



Appeal Decision

Site visit made on 12 November 2024

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 February 2025

Appeal A Ref: APP/Z5060/C/23/3315882

Land and premises at 20 Church Street , Dagenham, RM10 9UR

Appeal B Ref: APP/Z5060/C/23/3315884

Land and premises at 22 Church Street , Dagenham, RM10 9UR

Appeal C Ref: APP/Z5060/C/23/3315887

Land and premises at 28 Church Street , Dagenham, RM10 9UR

Appeal D Ref: APP/Z5060/C/23/3315889

Land and premises at 30 Church Street , Dagenham, RM10 9UR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mountley Estates Ltd against enforcement notices issued by the Council of the London Borough of Barking & Dagenham.
- The notices were issued on 4 January 2023.
- The breach of planning control as alleged in the notices is Without planning permission, the unauthorised use of the ground floor rear outbuilding, as an unauthorised additional self-contained unit of accommodation.
- The requirements of the notices are to:
 - Cease the use of the outbuilding as a self-contained unit of accommodation.
 - Remove all alterations and fixtures enabling the creation and use of the self-contained unit.
 - Remove all consequent waste material from the premises.
- The period for compliance with the requirements is:
6 months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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.

Formal Decisions: The appeals are dismissed and the enforcement notices are upheld with a correction and variation in the terms set out below in the Formal Decisions

Formal Decisions (Appeals A, B C and D)

1. It is directed that the enforcement notices are corrected and varied by:

- 1) Deleting at section 3 of the notices (the matters which appear to constitute the breach of planning control) the wording:

‘Without planning permission, the unauthorised use of the ground floor rear outbuilding, as an unauthorised additional self-contained unit of accommodation’

With the words:

‘The material change of use of the ground floor rear outbuilding to an additional self-contained unit of accommodation’.

- 2) Deleting at section 6 of the notices (time for compliance) the wording:

6 months

and replacement with the wording:

9 months.

2. Subject to the correction and variation 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.

The Notice

3. Section 176(1)(a) of the Town and Country Planning Act 1990 (as amended) (the Act) transfers power to Inspectors to correct any 'defect, error or misdescription' in the notice provided that that correction or variation does not cause injustice to the appellant or to the local planning authority. Each of the notices describe the alleged breach of planning control as being '*Without planning permission, the unauthorised use of the ground floor rear outbuilding, as an unauthorised additional self-contained unit of accommodation*'. However, as development is defined in section 55(1) of the Act as including '*..the making of any material change of use of any building or other land*' the notices do not allege a material change of use of the buildings and, thus, do not allege development for the purposes of s55(1) of the Act.
4. As such, I consider the notices to be defective in this regard. However, it is clear, taking each of the notices as a whole, that they seek to attack the material change of use of each of the outbuildings from one use to another. Although the original uses are not stated, and it would have been useful to do so, that omission is not critical to the notices. Nevertheless, corrections are necessary in relation to the allegations as a whole so as to ensure that reference is correctly made to the material change of use of the outbuildings to use as self-contained units of accommodation. To make such changes to the notices would not cause injustice to either main party. Nor would removal of duplication of the word 'unauthorised' from the allegation cause injustice.

Preliminary Matters

5. The properties the subject of this appeal are all outbuildings located at the rears of properties on Church Street. Thus, numbers 20 and 22 adjoin each other, as do numbers 28 and 30. Although the internal layouts of each of the four units differ the nature of the alleged breach of planning control is the same for all four properties. The appellant is the same in all four appeals, as are the appellant's submitted grounds of appeal for each case, and both main parties advance the exact same case, albeit collectively in one statement for the appellant and separately, for each of the individual properties, by the Council. I am satisfied that the alleged breaches, grounds of appeal, appeal cases and main issues in relation to each of the grounds are sufficiently similar to allow me to deal with the appeals collectively.
6. Within the notice, the Council refer to policies from the '*Borough Wide Development Policies Development Plan Document*' (2011) (DPD). However, the Council adopted the new '*Local Plan 2020-2037*' (LP) in September 2024. The Council have indicated which policies within the new LP replace those referred to within the notice, and both main parties have been afforded the opportunity to comment on the relevance of the policies within the new LP on their respective cases. I have determined the appeal accordingly.
7. Since the service of the notices, revised versions of the National Planning Policy Framework (the Framework) were published in December 2023 and December 2024. I am satisfied that, other than changes to paragraph numbering and

paragraph structure between the current and previous versions of the Framework, the sections relevant to the matter before me have not materially changed. References to Framework paragraphs hereafter are to the current December 2024 version. I have determined the appeal accordingly and in so doing I am satisfied that neither main party would be disadvantaged.

The appeals on ground (a)

Background and Main Issues

8. The appeal sites have been subject to previous applications for planning permission for part or all of the respective sites in 2018¹, 2019² and 2023³, all of which sought to create or establish residential use in one form or another, and all resulting in dismissed appeals. Each of the appeal schemes before me in the current instance differ slightly in the layout and quantum of accommodation provided within each of the buildings. The appellant has also submitted revised floor plan layouts for each of the buildings as part of the submissions under ground (f) which I consider as alternative schemes under the ground (a) appeal.
9. The main issues are therefore the effects of the use of the outbuildings as self-contained units of accommodation upon:
 - The character of the Dagenham Village Conservation Area (the CA), and specifically whether the proposal would preserve or enhance the character or appearance thereof;
 - The living conditions of occupiers of the appeal units, with particular regard to the quality of the internal layout of the units;
 - The living conditions of occupiers of neighbouring properties, and present and future occupiers of the appeal units, with particular regard to noise and disturbance; and
 - The availability of car parking and the effect on highway and pedestrian safety.

Reasons

Character

10. The outbuildings in question all lie to the rear of properties on Church Street, a commercial Victorian parade comprised of a two-storey terraced block. To the rear, a mix of two storey outriggers and single storey outbuildings extend rearwards towards a fenced and gated access lane, beyond which lies a small, landscaped area of mixed grassland, shrubs and trees.
11. The commercial parade forms the western spur of the CA, the heart of which is centred around the church and churchyard of the Church of St Peter and St Paul, the Old Vicarage and the Cross Keys public house. Inspectors considering previous appeals relating to outbuildings at the rear of Church Street properties have noted the significance of the relationship between these outriggers and outbuildings and the commercial premises at ground floor within parade, whilst the Conservation

¹ LPA Ref No: 18/01215/FUL – APP/Z5060/W/18/3214252

² LPA Ref No: 19/00772/FUL – APP/Z5060/W/19/3239784

³ LPA Ref No: 23/00476/PRIMA – APP/Z5060/W/23/3322465

Area Character Appraisal (CACA) noted that most of the village buildings were knocked down in the 1960s and 1970s. Hence the significance of the remaining buildings and their place and role within what remains of the original street pattern.

12. Commercial uses remain within the ground floors of the buildings as they face Church Street. Typically, the areas behind would have been utilised in a manner supportive of, and intrinsically linked to, those commercial operations. The use and occupation of these outbuildings as self-contained primary residential units has no context within the CA and to do so would be out of character with their setting, position and role.
13. The buildings are all currently occupied and appear to be well-maintained, inside and out. The appellant has supplied photographs of the outbuildings and the areas at the rear of the Church Street properties accessed from the access lane off Exeter Road which shows them to have been in an untidy and unkempt condition. An Inspector previously noted these outbuildings as being subservient to the main commercial parade and that they moderately detracted from the character of the CA.
14. Whilst the visual improvement to the appearance of the outbuildings is welcomed, the nature of the alleged breach of planning control and the subsequent use of the buildings fundamentally and materially alters their role and function within the CA, previously linked to the principal commercial focus of the ground floor units fronting Church Street. The rear access lane is gated and fenced, but the residential units would face out into this area and introduce a residential character that would be at odds with the character of the CA's historic street pattern and function, and with that of the surrounding area. Nor has it been explained how or why the uses set out in the alleged breach were the only means by which the visual improvement of the buildings could have been brought about.
15. The residential use of these buildings would, individually for any one of them, be incongruous in the context of the commercial use of the frontage buildings and the ancillary nature of the uses of the land behind them. Cumulatively, the effect of material changes of use to residential and residential occupation of the buildings as self-contained accommodation would materially alter the character of the area behind the commercial parade. As the interest in the compact CA is derived in part from the last vestiges of the village's street pattern, such a shift as would arise from the appeal schemes would fail to preserve or enhance the character of the CA which would result in harm to the CA, albeit that that harm would be less than substantial.
16. The Framework states that great weight should be given to the conservation of the heritage asset, in this instance the conservation area. Any harm should require clear and convincing justification and where less than substantial harm arises, this should be weighed against the public benefits of the proposal(s). The appellant has not explicitly advanced a public benefit case, but the visual improvements to the condition and appearance of the outbuildings is noted. However, the weight that I give this consideration is limited as it is not clear that the use of the buildings in the manner attacked by the notices was the only way in which the appearance and condition of the buildings could have been improved.
17. The appeal schemes result cumulatively in the provision of four additional dwellings. Whilst neither party has made a case regarding housing supply within

the borough, additional housing units increase choice and availability of a range of housing and is a public benefit that weighs in support of the appeal schemes. However, given that the schemes only result in four additional accommodation units, the weight that this carries is limited.

18. For the reasons set out, there are not sufficient public benefits to overcome the less than substantial harm to the character of the CA that I have identified. The appeal schemes are contrary to LP Policy DMD4 and the guidance set out in the Framework with regard to the historic environment.

Living conditions – internal living accommodation

19. The appellant has not sought to justify the internal layout of the buildings as enforced against. In this respect, the Council are correct to be concerned about the intensity of use of the buildings and the quality (and quantity) of internal space provided within each.
20. Thus, as I saw the buildings at the time of my visit, all of the bedrooms were laid out as double bedrooms. No. 20B was fitted out and occupied as a 2 bed-4 person unit (2b4p), No. 22B as a 2b4p unit and No. 28B as a 3b-6p unit. Only No. 30B was laid out as a 1 bed roomed unit (1b2p) but with a study / office that could be easily capable of accommodation as a second double bedroom. I have not been provided with the respective floor areas of each of the bedrooms as enforced against, and whilst the appellant has provided figures for the total floor area of each unit as part of an alternative scheme, the appellant has not advanced floor area figures for each of the bedrooms.
21. The Council's reasons for taking enforcement action refer to the quality of the accommodation provided. Whilst the number and size of bedrooms will inevitably have an effect on the quality of accommodation, so too will the layout of that accommodation. In each of the buildings I saw during my visit particular elements of their layout that further contribute to the provision of poor quality accommodation. No. 20B has a second bedroom that has no outlook from windows and which receives light from a roof light whilst both Nos. 22B and 28B have bedroom windows that look directly out on an area used as car parking, whilst No. 30B has a deep floorplate and only a single aspect. Furthermore, both the bedroom and the study (which could quite conceivably be occupied as a second bedroom) have no outlook and receive light via rooflights.
22. For these reasons I conclude that the buildings as laid out internally and occupied provide a poor quality of accommodation arising from a combination of their intensive use and number of bedrooms provided within each, the limited size of those bedrooms and the poor outlook and daylight / sunlight received by those rooms. The poor quality of accommodation is detrimental to the living conditions of occupiers of these buildings and thus they are contrary to LP Policy DMS13 and London Plan Policy 3.5.

Living conditions – noise and disturbance

23. Each of the units of accommodation provide, in the manner laid out and as observed during my visit to the buildings, at least two (albeit small) double bedrooms or, as in the case of No. 30B a study capable of occupation as a second

- double bedroom, and in the case of No. 28B, three double bedrooms. Fully occupied, this would be likely to result in a significant level of comings and goings.
24. Whilst I agree with the Council that an intensive residential use of property and buildings can have harmful effects on the living conditions of occupiers neighbouring through noise and disturbance, the closest existing residential properties in this instance are those 'above the shop' of the commercial premises fronting Church Street. As the outbuildings and the rear access lane would have previously been associated with the commercial uses for storage purposes, noise and activity would not necessarily have been uncommon to occupiers of those upper floor properties. Furthermore, the residential blocks of Salisbury Road further to the north lie some distance away across an area of landscaped ground, within which trees provide some visual and contextual separation from the appeal buildings.
25. Thus, beyond the four appeal outbuildings, the comings and goings of the occupiers of those buildings are unlikely to be so intense either individually or cumulatively as a group of four self-contained units of accommodation, or close to occupiers of the nearest properties, so as to give rise to levels of noise and disturbance that would be materially harmful to the living conditions of occupiers of those properties. However, the cumulative effect of full occupancy of all four units on the living conditions of occupiers of each of those units would be more likely to be harmful. Access to and from the units would be close to, or directly past, other units where the effects of high occupancy comings and goings would be more keenly felt, particularly given the nature of the land at the rear of the buildings and the absence of passing traffic and pedestrians.
26. I accept that, if considering just one building, then it would be likely to result in less comings and goings than multiple buildings, such as if considering two, three or all four together. However, all four are currently present and used and occupied as self-contained units of accommodation and it is not unreasonable to assess them as such. Whilst the effect of comings and goings on occupiers of existing properties above the commercial terrace of Church Street, the effects on occupiers of the units is unacceptable for the reasons I have set out and the appeal schemes are contrary to LP Policy DMSI3.

Highway and pedestrian safety

27. The appeal schemes are incapable of providing for car parking provision within the extent of the areas covered by each of the notices. The Council rather cursorily state that the schemes exacerbate a shortfall of car parking but provide no further evidence or commentary on why or how that is the case, what any shortfall may or may not be, what level of car parking would be likely to be generated or the harm that would arise.
28. Although the area has a low PTAL score the commercial parade fronting Church Street lies within a neighbourhood centre and so has reasonable access to a range of services and facilities. There is also a variety of on-street car parking spaces on Church Street and along Exeter Road. In the absence of evidence to demonstrate a material shortage of parking, or that the use of the buildings is resulting in excessive on-street parking demand, or inconsiderate parking that causes highway or pedestrian safety issues, there is no harm arising from the use of the

outbuildings in the manner described by the notices and the schemes would not be in conflict with LP Policy DMT2.

The alternative scheme

29. The alternative schemes for each of the four units attacked by the notices would do little to alter the nature, character or impact of the residential use of the buildings. The quantum of development would remain unchanged as there would be no external or internal alterations that would reduce the internal floorspace and the layouts of the each of the buildings would see them retained as self-contained residential units.
30. Although the number of bedrooms within each of the units would be reduced from their current, observed, numbers thereby theoretically reducing the number of residents in each, the layouts and rooms sizes nevertheless mean that further subdivision and greater occupancy could not reasonably be discounted. Nevertheless, taking these revisions at face value, the number of bedrooms within the appeal buildings would be reduced and the sizes of the remaining bedrooms would consequentially become larger.
31. Nevertheless, the revised schemes would not remedy the breaches of planning control as separate self-contained units of accommodation would remain. Nor would they preserve or enhance the character of the CA as the independent residential nature and character of the buildings would be retained and would remain at odds with the character of the CA and the special interest that it has.
32. As well as the alternative schemes with the revised internal layouts to each of the four outbuildings, the appellant has also advanced cases that each of the outbuildings could benefit from a fallback position offered under the terms of Class MA, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). However, no details of what form that scheme may take in relation to any of the four outbuildings the subject of this appeal. Furthermore, whilst the permission granted by Class MA establishes the principle, such proposals are subject to the conditions set out under paragraph MA.2. which require the developer to apply to the local planning authority for determination as to whether the prior approval of the authority is required on a number of grounds. These include the effect of the change of use on the character of a conservation area.
33. No details of a scheme or schemes that the appellant submits should be considered as 'fallback' schemes under the provisions of Class MA of the Order have been provided. Nor has it been expressly stated that the alternative schemes considered above should be considered as fallback schemes under Class MA of the Order. The weight that I give a possible fallback scheme or schemes under the provisions of Class MA of the Order is limited and does not therefore alter my conclusions in respect of the appeal schemes or the submitted alternative schemes.

Conclusion on ground (a)

34. For the reasons set out, the appeal under ground (a) fails in respect of the development the subject of the notice. Nor, even if I were to entertain as an alternative the appellant's alternative layouts within the outbuildings as alternative

schemes under the provisions of s177(1) of the Act, I am not persuaded that they would overcome the harm to the character of the conservation area that I have identified. The appeals on ground (a) should therefore fail.

The appeals on ground (f)

35. The appellant's appeals on ground (f) are based on the premise that 'lesser steps' exist, in the form of alternative schemes for each of the appeal buildings, that would remedy the breaches of planning control. Appeals on ground (f) are more accurately described by the Act as being '*the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity..*' which may have been caused by any such breach.
36. In these instances, the notices require the use of the land and premises as self-contained units of accommodation to cease. The purpose of the notices is to remedy the breaches of planning control and no 'lesser steps' would achieve that purpose the requirements of the notices do not therefore exceed what is necessary to remedy those breaches. Whilst the appellant has suggested alternative schemes in respect of each of the buildings these would merely amount to the rearrangement of internal spaces and reductions in the numbers of bedrooms. They would not remedy the breach of planning control.
37. The appeals on ground (f) must therefore fail.

The appeals on ground (g)

38. At the time of my visit to the site all four of the self-contained residential units were occupied. This, the appellant states, justifies seeking a longer period of time with which to comply with the requirements of the notices due to the basis of each of the tenancy agreements.
39. I have no information before me of the detail of the individual tenancy agreements or the details in relation to such. Whilst the appellant refers in broad terms to the 'legal requirements' of ceasing occupation of the units there is no information before me of, for example, the notice periods required by either side in this respect. Nor does the appellant explain how or why the structural work required to comply with the notice would take more than the 6 month period specified in the notices.
40. However, despite an absence of evidence regarding tenancy details and notice periods, I am mindful of the implications of upholding the notices and their requirements on the occupier's convention rights under Article 8 of the European Convention on Human Rights⁴, including those of children in the context of Article 3 of the United Nations Convention on the Rights of the Child which, whilst not incorporated into UK law is nevertheless pertinent and which requires a child's best interests to be a primary consideration.
41. I am satisfied that the requirements set out in the notices pursue the legitimate aim of regulating the use of land in the public interest. The actions are both necessary and proportionate. However, taking all this into account, a period of 6 months in the particular circumstances of these cases is unduly short. The appellant seeks a longer period of 9 months which strikes me as being an appropriate balance

⁴ As set out within the Human Rights Act 1998

between these needs and the harm that the notices seek to strike against. The appeals on ground (g) should succeed in this respect and for these reasons.

Conclusion

42. For the reasons given above, I conclude that the appeals should not succeed. I shall therefore uphold the enforcement notices, albeit with correction and variation to reflect the outcome of the appeals on ground (g).

G Robbie

INSPECTOR