in relation to housing provision is in the surrounding area. However, the appellant, despite their view that there remains a demand for this type of accommodation, has provided no detailed or precise evidence which demonstrates that there is an identified need for this accommodation or, that there is no longer a shortage of family housing.
22. Consequently, the development has resulted in the loss of a family house contrary to Policy BC4 of the DPD, and there is no evidence before me which would justify setting the requirements of the policy aside.
23. The reasons for issuing the notice refer to negative impacts on present and future occupiers however, no further explanation is given. In the absence of anything else, I consider the issue of the HMO licence is a useful indication that an acceptable standard of accommodation has been provided at the appeal site. As such, I conclude that the development does not cause harm to the living conditions of existing occupiers, having regard to the standard of accommodation. There is therefore no conflict with the Framework which seeks to ensure a high standard of amenity for existing and future users of buildings.
24. Although the Council referred to Policy BP8 of the DPD, in the absence of explanation I consider it is not directly relevant to this issue.
25. The property is already in use as an HMO and whilst the Council have raised general concerns regarding noise, I have not been provided with any substantive evidence that the use has caused, or is causing, unacceptable noise and disturbance. Therefore, there is no conflict with the amenity protection aims of Policy BP8 of the DPD or the Framework.
26. 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 off street parking for at least two vehicles at the front of the house. In the absence of evidence, 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 find there is no harm in this regard. Therefore, there is no conflict with the highway safety aims of Policy BR9 of the DPD.
27. However, the lack of harm in respect of living conditions and parking cannot outweigh the identified harm in respect of the loss of a family house and conflict with Policy BC4 of the DPD.

Conclusion

28. 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.

Felicity Thompson

INSPECTOR