



Appeal Decision

Site visit made on 13 September 2021

by Chris Couper BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021

Appeal Ref: APP/Z5060/W/21/3269123

Cherry Tree Public House, Cherry Tree Wood Lane, RM8 3LJ

- 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 Ms Chloe Radke against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application Ref 20/02286/FULL, dated 19 November 2020, was refused by notice dated 22 December 2020.
 - The development proposed is described as 'change of use from B1 to 4 No HMO'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the application was determined, the National Planning Policy Framework 2021 ('Framework') and the London Plan 2021 ('LP') have been published. The principal parties were given an opportunity to comment on those documents during the appeal, and I have taken their representations into account.
3. The appellant states that the reference in the description of the development to the property's B1 use is erroneous as it was previously a retail unit. The Council and the appellant agree that, although currently vacant, the property's use falls under Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended).
4. The Planning Inspectorate Procedural Guide: Planning Appeals – England 2021 states that the appeal process should not be used to evolve a scheme, and that what is considered by the Inspector should be essentially what was considered by the Council, and on which interested people's views were sought.
5. In this case, the appellant submitted amended drawing No GA 1002 (X) ('amended plan') which depicts masonry above the proposed openings on the building's front face, instead of the retention of the former signage panel. That amendment is slight, and I am satisfied that my acceptance of it would not prejudice interested parties.
6. At page 20 of her statement the appellant sets out that she is also providing a plan, as part of the appeal, depicting an additional four bicycle storage units. However, no such plan has been submitted.

Main Issues

7. The main issues are:

- Whether the scheme would provide appropriate living conditions for the property's occupants, and whether it would effectively integrate with the attached Public House;
- Whether the scheme would be appropriately configured, having regard to policies which promote sustainable transport;
- Whether the scheme would comply with policies which seek to retain shops and community facilities;
- The scheme's effect on the character and appearance of the host property and the area; and
- The scheme's effect on the living conditions of adjacent occupiers, with particular regards to noise, waste and general disturbance.

Reasons

Future occupants' living conditions

8. The appellant states that the proposed House in Multiple Occupation ('HMO') is intended to accommodate four individuals. However, applying the Technical Housing Standards published by DCLG in 2015 ('THS'), the Council states that, given their size, three of the bedrooms would be for two persons, and that the maximum number of occupants would therefore be seven. It continues that, for seven occupants, the building's gross internal area would fall almost 20sqm short of the THS.
9. However, irrespective of the total number of occupants, and whether or not the THS can be applied to this HMO, I note that room 4 would be between about 1.77m and 2.15m wide, and that it would have doors at each end, one leading to an en suite, with a further door leading to the yard. Given the location of those doors, along with the room's proportions and layout, I am not satisfied that it could appropriately accommodate a single bed, along with other necessary furniture and storage space.
10. However, its window facing the enclosed yard would be at a sufficient angle to room 3's large patio doors to prevent any significant overlooking. On the basis of the available evidence, despite their northerly and easterly aspects, these two rooms would receive sufficient natural light.
11. The two front bedrooms would have a single aspect, each with a window facing the forecourt. The proposed floor plan indicates that there would be a small gap between those windows and the parking spaces, although it is unclear, in the absence of landscaping or other details, how that gap would be retained.
12. Cars parking directly in front of those bedroom windows could cause significant noise to their occupants. Additionally, as room 2 would share a wall with the public house ('PH'), which is a music venue, in the absence of a proposed scheme of noise mitigation, I am concerned that there would be additional disturbance from there.

13. Demonstrating that there would be suitable mitigation between this proposed noise sensitive use and the PH is necessary to ensure effective integration with that community facility, in accordance with Framework paragraph 187 and LP Policy D13; and I am not therefore persuaded that this matter can be appropriately dealt with by means of a condition.
14. Turning to the communal areas, the Council maintains that as the yard would be just under 22sqm, would contain cycle storage facilities, and would be accessed only through bedrooms 3 and 4, it would provide inadequate external amenity space for the HMO's occupants. It maintains that it would fall well short of the minimum standards in Barking and Dagenham Borough Wide Development Policies Development Plan Document 2011 ('BDDP') Policy BP5. Whilst LP Policy D6 sets out a much lower minimum quantitative standard, these development plan policies collectively require such space to be private, practical and functional, and I see no cogent reason why they should not apply to this scheme of conversion.
15. The appellant states that the rear yard is only intended as a practical space to store bikes and bins, rather than to sit out. She also states that a nearby flatted development has no external space. I have no details of that scheme, but the yard here would only be directly accessible to the occupants of rooms 3 and 4. Consequently, there would not be an appropriate, private amenity space for all the HMO's occupants.
16. BDDP Policy BP6 sets out a minimum cooking, eating and living area requirement of 36sqm for a 7 person dwelling, and 27sqm for a 4 person dwelling. The appellant maintains that the kitchen here would exceed a minimum standard of 7sqm.
17. Whichever quantitative standard is applied, the kitchen, which would also be the HMO's dining/shared habitable space, would be narrow, and whilst it would have a rooflight, it would have no external window to provide an outlook. Additionally, the plans depict no built-in storage areas within the HMO. These matters add to my concerns regarding the poor living conditions that would be experienced by its occupants.
18. For the above reasons, the scheme would provide inadequate internal and external space. It would thus conflict with the general approach in BDDP Policies BP5 and BP6. It would also conflict with LP Policies D5 and D6 which set out a need for high quality places, with adequately sized rooms, convenient and efficient layouts, and practical outdoor space; and with the Framework, including its paragraph 130 which seeks a high standard of amenity.
19. LP Policy H9 which seeks to ensure the best use of housing stock and to protect existing HMOs, LP Policy D4 which addresses design quality, and BDDP Policy BC2 which requires major and strategic schemes to incorporate 'super-flexible housing' are of little, if any, relevance on this issue.

Sustainable transport

20. Whilst the area has a PTAL rating of just 2, there is a bus stop opposite the site, with onward connections to other destinations. I observed that, as well as the PH, there are other facilities and shops within walking distance. This is not therefore a location where the future occupants need be reliant on private cars to meet their day to day needs. Consequently, I accept the appellant's case,

partly based on her experience managing the existing HMO above the PH, that many of the future occupants may not own a car.

21. The Council states that the three proposed off-road car parking spaces would be within the maximum number allowed by LP Policies T6, T6.1 and Table 10.3. Whilst it has concerns that cars associated with the HMO might use the PH car park, for the above reasons I consider that should that occur, it would not undermine the use of other, more sustainable, modes of transport.
22. However, in order to promote sustainable transport, LP Policy T5 requires the provision of fit-for-purpose and well-located cycle parking. Applying its Table 10.2 the Council states that this use in this location should provide six secure and accessible cycle parking spaces.
23. The submitted drawings show that only two such spaces would be provided. These would be in the rear yard, and would only be directly accessible from the building through rooms three and four. Whilst the appellant states that the occupants of the other rooms could reach the cycle parking area externally, no such access is depicted. In any event, reaching this area from the rear via the car park driveway would be awkward and inconvenient for the occupants.
24. I have no evidence in support of the Council's assertion that the scheme would be detrimental to highway safety. However, for the above reasons, I am not satisfied that, in the interests of sustainable transport, the scheme would provide sufficient, accessible, cycle parking for all the HMO's occupants. It would therefore conflict with LP Policy T5 and Table 10.2, and with the Framework's requirement at paragraph 104 to promote cycling.
25. LP Policy T3 which largely addresses strategic transport matters is of limited relevance on this issue. As it does not form part of the development plan, I have given limited weight to Barking and Dagenham Draft Local Plan 2037 (Consultation Version September 2020) ('DLP') Policy DMH4, which in any event, refers to purpose built HMOs, and DLP Policy DMT2 which addresses car parking provision.

Community facility

26. Amongst other things, BDDP Policy BE3 seeks to retain individual shops outside of centres unless it can be shown that the unit is no longer viable for retail purposes, and that it has remained unlet for at least 12 months despite attempts to let it. Even then, it states that the preference will be for their use as a beneficial community facility. The Framework also seeks to retain established shops for the benefit of the community.
27. The appellant states that, following a series of short-term unsuccessful tenancies, the property has been empty for over 12 months. However, I have no evidence of its marketing either for retail or community uses, nor other cogent evidence to demonstrate that it is not viable for such uses. Consequently, on the basis of the information before me, I cannot conclude that the scheme would comply with BDDP Policy BE3, nor with the Framework's stance on the retention of shops and community facilities.
28. As LP Policy SD7, and Barking and Dagenham Core Strategy 2010 ('BDCS') Policies CE1 and CM5 address the role of town centres, and BDDP Policy BE5 addresses office uses, they are of little or no relevance on this issue.

Character and appearance

29. In place of the shop with roller shutters, the proposed front elevation with its window openings and masonry instead of signage boards, as depicted on the amended plan, would have a less stark appearance. I have limited details of the proposed windows and front door, but whilst the fenestration would differ from the PH, compared to the existing situation, it would integrate better with it, and would improve the building's symmetry.
30. Consequently, the scheme would not harm the character and appearance of this building, which the Council describes as a non-designated heritage asset, nor that of the wider Becontree Estate.
31. BDDP Policy BP11, and LP Policy D4 and BDCS Policy CP3, generally seek good design which respects local character and reinforces local distinctiveness. As it would improve the building's appearance, on this issue the scheme would not conflict with those policies, nor with the Framework's stance, particularly at paragraphs 126 and 134.
32. As no heritage asset would be harmed, the scheme would not conflict with BDDP Policy BP2, nor BDCS Policies CP2 and CM1. Neither would it conflict with the broadly similar approach in Policies SPP6, SP2, DMD1 and DMD4 of the emerging DLP. As DLP Policy SP3 addresses housing delivery it is of little, if any, relevance on this issue.

Adjacent occupiers' living conditions

33. The proposed use would typically generate comings and goings over a longer period of the day than the property's former use as a beauty salon and, in my view, given its occupancy more noise and disturbance than a single family dwellinghouse. However, having regard to the limited size of the accommodation, and in the context of the adjacent PH and HMO, the additional impact would be very modest. Furthermore, the proposed HMO, and its small recycling bin area, would be separated from the nearest dwellings to the east by the car park driveway, and from the dwellings to the south by a busy road.
34. BDDP Policy BC4 seeks to avoid an over concentration of HMOs, and states that no two adjacent properties should be converted to such a use. However, this site forms part of the same building as the PH and the existing HMO, which are controlled by the appellant. Even if there would be two adjoining HMOs, I have no reason to dispute the appellant's case that there are no other licenced HMOs within 100 metres of the site, and I have no evidence to indicate that the scheme would lead to an over concentration of HMOs in the area.
35. For those reasons, and given the building's detached setting, the scheme would not give rise to a significant impact on nearby residents' living conditions. On this issue it would not therefore conflict with the general thrust of BDDP Policy BC4, nor with those parts of LP Policies GG1 and D14, and BDDP Policy BP8, which seek to create inclusive communities, and to avoid noise significantly impacting quality of life; nor with the Framework's requirement to ensure a high standard of amenity.
36. DLP Policies DMD1 and DMSI3 take a broadly similar stance, although I have given them limited weight. LP Policy GG3 which seeks to promote a healthy city is of limited relevance on this issue.

Other matters

37. In its favour, the scheme would make an effective use of an existing building to provide relatively affordable accommodation, and would contribute to housing supply, in accordance with policies in the Framework and the development plan.

Planning Balance and Conclusion

38. Summing up, the scheme would provide poor living conditions for the HMO's occupants, and it would fail to appropriately promote sustainable modes of transport. Additionally, on the basis of the available evidence, I cannot conclude that it would comply with policies which seek to retain shops and community facilities.
39. The scheme's modest benefits would not outweigh the significant harm that it would cause. It would conflict with the development plan when considered as a whole, and it does not benefit from the Framework's presumption in favour of sustainable development. Consequently, having regard to all other matters raised, the appeal is dismissed.

Chris Couper

INSPECTOR