



Appeal Decision

Site visit made on 18 February 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st June 2020

Appeal Ref: APP/U5930/W/19/3241088
619-623 Lea Bridge Road, Leyton E10 6AJ

- 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 Elitok Properties Limited against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref: 183088, dated 6 September 2018, was refused by notice dated 23 October 2019.
 - The development proposed is described as: Modification of existing first floor and second floor at 619-623 to form a large HMO.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - Whether the appeal site is an appropriate location for the proposed development, having regard to the development plan;
 - The effect of the proposed development on the character and appearance of the area;
 - Whether the proposed development would make suitable provision for the storage of bicycles and refuse, and for the security of the future occupants; and
 - The effect of the proposed development on the living conditions of the occupiers of nearby residential properties.

Reasons

3. The appeal building is part of a terrace of two storey buildings and it was evident from my site visit that originally it comprised three individual buildings that have subsequently been combined into one structure. The ground floor is occupied by a retail unit and the upper floor of the building has been extended to provide two levels of accommodation above. These are presently occupied as small, self-contained, flats.
4. I am advised that the alterations to the upper part of the building and the occupation as flats is unauthorised, and that there are extant enforcement

notices, requiring the residential use to cease and that the second floor extension be removed.

5. Although the planning application described the proposal as a House in Multiple Occupation (HMO), as the appeal building is not a dwelling house *per se*, the proposal is more correctly for a building in multiple occupation. However, as this is largely a semantic difference and the relevant policies are equally applicable, for the purposes of the appeal and this decision I have used the term HMO to refer to both.

Whether the appeal site is an appropriate location for the proposed development

6. Policy CS2 of the Waltham Forest Local Plan Core Strategy 2012 (the Core Strategy) seeks to maximise the number of quality homes in the Borough, maximise the number of affordable homes, and to create an economically mixed and balanced community by seeking a range of home sizes and tenures in new development. Part C) of Policy CS2 states that the Council will prioritise the need for larger (3 bedroom or more) homes and resist the loss of larger homes. The supporting text to Policy CS2 sets out that the Council will support flats above shops and seek to optimise housing densities near local centres. However, it also sets out that there is concern about the overconcentration of flat conversions and HMOs in the southern part of Borough.
7. Policy DM6 of the Waltham Forest Development Management Policies Local Plan 2013 (the DMP) specifically addresses development involving houses or buildings in multiple occupation. This sets out that new HMOs will be resisted in the Borough's Restricted Dwelling Conversion, Houses in Multiple Occupation and Buildings in Multiple Occupation Wards (Restricted Conversion Wards).
8. The supporting text to Policy DM6 acknowledges that HMOs can contribute to meeting certain housing needs but also recognises that there are some areas where conversions would be incompatible with the existing character of the area.
9. It is common ground that the appeal building is located within a Restricted Conversion Ward identified by the Policy DM6. Core Strategy Policy CS2 and DMP Policy DM6 are based on evidence that is now some years old and the appellant suggests that Policy DM6 both diverges from the Policies in the National Planning Policy Framework (the Framework) and is internally contradictory by supporting conversions to HMOs in parts of the Borough but resisting them in others.
10. Although Policy DM6 is based on evidence that is some years old, neither party has submitted any evidence that would indicate that the circumstances with regard to overconcentration of flat conversions and HMOs, or the shortfall in larger homes, has changed. Nor is there any evidence before me in respect of the Council's five year housing land supply or performance against housing delivery targets. The Framework seeks to significantly boost the supply of housing but also sets out that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. The Framework is silent in respect of HMOs specifically but does recognise that there is a need for affordable housing. Whilst the appeal proposal would result in the provision of lower cost housing it is not being promoted as affordable housing and does not meet definition of affordable housing in Framework. The Restricted Conversion Wards identified in Policy

DM6 are clearly based on the evidence that was available at the time the Policy was drawn up. On the evidence before me, I can see no internal conflict in the approach taken by Policy DM6, nor any inherent conflict with the requirements of the Framework.

11. Core Strategy Policy CS2 only refers to HMOs insofar as it is supportive of the conversion of HMOs back into family sized housing. It is also clear that the whilst the Policy seeks to increase housing supply in the Borough, the Council's priority is for dwellings with three bedrooms or more. It is not argued that the proposal would result in the loss of a dwelling suitable for occupation by a family and in the absence of any substantive evidence in respect of the use of the upper floor of the appeal building prior to the current unauthorised extensions and use as flats, I have no reason to find that this would be the case. Although the proposal would not fundamentally conflict with Core Strategy Policy CS2, as the proposed development does not provide any dwellings that would be suitable for occupation by a family I do not find that there is any specific support for the proposal in the policy.
12. This notwithstanding, the only evidence that I have indicates that this part of the Borough has large numbers of small flats and HMOs. In order to rebalance the Boroughs housing stock, the Council's policies, particularly DMP Policy DM6, identify areas where further new HMOs would not be permitted. It is not in dispute that the appeal site is within a Restricted Conversion Ward and consequently conflicts with Policy DM6.
13. I therefore conclude that the appeal site is not an appropriate location for the proposed development, having regard to the development plan. It would not comply with the relevant requirements of Policy DM6 of the DMP.

Character and appearance

14. The appeal proposal seeks to remove an existing extension to the rear of the building which I understand from the evidence is itself unauthorised and subject of an extant enforcement notice. From the evidence I have, this enforcement notice relates only to the second floor extension to the rear of the existing roof plane. This would be replaced by three large flat roofed dormers shown on the submitted drawings as being of an equivalent height and projection to the current unauthorised extension, and overall of an equivalent width, but which would be separated by a gap of approximately 1 metre.
15. When I visited the site, I was able to view the appeal site and the current extension from Copeland Road and from a footpath that links Livingstone Road to Poplars Road, both of which allow views into the interior of the perimeter block. This perimeter block is largely comprised of two storey terraced properties with pitched roofs separated by upward projecting party walls. Poplars Road and Livingstone Road consist of terraced dwelling houses of a broadly similar design with full height bay windows and paired entrance doors on the front elevations and a two storey rear addition with a roof set below the height of the main roof.
16. From what I saw as I visited the site, the short parade of shops on Lea Bridge Road, which includes the appeal building and forms a continuation of the terraces on Poplars Road, was most likely purpose built as individual shop units with living accommodation above. There is surviving evidence in the form of pilasters and console brackets on the front elevations which would originally

have been part of a shop front consistent with the age of the buildings, although the remainder of the shop fronts themselves are now either much altered or lost. It was also evident that originally these units also had lower two storey rear additions. Some of these individual units, including the appeal building and numbers 635 to 637 at the end of the terrace, have subsequently been amalgamated to form larger units.

17. In the wider surrounding area, the architecture is more diverse, mainly consisting of two and three storey buildings with commercial premises on the ground floor on Lea Bridge Road, Hoe Street and High Road Leyton with two storey two storey terraced housing forming well defined perimeter blocks on the roads leading off these.
18. The exterior of the perimeter block that contains the appeal building has a degree of uniformity due to the similar design of the buildings. However, inside the block, the rear of the many of the buildings have been altered over time with a variety of extensions, including dormer windows. I also observed that there were other rear facing dormer windows on properties in the wider area. Whilst a number of these dormers extended over the existing rear additions to the properties, they were not as large as those that are part of the appeal proposal.
19. I saw that the other property formed of amalgamated units at 635 to 637 Lea Bridge Road has been extended by way of three dormer windows on the rear roof slope but also noted that these are not as large as those proposed by the appeal scheme.
20. I accept that the proposed dormers are set below the ridge height of the appeal building and that the building has been extended considerably at ground floor level. Nevertheless, the appeal building overall has been substantially altered previously and despite the small gaps proposed between the new dormers, due to their size and the extent that they would project from the rear of the building, the overall effect would not be dissimilar to that of the current second floor extension. Due to its overall size and position at a high level this appears as a disproportionately large addition to the building and is inconsistent in appearance with other buildings in the area which largely retain the appearance of being individual units within the larger terraced form. For the same reasons, I find that the proposed dormer extensions would also be inconsistent with the built form of the area and a disproportionately large addition to a building which has previously been much extended.
21. Although other buildings in the area have been much altered, the alterations read as subsidiary additions and the original form of the buildings is still discernible. I recognise that the appeal building is not within a conservation area or other protected area. Nonetheless, the various additions to the buildings, in a range of styles and materials, results in a visually complex and highly articulated built form to the interior of the perimeter block in contrast to the more uniform exterior, and which is integral to its character and appearance. Although not widely visible from the public domain, I saw when I visited the site that the appeal building is clearly visible from part of Copeland Road and from a footpath that links Livingstone Road to Poplars Road. It would also be visible from the rear of a number of properties on Livingstone Road. In these views the appeal proposal would be seen in context with the smaller scale and more varied rear elevations of the surrounding buildings and,

due to the size and massing of the building resulting from the appeal proposal, it would be inconsistent with the surrounding built form, and harmful to, the appearance of the area.

22. I therefore conclude that the proposed development would cause harm to the character and appearance of the area. It would not comply with the relevant requirements of Policies 7.4 and 7.6 of the London Plan 2016, Core Strategy Policy CS15 and Policies DM4 and DM29 of the DMP which seek to ensure that new development is of a high standard of design that has regard to its context and reinforces or enhances local distinctiveness.

Storage of bicycles and refuse, and the security of the future occupants

23. The submitted drawings do not show any provision for the storage of refuse bins for use by the occupants or for the storage of cycles.
24. When taken together, Core Strategy Policy CS6 and DMP Policy DM32 seek to ensure that new development provides adequate, accessible and well-designed, secure, internal and external storage facilities for residual waste and recycling that protect the amenity of occupiers and neighbouring development.
25. Core Strategy Policy CS7 and DMP Policy DM16 require new development to provide cycle parking in accordance with the Council's minimum standards, whilst DMP Policy DM14 seeks to promote sustainable transport. Policy DM33 of the DMP expects new development to contribute to a safe environment and seek to incorporate Secured by Design Standards.
26. The fourth reason for refusal also refers to Core Strategy Policy CS13 relating to health and well-being which seeks to promote regular exercise by making cycle routes more attractive, and to improve cycle access to green and open spaces. Nonetheless, this policy is not directly related to the provision of cycle parking or storage facilities within new development and I do not consider that it is relevant to this particular issue.
27. The Appellant argues that cycle and waste storage can be accommodated in the lobby area adjoining one of the stairwells and that a door could be added at the top of the stairs to ensure that both floors of the building had secure access to the lobby. Each upper floor is currently served by a separate staircase. It is suggested that these are matters of detail which could be addressed using planning conditions.
28. I was able to undertake an internal inspection of the building during my site visit and I saw the lobby area in question. I have no details in respect of the number of cycle parking spaces that would be required or the number of waste bins that would be necessary to serve the proposed development. From what I saw when I visited the site, although the lobby area may be able to accommodate the required cycle parking and bin storage it is less clear how this might work in practice or whether cycle storage would impede access to bin storage or vice versa. In addition, due to the configuration of the building, it was difficult to determine how this area could be effectively ventilated in order to prevent odours if it were to be used for storage of refuse bins.
29. The lobby area in question contains the entrance and stairway to the second floor of the building. It is proposed that the storage area would be available to the occupiers of both upper floors of the building. However, it is not accessible internally from the first floor which is served by a separate entrance and

staircase. The appellant suggests that a doorway could be provided from the first floor internal corridor to the staircase to provide access and maintain security. From the submitted drawings and from what I saw when I visited the site, after its initial rise from the ground floor level, the staircase serving the second floor turns at 90 degrees over the internal corridor of the floor below. A storage cupboard is present at the end of the first floor internal corridor below this second rise of the staircase. Due to the configuration of the stairway it would not be possible to insert a doorway at this point and based on the proposed internal layout there do not appear to be practical alternatives.

30. Whilst a condition in respect of these points may be able to meet the relevant tests in the Framework and the Planning Practice Guidance, in order to be effective, there also needs to be a reasonable prospect that any condition could be complied with. Based on the evidence before me and what I saw when I visited the site, I am not satisfied that in this case that these matters could be appropriately addressed after planning permission has been granted.
31. With regard to crime prevention, there is only limited information in the appellant's submission in respect of security measures at the proposed premises. However, having regard to the comments of the Council's Crime Prevention Officer that are set out in the Planning Officer's report, the submitted drawings, and what I saw when I visited the site, I am satisfied that these are matters of detail that could be secured by an appropriately worded planning condition, which would satisfy the requirements of DMP Policy DM33.
32. I therefore conclude that the proposed development would not make suitable provision for the storage of bicycles and refuse. It would not comply with the relevant provisions of Core Strategy Policies CS6 and CS7, and DMP Policies DM14, DM16 and DM32.

Living conditions of neighbouring occupiers

33. Whilst there is some disagreement between the parties as to what the development should be called and whether it amounts to one HMO or two separate ones, this is not particularly fundamental to the proposal which would result in the upper floors of the building being occupied on the basis of the individual bedrooms with the occupiers sharing kitchen facilities. The Council state that the occupancy level would be between 11 and 18 persons based on the size of the units to be provided.
34. The appeal building is located within a terrace of buildings comprising commercial premises at ground floor level with some residential accommodation on the upper levels. This stands adjacent to a terrace of wholly residential properties on Poplars Road. Lea Bridge Road is a busy main road which in the vicinity of the appeal building is largely comprised of buildings with commercial premises on the ground floor and other uses, including residential, on the upper floors. To the north east of the appeal site, on the far side of Copeland Road, there are wholly residential properties, although on the opposite side there are further mixed use buildings. Immediately to the north of the appeal building there are terraced houses on Livingstone Road.
35. I saw when I visited the site that there are a number of uses present nearby that will be open into the evening, and that the immediately surrounding area had a high and regular footfall. There was also a regular flow of traffic on Lea

Bridge Road. Consequently, the background noise levels were higher than in the nearby purely residential streets leading off Lea Bridge Road. Whilst I accept that this is just a snapshot of the conditions at the time that I was present at the site and in the surrounding area, there is no evidence that would indicate that this was atypical or that, whilst there would be reduced levels of activity in the evenings, the background noise levels would not be higher than in a wholly residential area.

36. The appeal building adjoins other properties with residential accommodation above. The appeal proposal would result in an increase in pedestrian movements on Lea Bridge Road, accessing and egressing the proposed development. The appeal scheme would be accessed via two separate entrances, one serving each floor, and which are located adjacent to commercial premises. Within the context of the already high footfall and higher background noise levels in the area this would not, in my view, significantly increase noise levels or create additional disturbance.
37. I do not have any information pertaining to the internal layout of the upper floors of the properties to either side of the appeal building and rooms within the proposed development would be adjacent to the common boundary with these. Nevertheless, I am satisfied that suitable measures could be put in place to prevent the transmission of noise between the buildings where they would be contiguous. This could be secured by an appropriately worded planning condition.
38. Whilst the rear of the proposed development would face towards the rear of residential properties on Livingstone Road, the proposed development would not have any outdoor amenity space and these properties currently experience a degree of overlooking from existing upper floor rear windows in other nearby properties on Lea Green Road. The Council have not raised overlooking or loss of privacy as an issue and from what I saw when I visited the site, and was able to view the properties opposite from the upper floors of the building in its current form, I do not find that the proposed development would result in an unacceptable degree of overlooking or loss of privacy to these properties.
39. Core Strategy Policies CS7 and CS13 are referred to in the reason for refusal. Policy CS7 relates to sustainable transport. The Council has not raised car parking as a specific issue in either the officers report, or its statement of case. I have noted that the Highway Authority have commented that the development should be car free and that the Officer report states that this could be achieved by way of an agreement under Section 106 of the Town and Country Planning Act 1990. The appellant merely states that as there is no provision to park a car on the appeal site congestion from car use cannot be an issue.
40. The appeal building is located in an area that has good access to public transport, with a Public Transport Accessibility Rating of 5, and is located in an area with a good range of shops and services nearby. I also saw when I visited the site that there are parking restrictions on Lea Bridge Road in the form of double yellow lines and that the surrounding residential streets are subject permit controlled parking. In such circumstances it would be possible to secure car free development through a suitably worded legal agreement. However, I do not have such an agreement before me. This notwithstanding, in the

absence of any other harm to living conditions, this is a matter that would be capable of resolution.

41. Core Strategy Policy CS13 referred to in the reason for refusal addresses promoting health and well-being. Whilst part A) of this policy refers to noise pollution, in the context of the other parts of the Policy and the supporting text, which sets out how the policy is to be applied, this refers to noise sources such as roads, railways and industrial sites, rather than from noise arising from residential uses, to which there is no specific reference either within the policy itself or the supporting text. Consequently, I do not consider that this policy is relevant to the development before me.
42. I therefore conclude that the proposed development would not cause harm to the living conditions of the occupiers of nearby residential properties. It would comply with the relevant requirements of DMP Policy DM32 which seeks to ensure that new development does not adversely affect the living conditions of the occupiers of existing neighbouring properties.

Conclusion

43. Based on the evidence before me, I have found that the appeal site is not an appropriate location for the proposed development having regard to the development plan, that the proposed development would cause harm to the character and appearance of the area, and that the development would not make suitable provision for the storage of bicycles and refuse. The appeal proposal therefore conflicts with relevant policies in the development plan that are consistent with the requirements of the Framework. Although I have found that the proposed development would not cause harm to the living conditions of the occupiers of nearby residential properties and that through the use of a planning condition appropriate security measures could be achieved, neither of these points either singly or collectively overcomes the conflict with the development plan or the other harm that I have found.
44. Whilst the Framework seeks to significantly boost the supply of housing, this is not an objective to be pursued to the exclusion of all others and in the absence of any evidence that circumstances have significantly changed since the Council's policy restricting the development of HMOs was adopted, this does not justify granting permission for a scheme that would not function well or add to the overall quality of the area, and is not sympathetic to local character or the surrounding built environment. No other material considerations have been identified that would indicate that permission should be granted for a proposed development that does not comply with the relevant provisions of the development plan.
45. For the above reasons, I conclude that the appeal should be dismissed.

John Dowsett

INSPECTOR