



Appeal Decision

Site visit made on 9 June 2020

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2020

Appeal Ref: APP/G5750/W/19/3243034

121A Earlham Grove, Forest Gate, London, E7 9AP

- 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 Sulaiman Ali against the decision of the Council of the London Borough of Newham.
 - The application Ref: 19/01920/FUL dated 2 July 2019, was refused by notice dated 6 September 2019.
 - The development proposed is described as retrospective planning application for retention of large HMO (Sui-Generis).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In December 2019, the Mayor of London issued the Draft London Plan (2019) (the DLP) he intended to publish. The Secretary of State wrote to the Mayor on 13 March 2020, issuing an Annex containing directions setting out modifications. The plan has undergone an examination and is at an advanced stage and therefore, where its policies are not proposed to be modified by the Annex, they attract significant weight. The parties have been given an opportunity to comment on the updated plan and Annex.
3. The appeal site (No. 121A) forms the ground and basement floors of No. 121 Earlham Grove which is a semi-detached property. The first and second floors comprise No. 121B Earlham Grove, which is the subject of a separate appeal (Ref: APP/G5750/W/19/3243039) for a similar proposal. The appeals are not being considered jointly because each is the subject of a separate planning application by a different applicant/appellant. As Inspector for the other appeal I am aware of the details of that case and will have regard to it as appropriate.
4. The development includes a single storey rear extension which accommodates kitchen facilities integral to the scheme. The extension is not shown on drawing No. D01A (Pre-existing ground floor plan) but is shown on drawing D02 Rev1 (Existing ground floor plan). As there is no confirmation of the status of the extension, I have not regarded this as any form of fallback position available to the appellant.
5. As the planning application form declares the current use commenced upon 8 August 2018, I am considering the appeal on this basis, as a retrospective proposal.

Background and Main Issue

6. The decision notice sets out two reasons for refusal. The first reason for refusal was that the development resulted in the loss of a family sized residential unit. The appellant expresses some doubt as to the lawful use of the appeal site, and therefore, whether a family sized residential unit would be lost as a result of the development. I shall return to this later in the Other Matters section of this decision.
7. The Council's second reason for refusal states the development would adversely affect neighbouring properties through increased noise and disturbance but does not specify which properties. In defining the main issue below I've had regard to the observations on my site visit to define affected neighbouring properties.
8. Accordingly, the main issue is the effect of the development upon the living conditions of the occupiers of Nos. 119, 121B and 123 Earlam Grove with particular reference to noise and disturbance.

Reasons

9. Earlam Grove is a primarily residential street approximately 400m from Forest Gate town centre. The rear garden backs onto the railway line serving the nearby Forest Gate Station. Whilst it can only represent a brief snapshot in time, at the time of my visit, foot and vehicular traffic was light around the appeal site. The noise of vehicular traffic, occasional trains and associated activity was audible in the background, but not dominant or obtrusive over the duration of my visit. The noise from trains was noticeable. However, the occasions were short and infrequent.
10. The development is understood to accommodate up to 11 occupiers in 7-bedrooms. At least 7 occupiers or groups of occupiers living largely independent lives, having reduced dependence on shared travel, is likely to result in a considerable increase in the number of comings and goings, above that of a typical residential dwelling. It would be likely to include comings and goings by private cars, taxis, the delivery of meals and other purchases, social visitors, and associated opening and closing of doors. The plans show a modest kitchen, but do not show dining or communal living areas. This could increase the use of outside space where any noise would be less contained, by groups of residents and/or visitors, particularly in more clement weather.
11. The appellant has suggested the number of occupants could be controlled by planning condition or by other housing legislation. However, there is no details of this legislation or a planning condition before me. Furthermore, based upon the information before me the enforceability of such a planning condition would appear questionable, including for the reason that guests of the occupiers may attend the property and it could not control the number of comings and goings and associated noise.
12. For the reasons above the development is likely to result in noise and disturbance to a level would result in significant harm to the living conditions of the occupiers of Nos. 119, 121B and 123 Earlam Grove. This would be contrary to Policy SP8 of the Newham Local Plan (2018) (the Local Plan) which expects developments to be neighbourly and avoid unacceptable exposure to noise. It would conflict with Policy 7.15 of the London Plan (2016) (the London

Plan) which expects development should avoid significant noise impacts, and Policy D13 of the DLP which has similar aims. It also conflicts with paragraph 127(f) of the National Planning Policy Framework (2019) (the Framework) which requires that planning decisions create places that promote health and well-being with a high standard of amenity.

13. The Council has referred to Policies S1, H1, H3, SP2 and SP3 of the Local Plan, Policy 7.1 of the London Plan, and Policies GG1, GG3, GG4 and D1 of the DLP in the reason for refusal. However, these primarily relate to broad high-level spatial strategy and placemaking, specialist accommodation, considerations of health and design. Therefore, the policies I previously set out are the most relevant to this issue.

Other Matters

14. The appellant has expressed doubts as to the lawful use of the appeal site, suggesting the C3 use is lost, and questioned the implementation of previous permissions. However, little substantive information has been provided. I see no substantive justification to doubt the validity of the certificate of lawfulness (CLU) for the existing use as two self-contained flats (17/00894/CLE). Although the certificate does not appear to specify the use class of the flats. There is a Borough wide Article 4 Direction in force (confirmed on 10 June 2013) preventing the change of use from C3 (a dwelling house) to a C4. The Council's report outlines the site history and absence of any evidence to the contrary in coming to the view the lawful use is C3.
15. The pre-existing ground floor plan (Ref D01A) shows a kitchen, living area, two-bedrooms, two unspecified rooms (capable of providing bedrooms) and a study in Flat A, with stairs to/from Flat B. At my site visit the appeal site appeared to be laid out in general accordance with the submitted plans, although the front rooms 1 and 2 were a single room, and not in use as a bedroom. The evidence before me including existence of the CLU, the Article 4 Direction, and the submitted pre-existing plan Ref D01A, are not outweighed by the evidence the appellant has provided which attracts little weight. On the basis of the evidence before me the lawful use of the appeal site appears highly likely to be a C3 dwelling/house. Therefore, the appellant's suggested doubts as to the use, does not justify allowing the development before me which would result in significant harm (from noise and disturbance) to the living conditions of occupiers of neighbouring properties.
16. The appeal site is located within the 6.2km Zone of Influence for the Epping Forest Special Area of Conservation (SAC). The Council's Habitat Regulation Assessment (HRA) advises the development either when considered alone, or in combination with other developments, is likely to have a significant effect on the sensitive interest features of the SAC through increased recreational pressure. Having regard to the SAC Interim Mitigation Strategy, the Interim Approach to Managing Recreational Pressures on the SAC by Natural England (October 2018), and the Newham Interim Habitats Funding Statement (April 2019), the Council concludes no financial contribution would be required.
17. Whilst I note the Council's conclusions, as the competent authority the Conservation of Habitat and Species Regulations 2017 place a duty on me to undertake an appropriate assessment of the implications of the appeal scheme for the site's conservation objectives. However, in-light of my findings on the main issues it has not been necessary for me to pursue this matter further,

given the development is unacceptable for other reasons. As such, planning permission will not be forthcoming via this appeal and the designated habitats at Epping Forest will therefore not be affected by my decision.

18. The appeal site appears well located for access to services and facilities and public transport links. The appellant advises me the proposal does not conflict with Framework and development plan policies in respect of the character and appearance, living conditions of future occupiers of the development, flood risk, highway safety, and that cycle and bin storage can be provided. It is also indicated that all occupants would have access to an adequate level of amenity space. Based upon the evidence before me I see no reason to disagree. However, compliance with the relevant policies in regard of these matters attracts neutral weight and would not outweigh the harm I have found above.
19. The appellant suggests the development would result in an enhancement in the character and appearance of the area. However, based upon the plans before me the proposal does not result in external alterations, aside of the single storey rear extension. That appears to match the materials of the building and be ancillary in scale. However, the development as a whole does not result in an enhancement to the character and appearance of the area.

Conclusion

20. I have not been provided with any substantive evidence as to whether this is the appellant's or other occupiers only or primary residence, but any future enforcement notice would put the occupation of the dwelling by the current occupiers at risk. This would represent an interference with their rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life) as incorporated by the Human Rights Act 1998.
21. Having regard to the legitimate and well-established planning policy aims to protect the living conditions of the occupiers of neighbouring properties, in this case I consider that greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the appellant or occupants.
22. Moreover, the development would be contrary to the development plan and the Framework and there are no other considerations, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR