



Appeal Decision

Site visit made on 13 February 2023

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 APRIL 2023

Appeal Ref: APP/Z5060/W/22/3308052

56 Stanley Avenue, Dagenham RM8 1JJ

- 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 Nnana Nsofor against the decision of the London Borough of Barking and Dagenham Council.
 - The application Ref 22/00124/FULL, dated 17 January 2022, was refused by notice dated 31 March 2022.
 - The development is change of use of single residential dwelling to House in Multiple Occupation (HMO).
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Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. The application form indicates the development had already begun and the Council considered it as retrospective. From the evidence before me, and my observations at my site visit, I see no reason to reach a different finding and have considered the appeal on the same basis.
3. A change of use from Class C3 (dwelling house) to Class 4 (house in multiple occupation) can be permitted development under the provisions of the GDPO¹. However, the appeal property is within an area covered by an Article 4 Direction, whereby the Council has removed such permitted development rights in order to manage local amenity or the proper planning of the area.
4. While I acknowledge the tenancy information submitted to the appeal, it does not comprise clear and compelling evidence that the HMO is in lawful use. For example, it is not clear as to how many persons occupied the property over what periods of time, and how those persons may have lived at the property. Furthermore, it is not the role of an inspector dealing solely with a section 78 appeal to determine whether the change of use is lawful. This can only be determined by a lawful certificate application.
5. The Council's reasons for refusal refer to policies within the emerging *London Borough of Barking and Dagenham Draft Local Plan 2037 Regulation 19 Consultation Version - September 2020* (EP). With regard to paragraph 48 of the National Planning Policy Framework (the Framework), there is no clear evidence before me as to whether there are unresolved objections to the relevant EP policies. Consequently, I cannot be certain that these policies are in their final form. Therefore, I attach limited weight to these emerging policies.

¹ Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Main Issues

6. The main issues are the effect of the development upon the supply of family sized housing; and the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

Supply of family sized housing

7. Policies GG4 and H1 of the London Plan 2021 (LP) reference the need to provide more housing with a wider choice that is inclusive for all Londoners; as well as the need to address affordability. Policy CM1 of the London Borough of Barking and Dagenham Core Strategy 2010 (CS) sets out general principles for development and seeks to meet community needs by providing suitable housing choices for all. Policy H9 of the LP seeks to ensure the best use of housing stock. Clause D of Policy H9 requires boroughs to take account of the role of HMOs in meeting local and strategic housing needs. These policies also demonstrate that a balance must be struck between the housing needs of different groups. The Housing Supplementary Planning Guidance 2016 (SPG) references the priority for affordable family accommodation across London, and the need for boroughs to take account of the strategic and local importance of HMOs, which may require striking a careful balance.
8. The objective of Policy BC4 of the DPD², clearly stated within the policy text, is to preserve and increase the stock of family housing; and when planning permission is required for changes of use from housing, the Council will resist proposals which involve the loss of housing with three bedrooms or more. The reasoned justification to this policy references the current shortage of family housing in the borough and across London, and paragraph 3.4.3 sets out that the policy aims to ensure that the current deficit of family housing is not worsened by further flat conversions and HMOs. Consequently, in the face of a pressing need to preserve and increase family housing supply, the restrictive approach of this policy is justified, in order to ensure that family housing needs are suitably met.
9. The appeal site is a mid-terraced property in a residential area, with a modest frontage and a rear garden. From the evidence before me and my own observations, the property would be suitable for a family sized dwelling of three or more bedrooms.
10. There is no substantive evidence before me to indicate that there are issues of affordability to meet the needs of young adults / single professionals in the area or that the size of the property makes it out of reach of single/young adults. There is undisputed evidence of a high demand for family sized accommodation of three or more bedrooms, and that development coming forward mainly meets the need for smaller units of 1-2 bedrooms.
11. Therefore, while the development meets a different need such as that required for young adults / single professionals, it leads to a loss of family accommodation.

² London Borough of Barking and Dagenham, Borough Wide Development Policies Development Plan Document, 2011 (DPD)

12. The appellant draws my attention to clause A of policy H9, which requires boroughs to promote the efficient use of existing housing stock to reduce the number of vacant and under-occupied dwellings. Nonetheless, the appeal property is not presently vacant. There is no compelling evidence before me that it is underoccupied.
13. The development has changed the use of a family sized dwelling of three bedrooms to a HMO, and this has therefore resulted in the loss of a family-sized dwelling of three or more bedrooms. The development therefore fails to protect the supply of family housing, and thus undermines the creation of mixed, inclusive and balanced communities.
14. I therefore conclude that the development has resulted in the unacceptable loss of family sized housing.
15. The development therefore conflicts with Policies GC4, H1, and H9 of the LP; Policies CM1 of the CS, and Policy BC4 of the DPD. It also conflicts with the SPG. Taken together, these policies and guidance seek, among other things, to create mixed and inclusive communities; to ensure housing delivery that meets identified needs, including meeting a priority need for family-sized units; to preserve and increase the stock of family housing in the borough; to resist proposals for HMOs involving the loss of housing with three or more bedrooms; and to seek a sustainable balance to ensure the borough functions as a successful community. The appeal scheme also conflicts with the aims of the Framework to address the needs of groups with specific housing requirements.
16. The development conflicts with Policies SPDG1, SP3 and DMH4 of the EP. These emerging policies seek to manage growth according to strategic principles to meet housing needs, and to ensure development does not undermine the supply of family housing. As such, these policies do not materially change the approach of the adopted development plan insofar as they are related to this main issue.
17. The Council's reasons for refusal reference a number of policies which do not directly relate to the development. Policy CM2 of the CS refers to managing housing growth; and sets out how annual housing growth targets will be met. Policy H2 of the LP seeks to increase the rate of housing delivery from small sites. Policy CC1 of the CS addresses the provision of family housing in new developments. I note that the supporting text to Policies H2 and CC1 reference the need for family sized units of three or more bedrooms.

Living Conditions

18. The HMO comprises four bedrooms for up to five people. While there is more potential for increased comings and goings, the level of activity involved in travel to work and for leisure and shopping purposes, and the volume of refuse generated is not substantially different to that of a large household. There is no clear evidence of formal complaints to the Council of noise or disturbance from the appeal property by neighbours. It is not clear that anti-social behaviour concerns relate to noise and disturbance from the appeal property.
19. Taking all these factors into account, I therefore conclude that the development does not harm the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. The development therefore accords with Policies BP8 and BP11 of the DPD, which seek to protect and maintain

residential amenity. It also accords with paragraph 130 of the Framework which seeks to ensure a high standard of amenity for existing and future users.

20. The development accords with Policies DMD1, SP7 and DMSI 3 of the EP. These emerging policies seek to ensure high quality and sustainable design; and, to ensure that development manages nuisance, including noise. As such, these policies do not materially change the approach of the adopted development plan insofar as they are related to this main issue.

Other Matters

21. The development is acceptable in terms of its location, space standards, parking, and provision for cycling storage.

Planning Balance

22. The benefit in terms of the provision of smaller units of accommodation to meet housing choice is limited. Given the scale of the scheme, the additional smaller units of accommodation make a small contribution to the supply of housing.
23. The adverse impact I have identified is the unacceptable loss of family sized housing that would otherwise assist in meeting a high demand for family sized housing. Paragraph 60 of the Framework requires the needs of groups with specific housing requirements to be addressed, including families with children. Paragraph 62 sets out that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. In this regard, the development plan policies with which the development conflicts are in conformity with the Framework. I therefore afford substantial weight to the conflict with these policies.
24. The development therefore conflicts with the development plan as a whole, for the above reasons.
25. The main parties agree that the Council is unable to demonstrate a five-year supply of land for housing. Consequently, paragraph 11d of the Framework is engaged, whereby the policies which are most important for determining the application should be considered out of date.
26. There are no relevant Framework policies that protect areas or assets of particular importance that provide a clear reason for refusal. Therefore, in accordance with paragraph 11 d) ii of the Framework, 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.
27. Paragraph 60 of the Framework seeks to significantly boost the supply of land for homes. The provision of smaller units of accommodation is a small contribution to the supply of housing, and this benefit is of limited weight. Paragraphs 60 and 62 seek to ensure that the housing needs of different groups are met. The HMO would meet the needs of young adults/single professionals, and this benefit attracts limited weight.
28. Paragraphs 60 and 62 of the Framework seek to ensure that the housing needs of different groups are met; and to ensure that planning policies reflect the size, type and tenure of housing needed for different groups, including, but not

limited to, families with children. In the context of a pressing need to preserve and increase family housing supply, the adverse impact I have identified attracts substantial weight.

29. Drawing together the above, the adverse impact of the development significantly and demonstrably outweighs the benefits, when assessed against the policies in the Framework taken as a whole. The development therefore does not benefit from the presumption in favour of sustainable development as set out in paragraph 11 d) ii of the Framework.

Conclusion

30. For the reasons given, I conclude that the development conflicts with the development plan, read as a whole. No material considerations have been shown to carry sufficient weight to warrant a decision otherwise than in accordance with it. Therefore, the appeal is dismissed.

J Moore

INSPECTOR