



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/22/3290721

Land and premises at 92 Burnside Road, Dagenham RM8 1YD

- 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 Ijaz Hussain against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 14 December 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised conversion of the property into two separate self-contained flats.
- The requirements of the notice are:
 - Cease the use of the property as independent units of accommodation.
 - Remove the additional kitchens.
 - Remove locks from the internal doors.
 - Remove all other alterations and fixtures enabling the conversion to independent units of accommodation.
 - Remove all consequent waste material from the premises.
- 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 dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Preliminary Matter

1. By a letter dated 20 March 2023, arrangements were made for me to inspect the site on 29 March 2023, accompanied by a representative of the appellant and the Council. A representative of the Council met me at the property at the appointed time. But nobody attended on behalf of the appellant so no access was provided to the property. Consequently the site visit was aborted.
2. Having attempted to gain access, I have considered determining the appeal without entering the property. I sought the views of the main parties on this approach and no objection from either main party was received. So I have based my decision on the information provided.

Reasons

The Notice

3. The term "independent units of accommodation", used in the first and fourth requirements of the notice is ambiguous. 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 this regard, such that these requirements

are consistent with the breach of planning control alleged, by referring to self-contained flats instead.

4. The term “additional kitchens” in the second requirement of the notice is also ambiguous. So I shall also correct the notice to clarify that all but one of the kitchens in the property must be removed.
5. These 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 has indicated that the property was converted into two flats in 2002. But according to the Council, this claim is contradicted by Council Tax records, which show that ‘flat b’ only came into the listings on 28 December 2019, around two years before the enforcement notice was issued.
11. So on the balance of probabilities, I am not satisfied 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)

12. 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;

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

- 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

13. 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.
14. 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. I have no reason to think otherwise.
15. A floor plan provided shows the appeal building arranged as a ground floor flat and a first floor flat. The first floor flat is shown to include two bedrooms, a kitchen, bathroom and living room. On the balance of probability, either the kitchen or the living room at first floor (or both), were previously bedrooms when the building was a single house. There is no evidence available to make me think otherwise.
16. In light of the above, prior to the breach of planning control, the appeal building was a single dwelling with at least three bedrooms and so the appeal development has resulted in the loss of a unit of family housing. Nothing has been provided by the appellant to lead me to a different conclusion.
17. I conclude the appeal development has reduced the borough's stock of family housing and so it does not comply with Policy BC4 of the DPDPD.

Living Conditions

18. The appeal development results in a more intensive use of the appeal site as it now accommodates two households in a space where previously there was one.
19. From the information provided, the two dwellings which have been created share an entrance and a living room has been provided at first floor level in one flat immediately above a bedroom in the other.
20. In my experience, each of the above factors mean that significant noise and disturbance will be likely to be experienced by occupants of the appeal development. Nothing has been provided by the appellant to lead me to believe that this would not be so.
21. However, based on the floorplans provided, I have no reason to think that the maximum occupancy of the appeal building has increased as a result of the appeal development, such that neighbouring occupiers would experience a significant increase in noise or disturbance. However, this makes no difference to the concern for occupants of the appeal development itself.
22. I conclude that whilst the appeal development may not harm the living conditions of neighbouring occupiers, it has a harmful effect on the living conditions of its own occupiers, with particular regard to noise and disturbance. As such it does not comply with Policy BP8 of the DPDPD.

Car Parking

23. 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.
24. The appellant states that the property benefits from a generous amount of parking space to the front. This is consistent with my observations at my site visit, where I saw a large hardstanding at the front of the building, being used to park a large van. I have no reason to believe this area could not be so used to accommodate a reasonable number of vehicles for occupants of the appeal development.
25. 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.

Other Matters

26. I accept that the external appearance of the building may not have altered as a result of the appeal development and so there may be no significant effect on the character or appearance of the area or on the light, privacy or outlook enjoyed by neighbouring occupiers. But these are neutral points and not benefits of the scheme, so they make no difference to my overall conclusion.
27. The appeal development provides an additional residential unit. But this benefit must be balanced against the harm. This includes the loss of a family-sized dwelling and there is no evidence that the need for one additional dwelling is greater than the need to preserve the stock of family housing in the borough so I give this point limited weight.
28. The appellant has suggested that the appeal development supports the delivery of affordable housing. But there is no evidence that either of the dwellings created accord with an appropriate definition of affordable housing, such as that set out in the National Planning Policy Framework.
29. According to the appellant, the living spaces are more than adequately proportioned, high quality indoor and outdoor spaces are provided (including a sizable rear garden) and high quality, energy efficient materials and products have been used. But no specific evidence has been made available to me on these points and so I am not satisfied they should outweigh the harm identified above.
30. The appellant states that the property is situated within easy reach of many local amenities. Be this as it may, I am not satisfied this is a good enough reason to allow the appeal development, in light of the harm identified above.
31. The appellant has also indicated that the changes made to the building are to the latest building regulation requirements. But this does not make sense for a conversion said to have been carried out in 2002. Moreover, the conversion would have to comply with building regulation requirements in force at the time in any event. So I am not satisfied this is a benefit of the scheme and so I give this consideration limited weight.

Conclusion on ground (a)

32. Whilst I have not found the appeal development unacceptable in respect of car parking, I have found the appeal development harmful in respect of family housing and living conditions. I therefore find conflict with the development plan overall and taking all of the above into account, I conclude that the appeal on ground (a) fails.

Conclusion

33. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

34. It is directed that the enforcement notice is corrected by:

- the deletion of the first requirement in paragraph 5 of the notice and its substitution with:
"Cease the use of the property as separate self-contained flats."
- the deletion of the second requirement in paragraph 5 of the notice and its substitution with:
"Remove all but one kitchen from the building."
- the deletion of the fourth requirement in paragraph 5 of the notice and its substitution with:
"Remove all other alterations and fixtures enabling the conversion to separate self-contained flats."

35. Subject to these corrections, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Perkins

INSPECTOR