The Planning Inspectorate

Appeal Decisions

Site visit made on 12 April 2023

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

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal A Ref: APP/B5480/C/22/3302893
31 Court Avenue, Romford, RM3 0XS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Arlind Gjocaj against an enforcement notice issued by London Borough of Havering.
- The notice, numbered ENF/46/22, was issued on 14 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a dwellinghouse to a house in multiple occupation (HMO).
- The requirements of the notice are to:
  1. Cease the use of the property as a house in multiple occupation (HMO).
     And
  2. Remove all bathroom and bathrooms facilities (such as baths, showers, water, closets and wash basins) from the ground floor except for one bathroom that serves that floor.
     And
  3. Remove all materials and debris from the land as a result of under taking step 2 above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Appeal B Ref: APP/B5480/W/22/3302975
31 Court Avenue, Havering, Romford, RM3 0XS

- 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 Arlind Gjocaj against the decision of London Borough of Havering.
- The application Ref P0181.22, dated 7 February 2022, was refused by notice dated 27 May 2022.
- The development proposed is retrospective planning application for change of use from use class C3 to use class C4 for 5 people.

Decisions

Appeal A

1. 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 Town and Country Planning Act 1990 as amended.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. The appellant is critical of the Council of issuing an enforcement notice without giving reasonable opportunity to appeal the refusal of his planning application, subject to Appeal B. However, that is not a matter for this appeal. Furthermore, an application for costs has not been made and I have no reason to believe that the Council has acted unreasonably.

4. The reasons for issuing the enforcement notice and the reasons for refusing the planning application are essentially the same. My reasoning below therefore applies to both appeals, unless I have specifically stated otherwise.

Appeals A and B

Main Issues

5. The main issues are:

   - the effect of the development on the Borough's housing stock;
   - whether the development provides acceptable living conditions for occupants, with particular regard to the provision of internal living space; and
   - the effect of the development on car parking and congestion.

Reasons

Housing stock

6. The appeal relates to a semi-detached bungalow with rear dormer and ground floor extension. It is accepted that the property has been subject to a change of use from a Class C3 dwellinghouse to a Class C4 house in multiple occupation (HMO). Indeed, the appellant has evidenced a HMO licence for a maximum of five people living as four households.

7. Policy 8 of the Havering Local Plan 2016-2031 (LP) recognises that HMOs can make a valuable contribution to the private rented sector by catering for the housing needs of specific groups, but that is to be balanced with the potential harm that can arise. As such the Council support applications for HMOs where certain criteria are met.

8. The first criteria (i) is that the overall size of the original property to be converted is not less than 120m^2.

9. The appellant highlights that the planning application form states that the gross internal floor area (GIA) is 135m^2 and that the Council erroneously stated it as approximately 50m^2. The appellant says this is an error because the change of use application did not relate to the building before it was developed in accordance with a prior approval scheme for a single storey rear extension[1]. Rather, it was based on an already developed property with a GIA of 135m^2.

10. The Council state that the prior approval scheme has not been built in accordance with the submitted plans whilst the rear dormer extension is not

[1] The Council determined in November 2021, under reference Y0466.21, that its prior approval was not required for a single storey rear extension with an overall depth of 6m, a maximum height of 3m, and an eaves height of 3m.

permitted development[2]. It is stated that both aspects could be subject to enforcement action. The appellant believed the works to be in full compliance but is willing to carry out works in order for the ground floor extension to accord with the approved plans and to make an application to regularise the dormer extension.

11. However, those submissions are somewhat academic because the criteria refers to the original property. Clearly, the floor space of a ground floor extension, and that of the dormer extension, should not be included as they are evidently additions to the original property.

12. The appellant appears to take issue with the Council defining original property as that which existed on 1 July 1948 or as built after that date. Although that is consistent with the definition in the National Planning Policy Framework, the LP extract I have, does not include that definition in the policy explanation. Nevertheless, on any reasonable interpretation, original property must mean that as originally built. If the policy was intended to be read in any other way, such as the size of the property at the time of the application, the word 'original' would not have been included.

13. The appellant has provided no evidence which shows that without the ground floor and dormer extensions the Council's estimation of about 50m^2 is incorrect, or that it would fall under the 120m^2 threshold. Given the size of the ground floor extension it is likely that the floor area of that alone would be enough to take the floor area of the dwelling from 135m^2 to less than 120m^2.

14. The development is therefore contrary to LP Policy 8(i) which seeks to protect the supply of family homes.

Living conditions

15. The reasons for issuing the enforcement notice and refusing the planning application include insufficient information being provided to demonstrate that the HMO complies with the quality and minimum living space standards set out within the East London HMO Guidance. The Council's delegated report clarifies that the concern at that time was whether the bedrooms had a minimum floor to ceiling height of at least 2m over 75% of their floor areas.

16. Based on the section provided, that could only be an issue in bedroom 4, which is within the roof space. Whilst the section shows the internal maximum height within the bedroom to be 2.34m, that does not demonstrate that the height would be over 2m for over 75% of the floor area. In the absence of information demonstrating otherwise and given the extent of the floor area of bedroom 4 falling below the main front roof slope, it is unlikely that the aforementioned space standards are met, contrary to criteria (vii) of LP Policy 8.

17. Based on the property as existing, I find no reason to differ from the Council's initial assessment which raised no objection to the room sizes (floor area). I also saw that each have either ensuite or dedicated bathroom facilities. Occupants also benefit from a large, shared kitchen.

18. The Council has subsequently suggested that the issues relating to the dormer and ground floor extension may impact on the accommodation provided, bringing into question further conflict with criteria (vii) of LP Policy 8. However,

[2] Due to its finishing materials and not being set up from the eaves

the lawfulness of the dormer and the ground floor extension, is not a matter for these appeals and, in any case, I have already found conflict with LP Policy 8.

19. The reasons for issuing the enforcement notice and refusing the planning application do not cite harm to the living conditions of neighbouring occupants. However, the Council has essentially revisited its earlier conclusions - that a similar sized family dwelling will have the same impact as a HMO - as not being correct. I agree. The use could be significantly intensified with up to five unconnected residents with very 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. Indeed, a HMO use is likely to generate more noise and disturbance as individuals come and go separately from one another for work, shopping and other day-to-day activities.

20. Similarly, a greater number of unconnected individuals living within one property will in turn likely generate a greater number of separate visitors and deliveries to the property with the associated noise and disturbance.

21. I appreciate that existing residents may be quiet and considerate, and I have little evidence that harm has arisen. However, future occupants may not be so inclined and within the context of a quiet suburban street, dominated by single family dwellings, those effects are likely to be more evident. I therefore find that the development is also in conflict with criteria (iii) of LP Policy 8.

22. I fully sympathise with the appellant's concerns over the Council's change in position on this issue but these are matters which would need to be addressed anyway as representation refers to a number of different residents coming and going. In any case, the appellant has had opportunity to respond and the outcome of the appeals would not be different even if I had found in the appellant's favour on this particular issue.

Car parking and congestion

23. The appellant's Transport Statement argues that the site has good accessibility and seeks to highlight limitations with the Public Transport Accessibility Level (PTAL) methodology[3]. Existing occupants also refer to good access to public transport.

24. However, there is no dispute that the site has a PTAL rating of 1b (low accessibility). Moreover, PTAL is the methodology used in the adopted Local Plan as well as the London Plan and I find no reason why it should not be applied in the particular context of the site, subject to the appeals.

25. LP Policy 24 states that in areas that have low public transport access (PTAL 0-1) a minimum of 1.5 spaces is required.

26. The submitted plans show that two vehicles can be accommodated on the hardstanding area at the front of the property, which would in principle accord with the minimum car parking requirements. However, the hardstanding area does not benefit from access via a dropped kerb and a street light column and residents parking bay are positioned directly in front of it. The Highway Authority advise that the latter aspects would need to be relocated at the

[3] PTAL is a measure of accessibility to the public transport network. Each area is graded between 0 and 6b, where a score of 0 is very poor access to public transport, and 6b is excellent access to public transport

appellant's expense. In principle such matters, as well as matters relating to surface water treatment, are capable of being addressed by way of condition.

27. At the time of my site visit, traffic levels were relatively light. Whilst I appreciate that is only a snapshot and it can reasonably be expected to increase at peak times of the day, I have little evidence to show that the likely increase in vehicular movements arising from the HMO, above that of a single family dwelling, are likely to materially exacerbate congestion in the surrounding highway network.

28. However, a HMO for up to five unrelated people is more likely to generate greater demand for car parking than a three bedroom, single family dwelling. Court Avenue and the surrounding roads fall within a controlled parking zone. Because most properties have off-street, frontage parking accessed by crossovers from the highway, there are only a limited amount of permit parking bays along the road. Moreover, representation refers to cars linked to the property being parked on the road without parking permits, and general parking stress in and around the area.

29. The appellant submits that only one occupant currently has a car and evidence is provided to show that she has a parking permit. However, even if it is only one or two occupants that currently have a car, that position could readily change, despite the London Ultra Low Emission Zone, not least because of the site's PTAL rating and residents' likely reliance on private car as a result.

30. LP Policy 24 states that planning conditions and legal agreements may be used to restrict eligibility for on-street residential parking permits irrespective of the amount of parking spaces provided off street as part the development. Having regard to the above, a planning obligation to that end is necessary to restrict eligibility for on-street residential parking permits for occupiers of the property. Although the appellant has confirmed he is not averse to submitting such an obligation, one has not been provided. Consequently, the development is likely to lead to increased parking stress, contrary to LP Policy 24.

Other Matters

31. I note the concerns raised regarding the potential future use of the outbuilding at the rear of the garden, but such matters are beyond the scope of these appeals. Moreover, I have no evidence to show that blocked drain issues can be attributed to the current use of the property.

32. I have noted the decisions submitted by both the appellant and the Council but I have determined the appeals before me on their own merits.

33. Based on my own observations I agree with the submission of an existing resident that the property is finished to a high standard. Moreover, I have no reason not to believe that the appellant is easy to deal with and professional in his approach. To that end, I appreciate that existing residents may enjoy living at the property. However, those matters do not outweigh the above stated harm and development plan conflict.

Conclusion on Appeal A

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

Conclusion on Appeal B

35. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/B5480/C/22/3302893	Mr Arlind Gjocaj
Appeal B	APP/B5480/W/22/3302975	Mr Arlind Gjocaj