
Appeal Decision

Site visit made on 10 October 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10th November 2016

Appeal Ref: APP/G5750/W/16/3153684

354 High Street North, East Ham, London E12 6PH

- 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 Miss Gentiana Hakia against the decision of the Council of the London Borough of Newham.
 - The application Ref 15/03681/FUL, dated 29 December 2015, was refused by notice dated 9 March 2016.
 - The development proposed is conversion of single dwelling to 2x residential flats (1x2 bed flat and 1x1 bed flat) with loft conversion with rear dormer, and 3x roof lights at front roofslope.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time of my visit, a loft conversion including a rear dormer and velux windows to the front elevation had been completed and internal alterations consistent with the internal layout indicated on the proposed plans had also taken place. However, the upper floors of the building were unoccupied.
3. The Newham Local Plan Detailed Sites and Policies Development Plan Document (DS&P) was adopted on the 20 October 2016. All parties have had the opportunity to comment on the change in status of this document in terms of the relevance to their case. The Council confirmed that upon adoption of the DS&P, Policies H17 and EQ45 of the London Borough of Newham Unitary Development Plan, adopted June 2001, have been replaced and are no longer part of the development plan. I, therefore, give no weight to those policies in determining this appeal.
4. From appeals I am determining elsewhere, I am aware that the London Plan 'Draft Interim Housing' Supplementary Planning Guidance document (2015) referred to by the Council has been superseded by the publication of the London Plan Housing Supplementary Planning Guidance (Housing SPG), March 2016. However, the relevant guidance within the SPG remains similar and so neither party has been prejudiced by this change in circumstances.

Main Issues

5. The main issues of this appeal are:
 - the effect upon the supply and choice of housing suitable for family occupation in the area;
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- the effect on the character and appearance of the host property and the surrounding area;
- whether the development would provide for a satisfactory living environment for its future occupiers;
- the effect on the living conditions of occupiers of neighbouring properties, with particular regard to privacy, noise and disturbance and the provision for disposal of waste, and;
- whether the development would provide adequate cycle storage.

Reasons

Dwellings which are suitable for family occupation

6. The appeal site consists of a three storey mid terraced building located on the eastern side of High Street North and within High Street North Local Centre. The existing property consists of a commercial unit at ground floor level with a separate access to residential accommodation within the upper floors.
7. Policy S1 of Newham's Local Plan – the Core Strategy (CS), adopted January 2012, prioritises quality new family housing over smaller residential units to rebalance the borough's housing stock. In this regard, Policies S6 and H4 of the CS, when taken together specifically seek to increase family housing and resist the loss of all family houses through subdivision or conversion to houses in multiple occupation (HMOs) and flat conversions unless exceptional circumstances prevail. The Council have indicated that the approach is based on a Housing Needs Study prepared to support the CS which identified a housing shortage of family dwellings in Newham, with family sized dwellings defined by the explanatory text of Policy H1 as having 3 bedrooms or more.
8. The submitted plans indicate that the previous use of the first and second floors of the property had the layout of a three bedroom duplex flat, as the residential accommodation forms part of a building which it is divided horizontally from some other part. The appellant has indicated that the residential accommodation was previously occupied as a house in multiple occupation (HMO) under licence. However, there is no evidence that the HMO exceeded the definition of a small HMO (i.e. not more than six residents) in Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended). There are permitted development rights under Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) for changes of use between Class C3 (dwellinghouses) and Class C4.
9. With regard to the above, on the balance of probability, it is likely that the most recent use of the residential accommodation within the building was as a small HMO within the definition of Class C4 taking account of the two shower and WC rooms. However, the occupation of the residential accommodation in this manner and its layout would not preclude the potential for future use and function as a dwellinghouse in Class C3, which would not require planning permission for a change of use.
10. The proposal seeks subdivision of the upper floors of the existing building into a two bedroom three person flat at first floor level (Flat 1) and a one bedroom two person duplex flat at second floor level and within the converted loft space (Flat 2). The proposal, therefore, would result in the loss of residential

accommodation consisting of three bedrooms, which would be suitable for occupation as a family dwelling, through subdivision into smaller flats.

11. Policy H1 of the CS prioritises the delivery of new homes of 3 bedrooms for families and there is no evidence of a lack of demand for three bedroom houses in the local area. Furthermore, there is no substantiated evidence that the location of the property, its access arrangements and its immediate surroundings of a mix of commercial and residential uses would make the upper floors of the building unsuitable for occupation as a family dwelling. In this respect, I have taken into account that Policy SP3 of the CS seeks to support mixed use areas with a range of accommodation. Whilst the absence of level access or a lift to the upper floors may be unsuitable for some residents and wheelchair accessibility, this does not specifically preclude occupation as family sized housing.
12. The development would make a limited contribution to boosting the supply of housing in accordance with the National Planning Policy Framework (the Framework). However, the benefits in this respect would not outweigh the harmful loss of a family dwelling. I, therefore, consider that exceptional circumstances have not been proven to justify the loss of the residential accommodation suitable for occupation as a family dwelling by subdivision into flats, as required by Policy H4 of the CS.
13. I conclude that the proposal would result in a harmful loss of housing suitable for family occupation in the area. The proposal would conflict, therefore, with Policies H1, H4, S1, S6, SP1 and SP3 of the CS and Policy 3.8 of The London Plan 2011 (as amended), which when taken together prioritise family housing based on new and existing local needs. The proposal would also conflict with the Framework in so far as it seeks that local planning authorities plan for a wide choice of high quality homes and a mix of housing based on the needs of different groups in the community.
14. In the interest of clarity with respect to the above, although Policy SP2 of the CS was also identified by the Council's reason for refusal, I find no specific conflict with that policy relating to this matter.

Character and appearance

15. The three storey properties in the terraced row include two storey shared rear outriggers forming part of the original design comprising a rear gable design that extends across three quarters of the rear elevation. The rear outrigger of 354 High Street North (No 354) is shared with No 356. Nevertheless, there is variety to the style and form of rear elevations of properties along the eastern side of High Street North, this includes a substantial single storey flat roof rear extension to the appeal property and to others along the terraced row.
16. In the wider area, there are properties with existing roof extensions to the south of the junction with Rosebery Avenue. There are also limited examples of roof extensions and alterations to the rear elevations of residential properties facing Goldsmith Avenue and Rosebery Avenue to the east. However, the terraced row within which the appeal site is located, have retained the symmetry of an unaltered existing pitched roof form that is visible from Goldsmith Avenue and Rosebery Avenue respectively.

17. Having regard to the above, the rear dormer is set down slightly from the ridge line and does not extend fully to the sides or the main rear elevation at eaves level. Nevertheless, it occupies the majority of the existing rear roof slope and therefore, despite the use of similar materials, the dormer is an unduly dominant, bulky and incongruous feature along the terraced row. The visual contrast with the host property is worsened by the scale of windows which appear out of place when compared to the proportions of those visible at first and second floor level. Although views of the dormer are limited to a small section of Goldsmith Avenue and Rosebery Avenue, it is clearly visible from a number of neighbouring properties and their gardens. I consider, therefore, that the rear dormer adversely affects the character and appearance of the host building and the surrounding terrace.
18. In reaching the above findings, I have taken account of the greater prominence of existing flat roof dormers located to properties on High Street North to the south of the junction with Rosebery Avenue. However, these dormers when viewed from Rosebery Avenue are viewed separately from the rear elevations and roofslopes of the appeal property and the surrounding terrace. In any case, I am not aware of the particular circumstances which led to the roof extensions and others in the wider area. I, therefore, must consider the appeal proposal on its own individual merits. The variety of extensions along the terraced row and the existence of other roof extensions in the locality do not justify the harm I have identified. The harm is also not outweighed by the benefits of providing additional living space.
19. The appellant has indicated that the property is not subject to Article 4 restrictions to remove permitted development rights under the GPDO and that the rear dormer has been designed to accord with permitted development rights for additions to the roof of a dwellinghouse¹. However, the GPDO states that the definition of "dwellinghouse" for the purpose of its interpretation, except in Part 3 of Schedule 2 relating to changes of use, does not include a building containing one or more flats. In such circumstances, I am not satisfied that there is a fallback position whereby the building benefits from permitted development rights for additions to its roof. I have determined this appeal on the basis that planning permission is required for the rear dormer and an application has been refused by the Council.
20. There is no existing precedent of rooflights to the front roofslope of properties along the terraced row, but there are examples in the wider setting. In any case, the rooflights are relatively modest in size and recessed appropriately into the roofslope. Consequently, I do not consider that they have an adverse effect upon the character and appearance of the host building and the surrounding area. However, the absence of concern in this respect does not justify the harm otherwise identified.
21. The appeal site is not designated within a conservation area or located within the setting of a listing building. However, the absence of such a designation or proximity to heritage assets does not justify harmful development. The Framework attaches great importance to the design of the built environment, whilst seeking high quality and inclusive design for all development.
22. I conclude that the development is harmful to the character and appearance of the host building and the surrounding area. The proposal, therefore, conflicts

¹ Schedule 2, Part 1, Class B of the GPDO

with Policies H1, S6, SP1 and SP3 of the CS, Policies 7.1, 7.4 and 7.6 of the London Plan, together with the guidance in the Newham Supplementary Planning Guidance: Altering and Extending Your Home. When taken together the policies seek high quality design that respects the character of the property and those surrounding. These policy aims are consistent with the Framework.

23. In the interest of clarity with respect to the above, although Policies S1 and SP2 of the CS were also identified by the Council's reason for refusal, I find no specific conflict with those policies relating to this matter.

Living environment – future residents

24. Flat 1 would consist of a 1 storey 2 bedroom 3 person flat. The internal layout of the flat would meet the minimum requirements of 62 sq.m Gross Internal Area (GIA), the minimum sizes for bedrooms and the requirements for built in storage for this type of accommodation, as set out in the nationally described space standard² which has been adopted by The London Plan.
25. However, the Council has expressed concern with respect to the private amenity space afforded to the property. The flat has direct access to private amenity space in the form of an existing roof terrace in a similar manner to the adjacent No 352. Nevertheless, there is no evidence before me that the roof terrace has planning permission, whether it has been subject to historic complaints from occupiers of neighbouring properties or whether it is subject to ongoing enforcement investigation.
26. With regard to the above, I have significant concerns with respect to the access to and interrelationship of the roof terrace and Bedroom 2 of the proposal with the windows of No 352 and the use of its roof terrace. I consider that this inter-relationship would not provide adequate levels of privacy for future occupiers of Flat 1 or occupiers of No 352 and therefore would not provide a satisfactory living environment. In such circumstances, I consider that the use of the roof terrace would not be suitable as private amenity space, as I am not satisfied that the potential overlooking between the properties could be mitigated by condition.
27. In reaching the above findings, I have taken into account that the roof terrace of the property and at No 352 have been in use. In this respect, the previous Bedroom 1 of the appeal property at first floor level was in close proximity to the roof terrace of No 352 and could be directly overlooked, as could windows in the neighbouring property. However, in the absence of evidence of the lawful status of the roof terraces I can offer little weight to the precedent of any pre-existing harm.
28. Flat 2 would consist of a 2 storey 1 bedroom 2 person flat. The internal layout of the flat would exceed the minimum requirements of 58 sq.m Gross Internal Area (GIA) by 9m, the minimum bedroom size and the requirements for built in storage for this type of accommodation, as set out in the nationally described standard. Flat 2 would accord with Policy 3.5 of The London Plan.
29. The Council have expressed concern relating to Flat 2 with respect to a failure to make adequate provision for open amenity space relative to the Housing SPG. The internal layout of the property precludes direct access to the terrace at first floor level and consequently, there would be no private amenity space

² Technical housing standards – nationally described space standard, DCLG 2015

- provision to serve Flat 2. In such circumstances, the proposal would not provide the minimum of 5 sq.m of private amenity space for 1-2 person dwellings, as recommended by the Housing SPG.
30. Notwithstanding the above, the Housing SPG at paragraph 2.3.32 states that in exceptional circumstances, where site constraints make it impossible to provide private open space for all dwellings, a proportion of dwellings may instead be provided with additional internal living space equivalent to the area of the private open space requirement. In this regard, on balance, I consider that the additional 9 sq.m of GIA within Flat 2 above the minimum requirements in the nationally described space standard would be sufficient to address the shortfall of private amenity space required by the Housing SPG. Nevertheless, the absence of concern in this respect does not outweigh the harm identified with respect to Flat 1.
31. In reaching the above findings, I have taken into account that the site is located within an Access to Nature Deficiency Area and Small Open Space/Pocket Park and District Parks Deficiency Area. I also observed that Plashet Park is in close walking distance from the site which would provide some access to public open space. However, the presence of public open space would not compensate for inadequate provision of amenity space as identified for Flat 1.
32. Based on the submitted plans and my observations, I am satisfied that all habitable rooms of Flats 1 and 2 would have suitable light provision. The respective internal layouts would minimise the potential for noise transfer between the sensitive rooms of each flat. However, the absence of concern in this respect is a neutral factor that does not outweigh the harm identified.
33. I conclude that the development would not provide for a satisfactory standard of living conditions for its future occupiers, due to the unsatisfactory relationship of habitable rooms of Flat 1 to No. 352 and the respective roof terraces which would make their use unsuitable as private amenity space. The proposal, therefore, would conflict with Policies S1, S6, SP1, SP2, SP3 and H1 of the CS, Policy SP8 of the DS&P, Policies 3.5 and 7.1 of The London Plan (as amended), together with the guidance in the Housing SPG in this respect. These policies when taken together seek healthy neighbourhoods, including that all new homes meet internal space standards, provide appropriate amenity space, avoid unacceptable exposure to noise and ensure adequate access to daylight and sunlight. The policy aims are consistent with the Framework which seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings.

Living conditions – neighbouring properties

34. There is no dispute between the parties that the relationship of the rear dormer to surrounding properties would not be harmful in terms of matters of privacy and outlook. However, the Council have expressed concern that the existing roof terrace at first floor level does not have planning permission and would result in an increased loss of privacy and noise and disturbance to occupiers of neighbouring properties.
35. During my visit, I observed that roof terraces are a feature of the appeal property and the adjacent No 352. The upper floors of No 352 are directly accessed from the terrace via a shared alleyway to the rear boundary of the

properties. The existing flat roof of the appeal property is currently unenclosed, whereas No 352 has a boundary rail that limits the terrace area to the side of the existing outrigger and a narrow access route to ground floor level at the rear.

36. As previously mentioned, I have significant concerns with respect to the relationship of habitable windows of Flat 1 to No 352, together with the potential overlooking and loss of privacy to habitable windows of No 352 resulting from the use of the roof terrace. I consider that this relationship would be harmful to the living conditions of occupiers of No 352. Furthermore, I am not satisfied, based on the evidence before me, that the harm could be overcome by condition.
37. The appeal property is located further to the north within the terraced row than No. 352 and therefore the use of the unenclosed roof terrace also offers more direct views of the habitable windows in the rear elevation of 2 Rosebery Avenue (No 2) and its rear garden. In this respect, I consider that the extent of overlooking in the section of the roof terrace beyond the first floor windows would result in a harmful loss of privacy with a detrimental effect on the living conditions of occupiers of No 2.
38. The rear yard of No 356 although directly overlooked appears to be in commercial use. However, the use of the unenclosed roof terrace indicated on the submitted plans would provide direct views of the rear elevation of the building with the potential for harmful overlooking and a loss of privacy.
39. In reaching the above findings, I have taken into account that there was a lack of objections from neighbours and that the use of the roof terrace and those nearby appears to be well established. However, such factors do not outweigh the harm identified given that I have no evidence before me relating to the circumstances which led to the roof terraces, that they have planning permission or are otherwise lawful. Similarly, I have also taken into account that the interrelationship of some side windows within outriggers and extensions along the terrace result in varying degrees of existing overlooking between properties. However, the precedent of such relationships does not justify the harm resulting from the layout of Flat 1 and use of the roof terrace.
40. I consider the potential for increased levels of noise and disturbance to be overstated by the Council. This is because the roof terrace is located in close proximity to commercial premises and a shared alleyway that has significant associated comings and goings to the rear of properties. In such circumstances, I cannot conclude based on the evidence before me that the use of the roof terrace would result in a noticeable difference to existing background noise levels whether during the day or of an evening due to the mixed use character of the immediate area.
41. The occupation of flats has the potential to increase general levels of activity associated to a building above that of a typical dwelling occupied by a single household. However, given that the scale of development relates to conversion of existing residential accommodation to two flats with limited extra floorspace proposed, any increase in activity and associated noise would be insignificant. As a consequence, the proposal would not result in additional noise and disturbance to an extent that would be harmful to the living conditions of occupiers of neighbouring properties. However, the absence of concern in this respect is a neutral factor which does not justify the harm otherwise identified.

42. The Council has expressed additional concern that details of the storage and disposal of waste and recycling has not been provided. In this respect, I consider that the provision of adequate waste and recycling storage could be appropriately secured by condition. This is noting that there is shared access via the rear alleyway to the commercial premises under the appellant's ownership that has potential capacity for storage of waste bins at ground floor level and access to the street. However, the absence of concern in this respect relating to Policy INF3 of the CS and Policy 5.3 of The London Plan is a neutral factor which does not outweigh the harm identified.
43. I conclude that the proposed development would result in an unacceptable impact upon the living conditions of the occupiers of neighbouring properties. The proposal would, therefore, conflict with Policies S1, S6, SP1, SP2, SP3 and H1 of the CS, Policy SP8 of the DS&P and Policy 3.5, 7.1, 7.4, and 7.15 of The London Plan, together with the guidance in the Housing SPG. These policies when taken together seek healthy neighbourhoods, including avoiding problems such as bad neighbour uses where satisfactory levels of privacy cannot be achieved. These policy aims are consistent with the Framework which seeks a good standard of amenity for all existing and future occupants of land and buildings.

Cycle storage

44. The proposal does not provide any details of cycle parking and a minimum of 3 spaces would need to be provided to meet the requirements of Policy 6.9 of The London Plan. However, I consider that the provision of details of cycle parking and its implementation could be appropriately secured by condition. In reaching this view, I have taken into account that the appellant has expressed a willingness to provide a covered storage space for bicycles within the commercial unit at ground floor which is within the appellant's ownership. I also observed that cycle storage if located at the rear of the commercial unit could be appropriately accessed via the shared alleyway at the rear.
45. I conclude that the development could provide adequate cycle storage. The proposal, therefore would not conflict with Policies H1, SP2 and INF2 of the CS, Policies SP8 and SC5 of the DS&P, Policies 3.5 and 6.9 of The London Plan (as amended) and the guidance in the Housing SPG in this respect.

Other Matters

46. The appeal site is located in an area with a PTAL rating of 5 which reflects very good accessibility to public transport provision. The proposal does not include provision for off-street parking, but such provision is not a feature of the existing building. There are parking restrictions evident on High Street North and in the surrounding area, including resident parking restrictions. However, I have no reason to take a different view to the Council that a lack of onsite parking would be acceptable in the particular circumstances of the development and that an additional residential unit at this property would not result in an unacceptable detrimental impact upon parking stress in the vicinity. In reaching this conclusion, I have taken into account that there is good accessibility to public transport, including nearby bus routes and the close proximity of East Ham underground station, and the levels of local car ownership from Census data.

Conclusion

47. I have found that the matters relating to provision for cycle storage and provision for disposal of waste and recycling associated to the development could be overcome through use of conditions if planning permission were granted. However, the absence of harm in this regard and the limited benefits to housing supply do not justify the harm identified with respect to the other four main issues which would be significant and overriding.
48. For the reasons given above and taking all other matters into consideration, I conclude that this appeal should be dismissed.

Gareth Wildgoose

INSPECTOR