



Appeal Decisions

Site visit made on 3 September 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2019

Appeal A: APP/G5750/C/18/3209987

Appeal B: APP/G5750/C/18/3212496

Land at 1187 Newham Way, East Ham, London E6 5JJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Anayet Hussain (Appeal A) and Ms Yeomon Emily Cheung (Appeal B) against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on: 27 July 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use to two self-contained residential units.
 - The requirements of the notice are: 1. Cease the use of the property as self-contained units. 2. Remove from the property one of the two kitchens, one of the two staircases, internal partitioning that solely facilitates the use as self-contained residential units, all duplicate doorbells, duplicate signage, duplicate satellite dishes and duplicate outside waste bins. 3. Remove the additional front door (as shown edged in green on the photograph attached at Appendix 1) and restore the land to its condition before the breach took place by reinstating the wall as illustrated on the photograph attached at Appendix 2. 4. Remove the brickwork and window (at the location as shown edged in blue on the on the photograph attached at Appendix 1) and restore the land to its condition before the breach took place by reinstating the garage and garage door as illustrated on the photograph attached at Appendix 2. 5. Remove from the property all but one supply of electricity, gas and water. 6. Remove from the site all debris arising from compliance with steps 1, 2, 3, 4 and 5.
 - The period for compliance with the requirements is: Five months.
 - Appeal A is 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 the appeals have 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 is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/G5750/W/19/3226721

1187 and 1187a Newham Way, London E6 5JJ

- 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 Anayet Hussain and Mr Yeomon Emily Cheung against the decision of the Council of the London Borough of Newham.
 - The application Ref 19/00133/FUL, dated 15 January 2019, was refused by notice dated 12 March 2019.
 - The development proposed is described as: Change of use from a two bedroom house (the lawful use) to a 3 bedroom house and a 1 bedroom house, including a two storey extension to the east side of the development plus new balcony and other alterations, with cycle parking, bins and amenity areas.
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Summary of Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice is upheld with a correction.

Appeal C

2. The appeal is allowed and planning permission is granted subject to conditions.

Application for Costs

3. An application for costs was made by Mr Anayet Hussain and Ms Yeomon Emily Cheung against the Council of the London Borough of Newham. This application is the subject of a separate Decision.

Preliminary Matters

4. The appellant has sought to combine grounds (a) and (f) to secure planning permission for an alternative to what the enforcement notice states. However, the alternative scheme involves building works, including extending the first-floor terrace so that it projects forward of the building. I am consequently not satisfied that these changes could be reasonably regarded as forming part of the development enforced against and thus this scheme cannot be considered under the deemed planning application. I will accordingly only consider the development enforced against under the ground (a) appeal.
5. Since the issue of the enforcement notice the Council has adopted the London Borough of Newham Local Plan, 2018 (the LP), the emerging policies of which were cited in the reasons for issuing the notice. I therefore give these policies full weight as the relevant development plan for the area and have consequently not considered any policies that have since been replaced or updated by the LP.

The Enforcement Notice

6. In order to facilitate the reversion of the residential use it is necessary to correct requirement 5. 1. of the enforcement notice, which would otherwise definitively cease all residential use. I do not consider that any injustice arises from correcting this requirement, which I shall set-out in my formal decision.

Appeal A

The ground (a) appeal

7. The main issues are the effects of the change of use on the:
 - i. provision of family sized accommodation;
 - ii. living conditions for occupiers; and,
 - iii. living conditions of neighbouring occupiers.

Reasons

8. The site is located in close proximity of a busy road and consists of a two-storey detached building. The immediate area is characterised by two and three storey residential buildings fronting onto Newham Way.

Family sized accommodation

9. The building was granted planning permission¹ as a two-bedroom detached property, albeit of a generous size which included an integral garage. It was constructed in around 2007. Based on the available evidence it would however appear that it was constructed or converted so there were up to 4 bedrooms in the property. Furthermore, it appears that it may have been used for a period as a House in Multiple Occupation (HMO).
10. There is however no certificate of lawfulness concerning the use of the property as an HMO, and which took place at a time when the property was under different ownership. I consequently afford that appellants assertion that the property was lawfully in use as such only limited weight. Any such use has also been supplanted by the subdivision of the building into two self-contained residential units. Furthermore, the site is in an area where there is an Article 4 Direction² which prohibits the change of use of a dwellinghouse to an HMO. This may also have had a bearing on lawfulness. The appellant also asserted in their planning application, which I am considering under Appeal C, that the lawful use of the building was as a two-bedroom house, which leads to further ambiguity, despite this assertion having later been withdrawn. Furthermore, a property licence³ was issued by the Council in 2014 based on the property being described as occupied by a single family providing 4 bedrooms. The issued licence was subsequently for a maximum of 8 people living as one household regardless of age.
11. It is therefore not for me, in the context of this appeal, to establish the lawfulness or otherwise of the previous uses. I am also conscious that the lawful use of the building as a small HMO could have readily reverted to that of a dwellinghouse without the need for planning permission.
12. Section 57(4) of the Act allows reversion to the last use following the issue of an enforcement notice provided that it was lawful. This right however does not extend to a past lawful use when there has been one or more intervening unlawful uses between it and the use alleged. In those circumstances, a nil use may result. However, as stated previously, no certificate of lawfulness has been sought for an HMO as I am not persuaded that the reversion of the property as a family home is no longer permitted. Furthermore, it is clear that the Council consider it desirable to enable the use of the property as a family home and so are unlikely to resist any future use of it as such. Accordingly, I attach significant weight to the Council's evidence about the need for family housing.
13. What however is known is that the building was granted planning permission as a detached dwelling and given its size, in my view, was very likely to have provided family sized accommodation, irrespective of the precise number of bedrooms it contained.
14. The change of use has however resulted in two much smaller units of accommodation. This has implications for community cohesion and population churn, which the Council evidences as being of particular concern within the Borough and which is ameliorated through the retention of larger houses – which are otherwise in decline.

¹ Council Ref 05/1226

² Made 31 July 2012 and Confirmed 10 June 2013

³ Licence Number 13/16964/HOSELE, dated 9 January 2014

15. Given the identification of a need for family sized accommodation within the borough, the loss of the permitted dwelling has adversely affected the local housing stock. I am also not persuaded on the evidence before me that the provision of the two smaller units of accommodation, in terms of any identified or overriding need, outweighs this particular loss.
16. I conclude that the change of use is harmful to the provision of family sized accommodation and fails to accord with Policies H1, H4, S1, S6, SP1, SP2 and SP3 of the LP as well as Policy 3.8 of the London Plan⁴ and Policy GG4 of the Draft London Plan. These policies, amongst other things, require there to be: a significant increase in family housing; specific protection for 3 and 4 bed+ family housing; reinforcement of communities; greater focus on improving housing quality; Borough-wide place-making; healthy neighbourhoods; high quality accommodation for living; a genuine choice of homes; and, homes for identified needs. For the same reasons it is contrary to the housing objectives of the National Planning Policy Framework (the Framework).

Living conditions for occupiers

17. Planning decisions should ensure that developments promote health and well-being, with a high standard of amenity for existing and future users.
18. The smallest of the units results in particularly inadequate accommodation to meet the needs of occupiers, given the provision of two bedrooms and likely number of occupiers. There is limited in-built storage space, particularly upstairs, and limited circulation space around furniture and other items leading to cramped living conditions. The only toilet and bathing facilities are downstairs. Furthermore, the only outside space amounts to approximately 2 sq. metres and is of limited depth. No cycle parking is provided.
19. The other unit of accommodation is however considerably larger, for a 2-bedroom unit with adequate storage and circulation space as well as adequate outside space. Any perceived minor shortfall when assessed against technical standards⁵ is therefore not significant given the layout of the unit.
20. I however conclude that the change of use is harmful to the living conditions of occupiers, having particular regard to the smaller unit of accommodation, and so I identify conflict with previously detailed Policies SP1, SP2 and SP3 of the LP as well as Policies 3.5, 6.9, 7.1 and 7.2 of the London Plan and Policies D3, D4 and GG4 of the Draft London Plan. These policies, amongst other things, require: housing developments to be of the highest quality internally; an increase in cycling; lifetime neighbourhoods; inclusive design and, efficient room layouts. Similarly, it fails to accord with the achieving well-designed places objectives of the Framework, the Housing Supplementary Planning Document 2016 and the technical standards.

⁴ The London Plan, The Spatial Development Strategy for London Consolidated with Alterations since 2011, March 2016

⁵ DCLG Technical housing standards – nationally described space standard, March 2015

Living conditions of neighbouring occupiers

21. I have very little evidence before me to substantiate concerns that the change of use results in an increase in noise and disturbance such that it is having an adverse effect upon health, the environment and general amenities of the area. I am therefore not persuaded, particularly given the sites location close to a busy road, that the increase comings and goings and change to the pattern inside and outside the premises is harmful in planning terms.
22. I conclude that the change of use does not harm the living conditions of neighbouring occupiers and so complies with Policies SP2, SP3 and SP8 of the LP as well as Policy 7.15 of the London Plan and Policy D13 of the Draft London Plan. These policies, amongst other things, require development to result in: healthy neighbourhoods; minimise environmental impact; good neighbourliness; and, avoid significant adverse noise impacts. For the same reasons it accords with the achieving well-designed places objectives of the Framework in this regard.

Conclusion

23. I have found that the change of use is harmful to the provision of family sized accommodation and that the smaller unit of accommodation gives rise to inadequate living conditions. The absence of other planning harms, including the living conditions of neighbouring occupiers, does not outweigh the harm I have identified. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) fails.

Appeals A and B

The ground (f) appeals

24. The purpose of the enforcement notice is to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives.
25. Aside from granting planning permission for an alternative to what the enforcement notice states, the appellant does not propose alternative or lesser requirements. Given the nature of the alternative scheme, as I have explained, it cannot reasonably be regarded as forming part of the development enforced against. Accordingly, the appeal on ground (f) must therefore fail.

The ground (g) appeals

26. Whilst I appreciate the building is occupied by two separate households, little evidence has been advanced to persuade me why there are any particular circumstances pertaining to those occupiers that would make securing alternative accommodation, within a five-month period, impractical, such that they would be made homeless. As the Council has also highlighted, it has powers under section 173A(1)(b) of the Act to formally extend the compliance period, but that would be a matter entirely for them.
27. The appellants have also submitted their planning application for an alternative scheme involving two units of accommodation. In this regard, no further

enquiries with the Council are necessary or justify extending the compliance period to some 18 months.

28. For these reasons the appeal on ground (g) fails.

Overall Conclusion on Appeals A and B

29. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Appeal C

30. The main issues are the effects of the development on the:

- i. provision of family sized accommodation; and,
- ii. living conditions for occupiers.

Reasons

31. The proposal relates to the subdivision of the property into a 1-bedroom house and a 3-bedroom house including a two-storey side extension and terrace.

Family sized accommodation

32. Part of the proposal thus relates to a two-storey side extension to the larger of the two current units of accommodation so that it would consist of 3-bedrooms on the first-floor with a larger living room area on the ground floor. In my view this would result in a size, some 86 sqm in floor-space, and type of unit that would adequately provide for family accommodation.

33. I conclude that the development would therefore provide family sized accommodation and so would accord with previously detailed Policies S1 and H4 of the LP as well as Policies 3.3 and 3.14 of the London Plan and Policy H10 of the Draft London Plan. These policies, amongst other things, require development to result in: increasing housing supply; the maintenance and enhancement of the quality of existing homes; and, avoid the loss of existing housing. For the same reasons it would accord with the housing objectives of the Framework.

Living conditions for occupiers

34. The proposed one-bedroom unit would be marginally smaller than the technical standards, but I have not been convinced that it results in poor quality accommodation or that the rooms would lack natural light or air given its layout and size, at some 53 sqm in floor-space. There would be adequate space for storage and circulation and an upstairs bathroom would be provided. The increased depth of the terrace would also result in a modest, but usable and adequate outside space for a one-bedroom property. Cycle parking is also proposed.

35. I am therefore not persuaded that owing to their respective layouts, any shortfall when assessed against the technical standards or the policies of the LP would be significant in terms of health, accessibility or flexibility. Indeed, overall, the proposal provides two units of accommodation which in my view adequately meet different housing needs.

36. I conclude that the development would not be harmful to the living conditions of occupiers and so would accord with previously detailed Policies SP2, H1 and H4 of the LP as well as previously detailed Policies 3.5 of the London Plan and D4 of the Draft London Plan. For the same reasons it accords with the achieving well-designed places objectives of the Framework.

Planning conditions

37. In addition to the standard time condition it is necessary to specify the plans in the interests of certainty. A materials condition is also necessary to protect the character and appearance of the area. A condition to secure the retention of the proposed cycle parking and bin storage is also required in the interests of maintaining adequate provision. I have not been persuaded on the evidence before me that other planning conditions would be necessary or relevant to the development to be permitted.

Other Matters

38. I appreciate the appellants have purchased the site and were not aware that its subdivision into two residential units was unauthorised. However, this has no bearing on my consideration of the planning merits of the development before me.
39. Representations have been received, including about loss of privacy arising from the proposed balcony/terrace, however this was not a matter in dispute between the Council and appellant and I have little evidence, including observations during my own site visit, to persuade me that the proposal results in this or other planning harms.

Conclusion on Appeal C

40. For these reasons and having regard to all other relevant matters raised, I conclude that Appeal C should be allowed.

Formal Decision

Appeals A and B

41. It is directed that the enforcement notice be corrected by:
- deletion of the words '*Cease the use of the property as self-contained residential units.*' and their replacement with the words '*Cease the use of the property as more than one self-contained residential unit.*'
42. Subject to this correction the appeals are dismissed and 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.

Appeal C

43. The appeal is allowed and planning permission is granted for the change of use from a two bedroom house (the lawful use) to a 3 bedroom house and a 1 bedroom house, including a two storey extension to the east side of the development plus new balcony and other alterations, with cycle parking, bins and amenity areas at 1187 and 1187a Newham Way, London E6 5JJ in accordance with the terms of the application, Ref 19/00133/FUL, dated 15 January 2019, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: *Proposed Drawings 1513AH_PRE:SH4 REVISION C.*
- 3) The external finishes used in the development hereby permitted shall match in material, colour, style, bonding and texture those used on the existing building.
- 4) The approved cycle parking and bin storage shall be retained for their intended purposes in perpetuity.

Paul T Hocking

INSPECTOR