



Appeal Decisions

Site visit made on 10 January 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2024

Appeals A Ref: APP/Z5060/C/22/3306540

Appeals B Ref: APP/Z5060/C/22/3306541

Land and premises at 118 Tallow Close, Dagenham, RM9 6EU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
 - Appeal A is made by Mr Olushola Ogunyemi against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - Appeal B is made by Mrs Temitayo Ogunyemi against the same enforcement notice.
 - The enforcement notice was issued on 30 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of a single-family dwelling house to a House of Multiple Occupation.
 - The requirements of the notice are to:
 - Cease the use as a house of multiple occupation.
 - Remove all alterations and fixtures enabling the conversion to a house of multiple occupation.
 - Remove all consequent waste material from the premises.
 - The period for compliance with the requirements is six months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the Town and Country Planning Act 1990 as amended. Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.
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Appeal C Ref: APP/Z5060/W/22/3306561

118 Tallow Close, Dagenham, RM9 6EU

- 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 Olushola Ogunyemi against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 22/00837/FULL, dated 18 May 2022, was refused by notice dated 29 June 2022.
 - The development proposed is change of use from C3 to C4. Change of use of lounge to bedroom 5.
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Decisions

Appeals A and B

1. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

2. The appeal is dismissed.

Preliminary Matters for Appeals A and B

3. The appeal forms only cited grounds (a) and (b). However, the appellants have raised issues which amount to hidden ground (c) appeals. The Council has had sight of those submissions and has had opportunity to comment. I will therefore determine the appeals with that additional ground.
4. The appellants say they were surprised to receive the enforcement notice, whilst still waiting for a decision on the planning application and consider that the Council has acted in bad faith. However, there is no reason why a notice should not be issued while a planning application remains undetermined.

Preliminary Matters for Appeals A, B and C

5. The reasons for refusing the planning application (Appeal C) cite conflict with London Borough of Barking and Dagenham Draft Local Plan Regulation consultation version (October 2020). Further to my request for an update on the plan preparation, the Council has provided its Draft Local Plan 2037 Second Revised Regulation 19 Consultation Version (Autumn 2021) (DLP) and has advised that that the plan is now at an 'advanced' stage, having gone through Local Plan Examination in Public in November 2023.
6. As my decisions must be made on the basis of the plans in place at the time of my decisions, I offered the appellants opportunity to comment on the DLP. The appellant for Appeals A and C confirmed that he has no comments to make.
7. Since the appeals were submitted, a revised version of the National Planning Policy Framework (the Framework) has also been published (December 2023) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not materially alter the most relevant policies to the appeals, I have not reverted to the parties for comment.
8. For the purposes of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), Class C3 dwellinghouses is now formed by three parts. Class C3(a) is use by a single person or by people to be regarded as forming a single household. The term 'single household' is to be construed in accordance with s258 of Housing Act 2004 as including persons who are all members of the same family or persons whose circumstances are described in regulations. Class C3(c) is not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4)¹.
9. Class C4 is the use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO). For the purposes of Class C4, a HMO has the same meaning as in s254 of the Housing Act 2004. Broadly that equates to occupation by between three and six individuals who do not form a single household and that two or more of the households share one or more basic amenities. HMOs with more than six occupiers fall outside of any use class. The 2004 Act also defines types of living accommodation that are not HMOs. Having regard to that Act and Regulations made under it, those include properties occupied by the owner and up to two lodgers².

¹ The third part is C3(b), which is not more than six residents living together as a single household where care is provided for residents.

² Housing Act 2004, Schedule 14, paragraph 6(1)(c) and Regulation 6(2) of The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006.

Appeals A and B on Ground (b)

10. A ground (b) appeal is that the alleged breach has not occurred as a matter of fact. The onus lies with the appellants to make their case on the balance of probabilities.
11. The appellants argue that there has been no unauthorised change of use from a single-family dwelling house to a HMO and that the house always had a licence which permitted five people. The latter is corroborated by a Selective Private Rented Property Licence granted by the Council for five persons, in a maximum of one household.
12. However, the appellants explain that because of damage to the property by a Council tenant, they decided to use the property themselves as a single-family house and for four individual room lets. The Council also states that the appellants have requested a HMO licence from its Licensing Department for four people from four households. The appellant does not argue otherwise.
13. Therefore, despite the licence being granted for a single household, it is more likely that the property was being used by the appellant and four individuals (lodgers), who do not form a single household.
14. The appellants further state that the property still has four persons living there, two of which are council tenants. Although they explain that they intend to issue a notice to quit to one, or both, it makes no difference if the property has subsequently been used as a single household. S174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the enforcement notice. For the same reasons, it also makes no difference that at the time of my site visit the property was vacant.
15. The property itself is conventionally fitted out with one kitchen and two bathrooms, one of which is ensuite. Consequently, individuals occupying the house would have had to share those basic amenities. I also saw that the individual bedrooms had door locks, which again points towards occupation by more than one household.
16. It is therefore more probable than not that the property was being used as a HMO. The appeal on ground (b) must therefore fail.

Appeals A and B on Ground (c)

17. An appeal on ground (c) is that the matters alleged in the enforcement notice do not constitute a breach of planning control. Again, the onus lies with the appellants to make their case on the balance of probabilities.
18. On 6 April 2010, an amendment to the UCO³ introduced a definition of small-scale HMOs into the planning system. The changes were made so that those HMOs became a separate class (Class C4) rather than a sui generis use.
19. Permitted development rights to change from Class C3 to Class C4 came into force on 1 October 2010⁴ under Schedule 2, Part 3, Class L of the GPDO⁵.

³ The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010

⁴ The Town and Country Planning (General Permitted Development) (Amendment) (England) (No.2) Order 2010

⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015

However, the Council introduced an Article 4 Direction on 14 May 2012 to remove that permitted development right.

20. Consequently, a material change of use from a Class C3 single-family dwelling house to a Class C4 HMO would require planning permission, if that change took place after the Article 4 direction came into force. If it took place between 1 October 2010, when the Class L permitted development right was introduced, and the date of the Article 4 direction, planning permission would have been granted by the GPDO. Prior to the introduction of Class C4, a change from Class C3 to a HMO would not necessarily have amounted to a material change of use; it would be a question of fact and degree as to whether there was a fundamental change to the character of the use.
21. As noted, the appellants assert that the house always had a licence which permitted five persons having been let to the Council via a letting agency. I have considered whether that could be construed as a ground (d) argument⁶. However, the earliest temporal evidence comprises letters from the Council in 2016 relating to an application for a Private Rented Property Licence, which would not allow sufficient time to gain immunity from enforcement action (10 years) pursuant to s171B(3) of the 1990 Act, even if they were made in respect of a HMO. In any event, they were not. The applications were for a selective licence, rather than a HMO licence.
22. Moreover, even if the licence referred to by the appellants was to operate as a HMO, that does not obviate the need for planning permission, if a material change of use to a HMO had occurred.
23. The notice of a proposal to grant a Selective Private Rented Property Licence, dated 2 July 2018 is for five persons but for a maximum of one household. As noted, because of damage to the property by a Council tenant, the appellants decided to use the property themselves and for four individual room lets, which amounts to a HMO use. In the absence of an explanation otherwise, that suggests that the use commenced after the licence was granted and therefore when the Article 4 direction was in place.
24. The appellants say that when they applied for a new licence they were told they do not need one if the number of persons in the property is kept at four and that a licence would only be required for five persons. More pertinently, they also assert that the Council's Licensing Department told them that planning permission would not be required if the use was kept to four persons. However, no evidence is provided of the advice purported to have been given.
25. In any case, it is not simply a numbers threshold; for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
26. In this case, occupation by the appellants and four individuals would likely have resulted in a significant intensification in the use of the property, generating different patterns of usage and behaviour, compared to the occupants of a single household who are more likely to carry out activities on a communal basis.

⁶ That at the time the enforcement notice was issued, it was too late to take enforcement action

27. A fundamental change to the character of the use is therefore likely to have occurred as a matter of fact and degree. It follows that there would have been a breach of planning control arising from a material change of use.
28. The appellants argue that the property and development was approved by the Council but the only evidence of an approval from the Council is the aforementioned licence for a five-person occupancy as a single household. It is not shown that planning permission has been granted for the material change of use from a single household dwelling to a HMO.
29. The appellants also seek to argue that because they intend to issue notice to quit to one or two of the four still living there, that means that planning permission will not be needed. However, although an appellant may rely upon matters occurring since the date of issue of the enforcement notice to show that, at the time of the decision, what was alleged does not amount to a breach of planning control, it is crucial that the development is that which was alleged when the enforcement notice was issued and not some subsequent altered development.
30. Consequently, even if the appellants had shown that the property is now being used, for example, as a Class 3 dwellinghouse, which would not require planning permission, that would not lead to success on ground (c) because it is not shown that the alleged HMO use is not in breach of planning control.
31. The ground (c) appeal fails.

Appeals A and B on ground (a) and Appeal C

Main Issues

32. Save for car parking, the reasons for issuing the enforcement notice, subject to Appeals A and B, are largely the same as the reasons for refusing the planning application, subject to Appeal C. My reasoning below therefore relates to the three appeals, unless I have stated otherwise.
33. The Council's second reason for refusal (Appeal C) cites a lack of external amenity space, which is not included in the corresponding reason for issuing the enforcement notice. The Council has subsequently confirmed that it does not dispute the appellants' submission that the garden is sufficient for the number of occupants. Based on my own observations, I find no reason to disagree.
34. Therefore, the main issues are:
 - the effect of the development on the Borough's stock of family housing;
 - the effect of the development on the living conditions of occupants of the property and the occupants of neighbouring properties with particular regard to noise and disturbance;
 - whether the property provides acceptable living conditions for its occupants, with particular regard to the provision of internal living space; and
 - the effect of the development on car parking (applicable to Appeals A and B).

Reasons

Housing stock

35. Borough Wide Development Policies Development Plan Document (DPD) Policy BC4 explains that the Council is seeking to preserve and increase the stock of family housing in the Borough and that it will resist proposals which involve the loss of housing with three bedrooms or more.
36. Despite acknowledging that the appeal property is a four-bedroom detached house, the appellant seeks to argue that the proposal does not in any way reduce the number of family houses and that there are thousands of three and four-bedroom houses in the Borough.
37. However, the policy justification to Policy BC4 explains that a strict approach to preserving family housing and particularly four-bedroom homes has been adopted given the shortage in Barking and Dagenham as highlighted in the Housing Strategy 2007 – 2010. Although that Strategy is evidently some years old, a similar approach is carried through in DLP Policy DMH 5. That states that proposals for conversions or loss of existing family housing, or dwelling houses capable of accommodating a small family with children, will be resisted.
38. Moreover, the Council refers to its February 2020 Strategic Housing Market Assessment as the most up-to-date evidence base, which highlights a high demand for family houses, specifically for dwellings of four bedrooms or more.
39. The Council also refer to its Annual Monitoring Reports which indicate that new development coming forward mainly meets the identified need for smaller units (one or two bedrooms) and that it is rare for developers to provide flats or houses that are three-bedroom plus, thereby giving greater importance to the retention of the existing family housing stock.
40. No evidence is provided by the appellant which disputes or undermines the evidence base referred to by the Council.
41. There is no doubt in my mind that the appeal property should be regarded as a family house. Therefore, to use it as a HMO plainly results in the loss of a family house, contrary to DPD Policies BC4, Local Development Framework Core Strategy (CS) Policies CM1 and CC1, London Plan Policies GG4 and DLP Policies DMH 5 and SP3. Those policies state, in addition to the above and amongst other things, that the Council will ensure development does not undermine the supply of self-contained housing, in particular family housing.
42. The Council also cite conflict with London Plan Policy H9, however, that states, amongst other things, that Boroughs should take account of the role of HMOs in meeting local and strategic housing needs and that where they are of a reasonable standard they should generally be protected. Even if in this case I found the property to be of a reasonable standard, its use as a HMO comes at the cost of losing a family home, which the Council's DPD and DLP policies evidently seek to prioritise.
43. The Council further cite conflict with London Plan Policies H1 (increasing housing supply) and H2 (small sites), CS Policy CM2 (managing housing growth) and DLP Policy SPDG 1 (delivering growth in Barking and Dagenham). However, I find those policies to have limited relevance to this main issue.

Living conditions of occupiers

44. As noted in respect of Appeals A and B, the appellants decided to use the property themselves and for four individual room lets. If those individual room lets were occupied by four individuals, that would equate to six occupants. However, the alleged development is a HMO, rather than specifically a Class C4 HMO. Overall occupancy could therefore be greater than six. Nevertheless, a maximum of six person occupancy could be controlled by condition. Appeal C is for a Class C4 use, so by definition would be for no more than six occupants.
45. The 'Technical Housing Standards – Nationally Described Space Standard' (March 2015)⁷, which is deemed suitable across all tenures, requires a minimum gross internal floor area (GIA) of 106m² for a four-bedroom, six person dwelling, and 110m² for a five bedroom, six person dwelling.
46. The Council has made various space calculations relating to the appeal property, which the appellants have not sought to dispute. It calculates its GIA to be 104m², thereby falling marginally below those standards.
47. The Space Standard also requires that, in order to provide one bedspace, a single bedroom has a floor area of at least 7.5m², and that for two bedspaces, a double (or twin bedroom) has a floor area of at least 11.5m². The Council calculate that bedrooms one and five comply with the two-bedspace standard and that bedrooms two, three and four comply on the basis of their use for one bedspace. Although I note that the plans show double beds in bedrooms 2 and 3, based on a six person occupancy, there would be no need to utilise those bedrooms for more than a single person.
48. Nevertheless, bedroom 3 does fall marginally below the 8.5m² space standard set out in the East London HMO Guidance⁸, even on the basis of single occupancy.
49. DPD Policy BP6 states that the Council will seek to ensure that new dwellings provide adequate internal space and that the minimum standard for the aggregate of the cooking, eating and living areas for six persons is 33m². For Appeal C, the Council calculate the aggregate area to be 17.38m², which falls significantly short of that internal space standard.
50. I have not been provided with calculations for the aggregate areas applicable to Appeals A and B, which retain the existing lounge, but based on the imperial dimensions in the floor plans, it is likely that the space requirement would be broadly achieved. However, I am mindful that a four-room let in addition to a bedroom for appellants would likely require use of the TV room/study as a bedroom. That being the case, the aggregate space would likely fall short of that required by Policy BP6, even restricting occupancy to six persons.
51. The East London HMO Guidance also states that a landlord may provide a communal living room (in addition to any space that is required for shared kitchen and dining facilities) and, as a guide, should be at least 13m² for three people, plus 1m² for every additional person.

⁷ Department for Communities and Local Government

⁸ Which is higher than the Nationally Described Space Standard

52. On the basis of the dimensions set out in the existing floor plan, the retained lounge area, applicable to Appeals A and B, would broadly comply with that guidance if the property is occupied by no more than six people.
53. However, the Appeal C proposal is to utilise the existing lounge as a fifth bedroom, leaving only the TV room/study, calculated as 5m² by the Council. I note the appellants argue that the lounge has not been used by tenants in the last four years, nevertheless, that provision would fall significantly below the HMO Guidance.
54. The HMO Guidance states that kitchens must be of an adequate size and shape to enable safe food preparation by the number of occupiers. Based on the Council's calculations, the kitchen/diner area would comply.
55. Bringing the above together, the proposed accommodation, as applicable to Appeal C, would not provide acceptable living conditions for its occupants, with particular regard to the provision of internal living space, contrary to London Plan Policies GG4 and D6, DPD Policies BP6, paragraph 135 of the Framework, and the HMO Guidance.
56. For Appeals A and B, if restricted to a maximum of six occupants, deficiencies are largely restricted to aggregate cooking, eating and living areas, contrary to DPD Policy BP6. However, the overall harm and degree of conflict with that policy is limited.
57. The Council also cite conflict with London Plan Policies D4 (delivering good design) and D8 (public realm), CS Policy CP3 (high quality built environment), DPD Policy BP11 (urban design) and DLP Policies SP2 (Delivering a high quality designed and resilient built environment) and DMD 1 (securing high-quality design). However, I find those policies to have limited relevance to this main issue.
58. The corresponding reason for issuing the enforcement notice cites conflict with Policy 3.5 of the London Plan (March 2016). However, that version of the London Plan was replaced by the March 2021 version, before the enforcement notice was issued in August 2022.

Living conditions of neighbouring occupants

59. As noted above for Appeals A and B, the appellants explain that they use the property themselves and for four individual room lets. Even based on a single occupancy of the individual room lets, that would equate to six occupants and up to five households. The proposal for Appeal C is to provide a five bedroom HMO. At full occupancy that would equate to at least five occupants and up to five different households.
60. Both scenarios result in a significant intensification in the use of the property compared to the occupants of a single household who are more likely to carry out activities on a communal basis. Indeed, the levels of use are likely to generate significantly more noise and disturbance as individuals come and go separately from one another for work, shopping and other day-to-day activities. A more intensive use is also more likely to increase noise from multiple television and audio sources operating simultaneously.

61. A greater number of unconnected individuals living within one property will also likely generate a greater number of separate visitors and deliveries to the property, with the associated noise and disturbance arising from the sound of voices, opening and closing of doors and vehicles.
62. I appreciate that the property is not being used as a restaurant or a bar and that hitherto the behaviour of tenants may not have given cause for complaint. Nevertheless, within the context of a suburban style estate, the existing and proposed levels of HMO use are likely to result in significant and unacceptable harm to the living conditions of neighbouring occupants through noise and general disturbance. Moreover, planning permissions run with the land so future occupants may not behave with the same levels of consideration as previous occupants.
63. The corresponding reason for issuing the enforcement notice refers to a negative impact on the living conditions of existing and future occupants. However, occupants of a HMO are likely to have a greater expectation and therefore tolerance for additional noise and disturbance, compared to a single household property. Occupants would not therefore be unacceptably affected.
64. Nevertheless, I find that the use of the property as a HMO would result in unacceptable harm to the living conditions of the occupants of neighbouring properties, contrary to DPD Policies PB8 and BP11, DLP Policies DMD1 and DMSI 3, and paragraph 135 of the Framework. Those policies expect, amongst other matters, that occupiers are not exposed to unacceptable levels of general disturbance.
65. The Council also cite conflict with DLP Policy SP 7 (Securing a clean, green and sustainable borough) but that has limited relevance to this main issue.

Car parking

66. The use of the property as a HMO is likely to increase pressure on parking provision on the basis that there would be more unrelated adults living at the property compared to a single household dwelling.
67. Although the house has an attached garage and driveway, that is conventionally laid out in a tandem arrangement so that individual households would be unable to utilise the spaces independently. One car would inevitably block another. The use is therefore likely to result in overspill car parking on the surrounding streets.
68. The appellants argue that the property is in a residential area with lots of parking, amenities and easy access to transport links. They also seek to highlight that they have housed many key workers given the proximity to Barking Hospital.
69. However, no evidence is provided, such as a parking survey, to show whether there is on-street capacity to accommodate any excess or overspill parking safely. Indeed, on-street parking in the estate is controlled and limited to permit holders and at the time of my site visit there was little availability.
70. Overall, there is limited evidence before me on the issue of car parking. Based on what there is and my own observations, I find that the development is more likely to result in an increase in parking stress and associated annoyance and

inconvenience for existing residents in the area, compared to a single family dwelling. That is contrary to DPD Policy BR9, which states that final levels of provision for each development will be agreed having taken into consideration matters including development type and on-street parking availability.

Other Matters and the Planning Balance

71. The Council cannot demonstrate a five year supply of deliverable housing sites. That means, as per paragraph 11.d) of the Framework, granting planning permission 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.
72. Paragraph 63 of the Framework states that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies, and that those groups should include families with children. That need is reflected in the above referenced development plan policies which seek to safeguard the supply of family homes. The use of the property as a HMO is contrary to those policies.
73. The appellant argues that the benefits of adding another room to make it five bedrooms outweigh the negatives as alleged by the Council. Notwithstanding that the benefits of using the property as a HMO are outweighed by the loss of a family home, the fifth bedroom (Appeal C) is not a new room. Its provision is at the cost of the existing living room space, which would result in conflict with the above identified development plan policies and guidance.
74. As a result, the proposal would not provide acceptable living conditions for occupants and would be contrary to paragraph 135 of the Framework, which states that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.
75. The internal space deficiencies applicable to Appeals A and B are limited. Nevertheless, those identified further weigh against both appeals.
76. I have also found that the use of the property as a HMO is harmful to the living conditions of the occupants of neighbouring properties, again contrary to paragraph 135 of the Framework.
77. The appellants seek to highlight that there is more than adequate amenity space but the lack of harm in that regard does not weigh in favour of the development.
78. Paragraph 115 of the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Although the use as a HMO is likely to increase parking stress, the effects are unlikely to result in such impacts. The parking harm found for Appeals A and B therefore attracts only limited weight.
79. I have noted the appellants' arguments regarding needs arising from the COVID-19 pandemic, but such matters are no longer directly relevant. I also note that the appellants seek to stress that two of their tenants are Council tenants, but that does not affect my reasoning on any of the main issues.

80. Weighing up all of the above, I find that the adverse impacts of the development significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result the presumption in favour of sustainable development does not apply.

Conclusions

Appeals A and B

81. For the reasons given above, I conclude that the material change of use to a HMO is contrary to the development plan as a whole and material considerations do not indicate that the appeals should be determined otherwise than in accordance with the development plan. The ground (a) appeals should not therefore succeed. I shall refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

82. For the reasons given above, and having considered all other matters raised, I conclude that the proposed Class C4 use would be contrary to the development plan as whole and material considerations do not indicate that the appeals should be determined otherwise than in accordance with the development plan. The appeal should be dismissed.

Richard S Jones

INSPECTOR