



Appeal Decision

Site visit made on 24 July 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2024

Appeal Ref: APP/Z5060/C/23/3324325

10 Sterry Crescent, Dagenham RM10 8QB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Osaro Richards against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The notice was issued on 24 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of a single-family dwellinghouse 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 appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - 1) Deleting the allegation in section three of the enforcement notice (the matters which appear to constitute the breach of planning control) and replacing it with the following: *The material change of use of a single-family dwellinghouse to a (Class C4) House in Multiple Occupation (HMO).*
 - 2) Deleting from section five of the enforcement notice, the requirement to *Cease the use as a house of multiple occupation* and replacing it with the following: *Cease the use as a (Class C4) House in Multiple Occupation (HMO).*
 - 3) Deleting the requirements to *Remove all alterations and fixtures enabling the conversion to a house of multiple occupation* and *remove all consequent waste material from the premises*, from section five of the enforcement notice.
2. Subject to the correction and variations, 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.

The Enforcement Notice

3. The term 'C4' refers to class C4 or the use of a dwellinghouse by not more than six residents as a house in multiple occupation (HMO), as set out in the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (UCO). If an HMO has more than six residents, it is 'sui generis,' meaning that it falls outside of any class.
4. The enforcement notice does not specify whether the Council consider that the use relates to an HMO within class C4, or whether they consider it to be a larger HMO.
5. I saw the property had four ensuite bedrooms, two on the ground and first floors, with a shared kitchen on the ground floor. One of the bedrooms was unoccupied. No evidence has been presented by the Council, however given both parties reference to the Article 4 direction and based on the number of rooms, it is likely that the property was in use as an HMO within class C4 at the time the notice was issued.
6. The main parties' views were sought. The appellant stated that the property has never had more than six occupants and the Council agreed to the proposed correction. Accordingly, I shall correct the allegation and the consequent requirement, as set out in my decision, and consider I can do so without injustice.
7. Section 173(3) of the Act makes it clear that the enforcement notice shall specify the steps required to be taken or activities required to cease in order to achieve, wholly or partly, any of the purposes set out in section 173(4).
8. The requirements cannot be so fundamentally vague or uncertain that the recipient does not know how to comply. In this case the requirement to remove all alterations and fixtures enabling the conversion to an HMO is vague. However, since the requirement, as varied, to cease the use as a (Class C4) HMO would suffice to remedy the breach of planning control, I shall vary the requirements to delete the second and third bullet points, without injustice.

The appeal on ground (c)

9. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.

Background and Statutory Framework

10. Article 3, Schedule 2, Part 3, Class L (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out that development consisting of the change of use of a building falling within class C3 of the schedule to the UCO to a use falling within class C4 is permitted development.
11. However, an Article 4 Direction came into force in the borough on 14 May 2012. The effect of which was to remove permitted development rights for the change from class C3 to C4. If the use as a class C4 HMO took place before 14 May 2012 it would have benefited from permitted development rights. After 14 May 2012, express planning permission would have been required. The

appellant's case is that the property had been in use as an HMO since he bought it in 2003 and prior to the introduction of the Article 4 Direction.

12. The Council issued an enforcement notice in 2017 in respect of the use of the property as four self-contained flats. They have not provided a copy of the notice; however, it appears there was no appeal, and the notice took effect, which is not disputed by the appellant.
13. The Council acknowledged that there may have been an HMO operating prior to the Article 4 Direction coming into force. However, they considered that the issuing of the enforcement notice in respect of the use as flats, means that the use as an HMO could not be lawful as it has not been continuous.
14. However, section 57(4) of the Act provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out.
15. Accordingly, if the property was lawfully in use as a class C4 HMO prior to the Article 4 Direction coming into force, and that use continued until 2017, when the use as four flats was begun, then there would have been a right to revert to the class C4 use, following compliance with the enforcement notice in respect of the use as flats.

The appellant's evidence

16. The evidence includes a statement of truth from a resident who lives on the opposite side of the road. They stated that the property has always been an HMO since the appellant bought it. The appellant also submitted a statement setting out that the property has always been an HMO since they bought it, which was in 2003. However, the appellant was in receipt of the enforcement notice in 2017 – in respect of the use as four flats, which there is no reference to in their statement. Accordingly, this limits the weight I attach to the statement. The Land Registry information takes me no further.
17. There is information from 192.com in respect of five previous occupants. The appellant stated that it does not list everyone who has lived at the property since 2003, because some did not register to vote, and others are not company directors.
18. Accordingly, and given the lack of explanation, it is not possible to establish how many occupants there were at specific points in time. Moreover, there is no detail about the relationship between those residing at the property, the extent to which facilities were shared, how the property was laid out, nor are there any bills or tenancy agreements before me.
19. It is therefore not clear precisely who was living in the property in May 2012, their relationship with one another, or the layout of the property at that time. Thus, the evidence does not demonstrate, on the balance of probabilities, that the property was being used as a class C4 HMO immediately prior to the Article 4 Direction coming into force, nor that such a use continued until the change of use to four flats.
20. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The development is not

development that is permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) therefore fails.

The appeal on ground (d)

21. An appeal on ground (d) is on the basis that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice.
22. In order to succeed on this ground, the appellant would need to demonstrate, on the balance of probabilities, that the use as a class C4 HMO has been ongoing on a substantially uninterrupted basis for not less than ten years before the material date, being the date of the issue of the notice 24 May 2023 (s171B(3) of the Act).
23. As already set out above, an enforcement notice was issued in 2017 in respect of the use of the property as four flats. Consequently, since the property was in use as four flats in 2017, the use subject of this appeal, cannot have existed uninterrupted, throughout the relevant ten-year period.
24. The appeal on ground (d) must fail.

The appeal on ground (a) the deemed planning application

Main issues

25. The main issues are the effect on (i) the stock of family housing in the borough (ii) the living conditions of occupants with regard to the standard of accommodation (iii) the living conditions of neighbouring occupants with particular regard to noise and disturbance and (iv) the availability of on-street parking.

Family housing

26. Policy BC4 of the Borough Wide Development Policies Development Plan Document (March 2011) (the DPD) relates to residential conversions and houses in multiple occupation and seeks to preserve and increase the stock of family housing in the borough by resisting proposals which involve the loss of housing with three bedrooms or more.
27. The second paragraph of the policy deals with a different situation; proposals for the conversion of properties other than those which are houses with three bedrooms or more. It is criteria-based and identifies some factors for consideration where the use of a property as an HMO is proposed.
28. To understand whether the change of use complies with the policy it is necessary to understand how many bedrooms were in the dwelling prior to conversion to an HMO. No information has been provided by either party as to how the property was laid out prior to conversion.
29. In any event, policy BC4 states that the Council will *resist* the loss of family housing with three bedrooms or more and does not state that such proposals will necessarily be refused. The modest size of the original dwelling is something that weighs in favour of the proposal, particularly noting the justification to policy BC4 which explains that the Council will adopt a particularly strict approach to the conversion of dwellings with four bedrooms. I

consider it unlikely that the appeal property would have had four bedrooms prior to conversion to an HMO.

30. Due to the lack of evidence before me, it is a moot point whether the dwelling would have had two or three bedrooms prior to conversion and, thus, whether it would have been the kind of dwelling that the Council seeks to protect under policy BC4. Accordingly, and in the absence of evidence regarding the housing needs of the area, I consider that planning permission should not be withheld based on the first limb of policy BC4.

Standard of accommodation

31. There are two ensuite bedrooms on both the ground and first floor. There is a very small kitchen on the ground floor which could realistically only accommodate one person at a time and does not include anywhere to sit and eat. I saw that an Elfin kitchen had been installed in the hallway area outside of the kitchen. However, outside of the rear garden, there are no amenity areas, such as a lounge or dining room. In the absence of alternative amenity space, occupants would spend a reasonable amount of time in their bedrooms.
32. The bedrooms on the ground floor are modest, one was unfurnished at the time of my visit, but it seems to me that once furnished with a bed there would be little room for other furniture or storage space. The rooms on the first floor are larger. However, considering the need to utilise bedrooms for relaxing and eating for example, due to the absence of communal amenity space, the bedrooms are not adequate in size.
33. Overall, the accommodation does not provide satisfactory living conditions for occupants contrary to the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for existing and future users of buildings.

Living conditions of neighbouring occupants

34. I acknowledge that compared to use by a single-family functioning as a single household, the character of the property's use as an HMO is likely to be different. For example, comings and goings to and from the property are likely to be more frequent given the property is likely to be occupied by unrelated individuals. There is also potential for general disturbance to be caused to nearby residents due to an increase in residential activity associated with the level and character of the use of the property.
35. However, I am mindful that the property may have had multiple occupants for some time. Whilst the Council raised general concerns, they have provided no explanation, nor have I any substantive evidence that the use has caused, or is causing, unacceptable noise and disturbance. Therefore, I find no conflict with Policy BP8 of the DPD in so far as it aims to protect living conditions, or the amenity protection aims of the Framework.

Parking

36. The property is located within walking distance of public transport options and shops. Given the accessibility of services and facilities by non-car modes, I consider this reduces the desire to own a car.

37. Moreover, there is off-street parking for one vehicle at the front of the property and I saw that there is on-street availability in the vicinity of the site. In the absence of evidence that there is a material shortage of parking, or that the use is resulting in excessive on-street or inconsiderate parking that is causing highway safety issues, I find there is no harm and no conflict with Policy BR9 of the DPD which sets out maximum standards.

Other matters

38. There are no minimum standards for the layout of HMO accommodation set out in the development plan. The Council therefore referred to those standards set out in Policy D6 of The London Plan (2021) and the National Technical Housing Standards – Nationally Described Space Standard (2015) which relate to bedrooms in dwellings. However, they did not identify what the shortfall is, in terms of specific dimensions.

Conclusion on ground (a)

39. My finding no harm in respect of the impact on the supply of family housing, the living conditions of neighbouring occupants, or in respect of parking, cannot outweigh the harm in respect of the standard of accommodation.
40. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (f)

41. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)).
42. In this case the notice, as varied, requires that the use of the property as a (Class C4) HMO should cease. I therefore find that the purpose of the notice is to remedy the breach of planning control and no lesser steps would achieve that purpose.
43. The appellant suggested a lesser step of removing all internal locks. However, this would not remedy the breach of planning control.
44. Since it is not excessive to require the use as a (Class C4) HMO to cease, the appeal on ground (f) fails.

The appeal on ground (g)

45. An appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant did not suggest a period but stated that the eviction process could take more than six months.
46. Whilst I am mindful that the property is occupied, I have no details about the occupants' circumstances, for example I have not been provided with copies of tenancy agreements held by the tenants or details in relation to any such agreements. I therefore have no substantive details of the terms of the tenancies held by any current occupants, particularly in relation to matters such as the notice periods required by either side.

47. I cannot therefore be certain, that a period longer than six months is necessary to secure compliance with the notice, which requires only the use to cease, or that the period of six months specified in the notice is not proportionate to the breach of planning control that has occurred.

48. Accordingly, the appeal on ground (g) fails.

Conclusion

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

Felicity Thompson

INSPECTOR