



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/19/3243039

121B 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 Ms Shaheda Ali against the decision of the Council of the London Borough of Newham.
 - The application Ref: 19/01942/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. 121B) forms the first and second floors of No. 121 Earlham Grove which is a semi-detached property. The basement and ground floors comprise No. 121A Earlham Grove, which is the subject of a separate appeal (Ref: APP/G5750/W/19/3243034) 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. 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

5. 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 disputes this as they consider that the

residential C3 use has been lost and the lawful use of the site is as a C4 small House of Multiple Occupation (HMO). I shall return to this later in the Other Matters section of this decision.

6. 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.
7. Accordingly, the main issue is the effect of the development upon the living conditions of the occupiers of Nos. 119, 121A and 123 Earlham Grove with particular reference to noise and disturbance.

Reasons

8. Earlham 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.
9. The development is understood to accommodate up to 12 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.
10. No. 121A is directly below No. 121B so the occupiers of No. 121B need to walk past the front door and use stairs adjacent to it. Additionally, the rear windows of 121A back onto the garden and side return areas. Therefore, occupiers of No. 121A are likely to be particularly susceptible to noise and disturbance when outside or communal space is being used. 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.
11. 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, 121A and 123 Earlham 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.

12. 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

13. In suggesting the site benefits from a lawful C4 use, the appellant has questioned the implementation of previous permissions. However, 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. However, in response to the appellant's assertion of the C4 use in their appeal statement, the Council's appeal statement only relies upon the delegated report.
14. The pre-existing and existing floor layout plans (drawing D01 Rev-1 and D02 Rev-1) show the appeal site providing seven unspecified rooms, two toilet/bathrooms and a kitchen. At my visit it appeared laid out in general accordance with the plans, with the décor appearing to have been present for several years. The lack of further challenge to the C4 use by the Council and the Article 4 Direction, do not appear to outweigh the pre-existing layout plan, the layout and condition of the property. However, having regard to the evidence before me, the parties have provided little conclusive evidence to substantiate the correct the lawful use.
15. Whether the lawful use is a C3 or a C4 use and a family dwelling would or would not be lost, the number occupiers and level of noise and disturbance would be greater under the Large HMO scheme before me. Therefore, this 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 issue 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 development would be likely to increase the number of persons or households being able to be accommodated at the appeal site. 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 space. Based upon the evidence before me I see no reason to disagree. There are no discernible external alterations to the property, so the effect on character and appearance is neutral. The compliance with policies and the increase in number of occupiers does not outweigh the harm I have found above.

Conclusion

19. 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.
20. 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.
21. 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