



Appeal Decision

Site visit made on 9 September 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2019

Appeal Ref: APP/B5480/W/19/3220059

30A South Hall Drive, Rainham RM13 9HS

- 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 Jo Flack against the decision of the Council of the London Borough of Havering.
 - The application Ref P1378.18, dated 7 September 2018, was refused by notice dated 2 November 2018.
 - The development proposed is described as retrospective planning permission for subdivision of existing dwelling into 2 self-contained flats to ground, first and second floors.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application has been submitted retrospectively and I have considered the appeal on that basis.
3. It is indicated that the Council is in the process of preparing a new Local Plan, but that the Examination in Public is currently paused to enable further work to be undertaken. The only emerging policy I have been referred to is 7.7, Policy 9 (conversions and subdivisions), which the Council have relied on in the third reason for refusal. However, I have not been provided with any information on whether there are unresolved objections to this Policy. Therefore, as I do not know whether this Policy will be adopted in its current form, or at all, I can only give it very limited weight in considering this appeal.

Main Issues

4. The main issues are:
 - Whether the development provides an acceptable standard of living for the occupiers.
 - The effect of the development upon the living conditions of the occupiers of 30 South Hall Drive in respect of noise.
 - Whether the development would secure an appropriate housing mix for the area.

Reasons

Living conditions of the occupiers

5. There is no dispute between the parties that the size of the two flats that have been created fall below the standards set out under the Technical Housing Standards – Nationally Described Space Standard, and incorporated into the London Plan (March 2016) (the LP) under Policy 3.5. Taking the appellant's figures, the 1-bed 1-person ground floor flat has a gross internal area (GIA) of 29m², which is 8m² under the 37m² minimum residential space standard requirement for this size of unit. The upper floor flat occupies two floors and although the drawings show it as a 1-bed flat with study, the appellant describes it as a 2-bed 3-person flat. I observed during my site visit that the 'study' was occupied as a bedroom, so I would concur with the appellant's description rather than what is shown on the plans. This flat has a GIA of 53m², which is 17m² under the 70m² minimum residential space standard requirement for a 2-bed 3-person unit over two floors.
6. I note that the appellant considers that the space standards should be applied flexibly, as guidance, and I accept that in other respects both flats have good outlooks, separate sleeping areas, secure access and adequate parking, as required by Policy DC4 of the London Borough of Havering Core Strategy and Development Control Policies Development Plan Document 2008 (the CS).
7. However, even allowing for some flexibility, the shortfall in GIA is substantial and therefore, irrespective of the other factors alluded to, undoubtedly results in the living conditions of the occupiers being compromised through reduced space. This is further compounded by the absence of any outdoor amenity space for the 2-bed unit, as well as the absence of any dedicated waste and cycle storage facilities. Cumulatively these issues result in a significant impact on the overall quality of the accommodation, and an unacceptable impact on the living conditions for the occupiers.
8. I give very little weight to the appellant's claims that the occupiers have not complained about these matters, because the residential space standards exist to ensure an appropriate standard of accommodation for all occupiers, regardless of whether some may be prepared to accept lower standards. In any event, the standards are expressed as minimum requirements and there is no compelling evidence before me as to why a standard less than that should be accepted in this particular case.
9. I conclude, on this issue, that the development does not provide an acceptable standard of living for the occupiers, which is harmful to their living conditions. This is contrary to Policy 3.5 of the LP, which requires housing developments should be of the highest quality internally, including through meeting minimum space standards, Policy DC61 of the CS where it seeks to ensure that development meets the needs of all people of all ages, and Policy DC4 of the CS in respect of providing suitable private sitting out/amenity space for the upper floor flat and meeting the needs of cyclists. It is also contrary to the guidance of the London Borough of Havering Residential Design Supplementary Planning Document 2010, which indicates that regard should be had to the size and quality of internal spaces in new development, good quality and usable amenity space, and cycle parking and waste storage.

Living conditions of neighbouring occupiers

10. The Council was concerned about the potential for noise disturbance to the adjoining property No 30 on the basis of its bedroom abutting the kitchen/living room of the upper floor flat.
11. However, the appellant has explained that the respective rooms are separated by stairwells, as is shown on the submitted drawings, which has not been contested by the Council. I am satisfied that this, together with additional sound proofing, would be sufficient to prevent unreasonable noise disturbance to the occupiers of No 30.
12. I conclude, on this issue, that the effect of the development on the living conditions of the occupiers of No 30 would not be unacceptable with regards to noise. As such, there is no conflict with Policy DC4 of the CS in this regard.

Housing mix

13. I accept that, as a matter of fact, the proposal does not comply with 7.7, Policy 9 of the Havering Local Plan 2016-2031 (Secretary of State submission version) (the emerging LP) in numerous respects, including provision of at least one 3-bed unit.
14. However, the Council have not put any substantive evidence before me to demonstrate that there is a significant need for family units of 3 or more bedrooms in the area, or that the proposal involves the otherwise unacceptable loss of a house size for which there is a specific need. Therefore, on the basis of the evidence before me and having regard to my aforementioned conclusions on the current status of the emerging LP, I can only give any conflict with 7.7, Policy 9 very limited, non-determinative weight.
15. The current relevant adopted Policy DC4 of the CS has no requirement to provide a 3-bed unit through residential subdivisions. In respect of housing mix, Policy DC4 only requires that at least one 1-bed self-contained flat is provided with a separate sleeping area, and does not permit studio flats. As both flats have separate bedrooms and there are no studio flats, there is no conflict with CS Policy DC4 in this regard.
16. On the information before me, I conclude, on this issue, that the development does not provide an unsatisfactory mix of housing.

Other Matters

17. I note interested parties raised concerns over matters including general disturbance, privacy, parking and capacity in local services, but those matters did not feature in the Council's refusal reasons, and as I am dismissing the appeal for other reasons, it is not necessary for me to explore those issues further.

Planning Balance

18. The provision of one net additional dwelling to the local housing market would be a social benefit of the development, albeit in the absence of any substantive evidence on specific areas of housing need and given the quantum of development, the weight to be attached would be very limited. The local economy would have the potential to have some limited benefit through

expenditure from occupiers. I have also noted that the site is in a reasonably accessible location. These benefits weigh moderately in favour of the appeal.

19. I have also had regard to the Human Rights Act (HRA) 1998, which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights (ECHR). These include Article 8 – right for respect for private and family life and Article 1 of the First Protocol – protection of property. These are qualified rights and in appropriate circumstances an interference may be justified in the public interest. The aim is to ensure to strike a fair balance between the demands of the general interests of the wider community and the requirements of the protection of the individual's fundamental rights. Central to the principle of a fair balance is the doctrine of proportionality.
20. Dismissing the appeal would not render the occupants of the flats homeless. It would be a matter for the Council to decide whether it would be expedient to progress enforcement action in relation to this matter. I also note that the appeal building provides rented accommodation whereby the tenants could be given notice to leave the flats as existing tenancy agreements expire. In addition, the appeal building is located in a large metropolitan area and no evidence has been submitted indicating that there is a shortage of similar alternative accommodation, or that there are any special welfare needs for a child, or other person, that I should have foremost regard to.
21. I have identified significant harm insofar as the development does not provide an acceptable standard of living, with a consequent unacceptable impact on the living conditions of the occupiers of the flats. These are legitimate and well-established planning policy aims in the public interest and under the social arm of sustainable development, and would significantly and demonstrably outweigh the benefits of the proposal. As such, a refusal of planning permission would therefore be proportionate and necessary.
22. Having regard to the above points, in my view the dismissal of the appeal would be a limited interference with Article 8 and Article 1 of the First Protocol for the occupiers of the flats. Protection of the public interest cannot be achieved by means that are less interfering of their rights. As a result, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8 or Article 1 of the First Protocol of the ECHR, as incorporated by the HRA 1998.

Conclusion

23. On balance, and for the reasons outlined above, I conclude that the appeal should be dismissed.

Adrian Caines

INSPECTOR