



Appeal Decision

Site visit made on 29 March 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2023

Appeal Ref: APP/Z5060/C/22/3292079

Land and premises at 43 Felton Road, Barking IG11 7YA

- 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 Ms Romena Begum against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 6 January 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the subdivision of the property creating an unauthorised self-contained unit of accommodation.
- The requirements of the notice are:
 - Cease the use as separate self-contained units of accommodation.
 - Revert the property to a single-family dwelling.
 - Remove all alterations and fixtures enabling the subdivision to create separate self-contained units of accommodation.
 - Remove all consequent waste material from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Reasons

The Notice

1. Section 55(3)(a) of the 1990 Act provides that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building as a whole and each part of it which is so used. In other words, the provision of self-contained dwellings within what was a single dwellinghouse represents a material change of use of the whole building and each individual dwelling within.
2. In light of the above, there is a misdescription in the breach of planning control alleged, in paragraph 3 of the notice. This is because two unauthorised self-contained units of accommodation have been created rather than one, as is suggested by the notice. In addition, I consider that the term "dwelling" is more precise than the term "unit of accommodation" used in the notice and there is nothing to suggest that either main party considers that what has occurred is anything other than dwelling creation.

3. I have a duty to get the notice in order, where I can, drawing on my powers under section 176(1) of the 1990 Act. So I shall correct the notice in respect of the above. A consequential correction is necessary in respect of the first requirement of the notice.
4. The second requirement of the notice seeks that the use of the property reverts to a single-family dwelling. But an enforcement notice cannot require that a lawful use is actively carried out and so I shall delete the second requirement entirely.
5. Were the notice to be upheld, the above corrections would still enable the purpose of the notice to be achieved. The corrections are minor in nature and there is no evidence they would change how either party would have argued their case. So I am satisfied the corrections would not result in any injustice to the appellant or the Council.

Ground (d)

6. An appeal on ground (d) is that it was too late for the Council to take enforcement action due to the time limits set out in section 171B of the 1990 Act.
7. In a ground (d) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities and the decision must be made on the evidence provided. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
8. Section 171B(2) of the 1990 Act provides that where there has been a breach of planning control consisting in the change of use of any building¹ to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
9. So based on the evidence provided, I must consider whether any part of the building changed use to a single dwellinghouse and continued to be so used for 4 years after the date of the change and before the enforcement notice was issued, such that the Council could have taken enforcement action at any time during that 4 year period.
10. The appellant states that between March 2017 and March 2019 the appellant lived in the main dwelling and rented out the single storey element as a separate dwelling. Then, it is said that in 2019 the appellant moved out of the main property and started to rent that out also, to a separate occupier, meaning that since March 2017 there have been two separate dwellings at the property that have been 'continually let out' during this time.
11. The appellant has pointed to the blocking up of an internal doorway, between the main dwelling and the side extension, at some point between 2014 and 2016, as an indication that it is 'possible' for the use to have been ongoing for over 4 years. But I am not satisfied that this physical alteration alone constitutes evidence of when the additional dwelling was created. It is not evidence of when the use of the side extension as a dwellinghouse actually commenced, or when the side extension was fitted out to provide the facilities

¹ Under section 336 of the 1990 Act "building" includes any part of a building

necessary for that part of the building to constitute a dwellinghouse in its own right.

12. In support of the appellant's case, I have been provided with screenshots of extracts from tenancy agreements. However, based on these, for the dwelling in the side extension, there is a period between 19 March 2018 and 7 November 2018 where there is no evidence of its use as a dwelling. This gap is unexplained and, in my judgement, significant.
13. Furthermore, there are overlaps in the dates of the latter 3 of the tenancy agreements for the dwelling in the side extension. These overlaps have not been explained and each of these agreements has the tenant name redacted. For these reasons I find these extracts contradictory, imprecise and ambiguous.
14. For the main dwelling, there is a period between March 2019 and 1 August 2019 where there is no evidence of its use as a dwelling. This gap is unexplained and, in my judgement, significant. This gap does not support the appellant's case that since March 2017 there have been two separate dwellings at the property that have been continually let out during this time.
15. Taking all of the above into account, I am not satisfied on the balance of probabilities that any part of the building changed use to a single dwellinghouse and continued to be so used for 4 years after the date of the change and before the enforcement notice was issued, such that the Council could have taken enforcement action at any time during that 4 year period. I conclude that the ground (d) appeal fails.

Ground (a)

16. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice. Based on the reasons for issuing the notice, the main issues in the ground (a) appeal are:
 - the effect of the appeal development on the borough's stock of family housing;
 - the effect of the appeal development on the living conditions of its occupiers and neighbouring occupiers, with particular regard to noise and disturbance; and
 - whether the appeal development provides adequate car parking.

Family Housing

17. In March 2011, the Council adopted its Borough Wide Development Policies Development Plan Document (the DPDPD). This states that the Council is seeking to preserve and increase the stock of family housing in the borough.
18. For the purposes of this appeal, the Council has not provided me with a definition of family housing. But Policy BC4 of the DPDPD, that I have been referred to in respect of this main issue, states that when planning permission is required, the Council will resist proposals which involve the loss of housing with three bedrooms or more. In this case, I therefore consider dwellings with three bedrooms or more to constitute family housing and I have no reason to think otherwise.

19. From the floor plans provided by the appellant, prior to the breach of planning control, the appeal building had two bedrooms. Therefore, the appeal development has not resulted in any loss of family housing.
20. I conclude the appeal development has had no effect on the borough's stock of family housing and so there is no conflict with Policy BC4 of the DPD as a result of the appeal development.

Living Conditions

21. The two dwellings which have been formed by the appeal development each have their own separate entrance, on different elevations of the building. In addition, the two dwellings are vertically separated from one another by the original external flank wall of the main dwelling. Whilst there was previously a doorway in this wall, connecting the main dwelling and the side extension, this has since been blocked up.
22. The appeal development results in a more intensive use of the appeal site as it now accommodates two households where previously there was one. But I have no reason to think that the arrangement explained above does not provide occupants on either part of the site with sufficient insulation from noise or disturbance produced by the other side, as a consequence of normal residential occupation.
23. There is also no evidence that the creation of one additional household on the site has had any significant effect on noise and disturbance for neighbouring occupiers.
24. I conclude the appeal development has no significant effect on the living conditions of its occupiers or neighbouring occupiers, with particular regard to noise and disturbance. As such I find no conflict with Policy BP8 of the DPD.

Car Parking

25. The Council considers that the appeal development exacerbates a shortfall of car parking, as, it is said, it does not provide adequate parking for the number of residents the property would support. But the Council's case is not further substantiated in this regard. In particular, it has not been explained what harm occurs as a result of the appeal development or what the severity of any such harm is.
26. My attention has been drawn to Policy BR9 of the DPD in respect of this main issue. This states that the car parking standards set out in the London Plan will be used as maximum parking standards for new developments and I have been provided with a copy of these parking standards by the appellant.
27. The appellant has indicated that the appeal site has a Public Transport Accessibility Level of 3. This is undisputed by the Council. In such an area, the London Plan parking standards indicate that, in outer London, for a development with a 1 bed dwelling and a 2 bed dwelling (as is the case here) the maximum parking provision is up to 0.75 car parking spaces per dwelling.
28. I saw at my site visit that the appeal site has a small hardstanding at the front. A dropped kerb indicates that it has been used for car parking. In my judgement, this space is not large enough to provide parking for more than one

small car. This level of parking accords with the parking standards set out in the London Plan.

29. Consequently, based on the limited case put to me in respect of this main issue, I conclude that the appeal development provides adequate car parking. As such I find no conflict with Policy BR9 of the DPDPD.

Conclusion on Ground (a)

30. I have not found harm in respect of any of the main issues in the ground (a) appeal and I have been given no other reason why planning permission for the appeal development should be refused.
31. No planning conditions have been suggested and there are none that I consider are necessary in this case. So for the reasons given above, I conclude that the appeal succeeds on ground (a) and that unconditional planning permission should be granted.

Conclusion

32. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected.

Formal Decision

33. It is directed that the enforcement notice is corrected by:
- the deletion of the breach of planning control alleged in paragraph 3 of the notice and its substitution with:
"Without planning permission, the subdivision of the property to create two self-contained dwellings."
 - the deletion of the first requirement in paragraph 5 of the notice and its substitution with:
"Cease the use of the property as two self-contained dwellings."
 - the deletion of the second requirement in paragraph 5 of the notice.
34. Subject to these corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the subdivision of the property to create two self-contained dwellings, on Land and premises at 43 Felton Road, Barking IG11 7YA, as shown on the plan attached to the notice.

L Perkins

INSPECTOR