



Appeal Decision

Site visit made on 19 September 2023

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2023

Appeal Ref: APP/Z5060/W/23/3315769

185 Westrow Drive, Barking IG11 9BS

- 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 Jamila Mohammed against the decision of the Council for the London Borough of Barking and Dagenham.
 - The application Ref 22/01810/FUL, dated 26 October 2022, was refused by notice dated 15 December 2022.
 - The development is the proposed change of use from residential to a house in multiple occupancy.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development on the application forms is for a proposed change of use to a House in Multiple Occupation (HMO). Both parties agree that the change of use from a single dwelling to the HMO has already occurred.
3. At the site visit it was established that the top floor bedroom had been subdivided into two bedrooms, one facing the front, the other to the rear. This gives the resultant HMO a total of seven bedrooms. This does not alter the description of development, as was applied for, nor does it alter my assessment given that a double bedroom, capable of accommodating two people, has been altered to two single bedrooms. I have considered the appeal on the basis of the existing situation as a seven bedroom HMO.
4. I note the Council's references to the draft Barking and Dagenham Local Plan (2021) (DLP). This draft plan is at Examination, and therefore at an advanced stage. However, at the current time it does not form part of the statutory development plan and I have not been made aware as to whether there are any unresolved objections in relation to the cited policies. For these reasons I, therefore, have only given limited weight to the policies of the DLP in this decision.

Main Issues

5. The main issues are:
 - a) The effect of the change of use of the property on the provision of family accommodation within the area;
 - b) The effect on the living conditions of neighbours through increased level of noise and activity at the property;

- c) Whether sufficient refuse storage facilities would be provided; and
- d) Whether adequate cycle parking would be available.

Reasons

Loss of family dwelling

- 6. The existing property comprises a, former, four-bedroom mid-terrace dwelling. This has been converted to a HMO. It features a paved driveway to the front and ample rear garden.
- 7. Policy BC4 of the Barking and Dagenham Borough Wide Development Policies Development Plan Document (2011) (DPD) states that proposals which result in the loss of housing with three or more bedrooms will be resisted. It is set out that this approach has been adopted because there is a shortage of family sized homes in the area. The policy permits changes of use to HMOs in some circumstances subject to several criteria being satisfied. These however are not applicable where there would be a loss of a dwelling with three bedrooms or more, as in this case.
- 8. The Council's evidence notes that the Borough is not currently succeeding in providing sufficient new family housing and, indeed, continues to lose such accommodation. The immediate area around the property has been noted by the appellant as having few other HMOs, although I have not been provided with any evidence to confirm this. In any case, the lack of HMOs in the local area is not a good reason for a further reduction in the limited amount of family housing given the Council's stated need across the Borough. No evidence of any specific identified need for this HMO has been drawn to my attention.
- 9. I conclude that the development conflicts with Policy BC4 of the DPD which promotes the delivery of homes to meet people's needs.

Living conditions

- 10. The council contend that the use of the property as a HMO could potentially increase comings and goings and noise and disturbance to the detriment of living conditions of neighbours. However, no evidence to substantiate this has been provided. No representations were made in opposition to the development.
- 11. The property could accommodate a large family when in use as a single dwelling. The Council considers the HMO could house up to six people but given that some rooms are doubles and the subdivision of the top floor, this is likely to be greater.
- 12. Although it is possible, as suggested by the Council, there is no reason to believe that the occupants of the HMO would necessarily result in more comings and goings than a family home. The same arguments could apply to different age groups within a multi-generational home.
- 13. There can be no guarantee that problems of noise and disturbance will not arise from the use of the property as an HMO, as this will depend on the particular group of occupiers. Nevertheless, the probability is that occupation of the property as an HMO would not be materially different to that of a dwelling, in terms of its impacts on neighbours.

14. I therefore conclude that there would be no conflict with the requirements of LP Policies BP8 and BP11 of the DPD which promote high quality living conditions for all residents.

Refuse storage

15. There is sufficient space on the site frontage for the storage of refuse bins. Although this has not been specified as part of the scheme, I am satisfied that such provision could be made available. The storage of refuse need not cause harm to the living conditions of neighbours if properly managed. Details of this could be secured through the use of planning conditions and could therefore comply with Policy BR15 of the DPD and the Barking and Dagenham Planning Advice Note on Waste and Recycling Provisions in New and Refurbished Residential Developments (2021) which promotes sustainable waste management.

Cycle parking

16. Parking for four bicycles is nominated on the plans. These would be located at the rear of the property. The property does benefit from rear access via a service lane from Bradfield Drive. These can be secured through planning condition in order to comply with Policy BR9 of the DPD and T5 of the London Plan (LP). These policies support the provision of cycle infrastructure including cycle parking that is fit for purpose, secure and well-located.

Other Matters

17. Although not an issue raised by the parties, I have considered the rights of the existing tenants under Article 8 of the European Convention on Human Rights. Article 8 affords the right to respect for private and family life. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
18. Dismissing the appeal would interfere with the tenants' rights under Article 8, since the consequence would be that they could be rendered homeless at some point. However, the interference would be in accordance with the law and in pursuance of a legitimate aim which is the regulation of the use of land in the public interest through the development management process. Given the circumstances overall, I find that dismissal of the appeal is both proportionate and necessary. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

Conclusion

19. I conclude that the use of the property as a HMO would result in the loss of a four bedroom dwelling that could be used as family accommodation for which there is a shortage within the Borough. This conflicts with Policy BC4 of the DPD.
20. However, I have found that the use of the property as a HMO would not be detrimental to the living conditions of neighbours, would be able to provide sufficient refuse facilities and provide adequate cycle parking to comply with policies BP8, BP11, BR9 and BR15 of the DPD and T5 of the LP. Nevertheless, the conflict I have found means that the proposal would not comply with the provisions of the development plan, read as a whole. I have not found any other considerations to outweigh this conflict.

21. For these reasons the appeal should be dismissed.

Nick Bowden

INSPECTOR