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# Appeal Decision

Site visit made on 15 September 2020

**by R Satheesan BSc PGCert MSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 September 2020**

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**Appeal Ref: APP/U5930/C/19/3242143**  
**113 Waltham Way, Chingford E4 8HD**

- 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 appeal is made by Mr C Philippou on behalf of Stef & Philips Ltd against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
  - The enforcement notice was issued on 18 October 2019.
  - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the dwellinghouse to use as a House in Multiple Occupation ('HMO') (Use Class C4) ("Unauthorised Development").
  - The requirements of the notice are:
    1. Cease the use of the property as a House in Multiple Occupation (Use Class C4);
    2. Remove the kitchen units, kitchen sinks and associated drainage connections, fridges, washing/drying machines from all bedroom units which facilitates the use of the property as a House in Multiple Occupation (Use Class C4).
    3. Remove the shared kitchen facilities and associated drainage connections from the first floor of the property and which facilitates the use of the property as a House in Multiple Occupation (Use Class C4).
    4. Remove all fixtures and fittings associated with the use of the property as a House in Multiple Occupation (Use Class C4), including but not limited to, all signage, door locks and door numbers.
    5. Remove all but two sets of shower and toilet facilities and associated drainage connection.
  - The period for compliance with the requirements is six months
  - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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## Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## The Appeal on Ground (a) and the Deemed Planning Application

### Main Issues

2. The main issues are:
  - Whether the Class C4 HMO use is acceptable, having regard to the effect on the supply of single family dwelling houses;

- The effect of the use of the property as a Class C4 HMO on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance; and
- Whether the Class C4 HMO use makes adequate provision for parking and the effect of any lack of provision on highway safety.

### *Preliminary*

3. The whole of the Borough is the subject of an Article 4 Direction which removes permitted development rights for changes of use from Use Class C3 (dwellinghouses) of the Town and Country (Use Classes) Order 1987 (as amended) to Use Class C4 (houses in multiple occupation [HMO]) of that Order. Therefore, planning permission is required for such a change of use, which is not in dispute.

### *Supply of Single Family Dwelling Houses*

4. Part A) of Policy DM6 of the London Borough of Waltham Forest Development Management Policies Local Plan, 2013 (Local Plan) states that the Council will not permit the conversion of a larger home(s) to Houses in Multiple Occupation (C4) where i) It has a gross original internal floor space of less than 124sqm. The supporting text for this policy, whilst recognising the need for HMO accommodation, highlights that there remains continued demand for larger family dwellings in Waltham Forest, especially for affordable housing, and that the continued depletion of larger family-sized housing through dwelling conversions to flats or HMOs is likely to exacerbate the affordability of family-sized housing further.
5. This policy accords with the National Planning Policy Framework, 2019 (the Framework), which indicates that planning policies should reflect the housing needs of different groups, including families with children.
6. Although the property has been extended with a rear roof extension, both parties agree that the property as originally built had an internal floor space of less than 124sqm, and therefore has resulted in a loss of accommodation suitable for a family, for which there is an identified housing need in the Borough in conflict with Part A) i) of Policy DM6 of the Local Plan.
7. I conclude on the first main issue that the development has an unacceptably harmful impact on the supply of family dwelling houses, contrary to Policy DM6 of the Local Plan, and Policy CS2 of the London Borough of Waltham Forest Core Strategy, 2012 (CS), which seek the aforementioned aims and resists the loss of existing larger homes and supports the re-establishment of HMOs into single family sized houses.

### *Living Conditions of Neighbouring Occupiers - Noise and Disturbance*

8. It is common ground that there are few other HMOs in the area, nor are there commercial developments nearby. The property also directly adjoins open space in the form of the River Lea and the William Girling Reservoir to the rear of the site. Furthermore, the properties in appeal terrace are fairly closely spaced. As such, the area has a fairly quiet, residential character, where noise levels are expected to be relatively low and there is a susceptibility for the living conditions of neighbouring occupiers to be affected by the introduction of a more intensive use.

9. The appellant argues that a Class C4 HMO (occupied by no more than 6 persons) has no greater impact on the living conditions of neighbouring occupiers than if the house was occupied by a large family with children. Notwithstanding this, these occupiers consist of up to five unrelated individuals/couples, all of whom would have separate work/domestic regimes and would attract their own visitors and deliveries at different times during the day and evening. In this respect, the Class C4 HMO use is more likely to increase the volume of movements to and from the property, than a single family dwelling, and the range of times when these activities take place.
10. I consider that the introduction of the Use Class C4 HMO has resulted in levels of noise and disturbance which adversely affect the living conditions of neighbouring occupiers. This derives from noise generated from 'comings and goings' outside of the building and increased vehicular and pedestrian movements. In reaching this conclusion, I note that objections have been raised by neighbouring occupiers specifically referring to existing noise and disturbance issues resulting from the existing use of the property as an HMO.
11. I therefore conclude that the change of use of the property to Class C4 HMO has resulted in a harmful effect on the living conditions of neighbouring occupiers, with regards to noise and disturbance, in conflict with Policy CS13 of the CS and Policy 3.5 of the London Plan. Amongst other things these seek to ensure satisfactory that amenity is provided for future and surrounding occupiers and states that housing developments should be of the highest quality internally, externally and in relation to their context and to the wider environment. There would also be conflict with paragraph 127 of the Framework which requires developments to create places that achieve a high standard of amenity for existing users.
12. The Council have also referred to Policies DM23 and DM32 of the Local Plan. However, these relate to Health Impact Assessments, promoting exercise, hot food takeaways, access to daylight, outlook and privacy and storage, collection and disposal of refuse. Therefore, these policies are not directly relevant to this main issue and do not affect my conclusion on noise and disturbance.

#### *Parking and Highway Safety*

13. The Council consider that the current HMO use, currently consisting of four separate households occupying the property, and due to their relationship independent from one another, is more likely to result in additional trips to and from the property at different times of the day and night, increasing on-street parking pressure to the detriment of highway safety.
14. Whilst I note that there a number of other properties in the area which have created dropped kerbs outside their property which reduces the overall availability for on-street parking space, there is no substantive evidence to show that the area experiences particular problems with regard to high parking stress or highway safety. At my site visit, I did not see any restrictions on parking on the highway in the vicinity of the site nor did there appear to be much on-street parking at that moment which would indicate a clear parking problem. Nor does the Council dispute the appellant's contention that the site is accessible by public transport, which assists in reducing the demand for parking spaces.

15. Furthermore, Appendix 4 in conjunction with Policy DM16 of the Local Plan provides maximum parking standards, and states that as a general principle, the Council will seek to encourage parking provision below the maximum figures stated. For dwellings converted into non self-contained flats and bedsits the maximum parking standard is 1 space per 10 units. As such, the existing Use Class C4 HMO, comprising 5 units, with no off-street parking spaces is broadly consistent with this maximum parking standard.
16. Therefore, I conclude that the Use Class C4 HMO use makes adequate provision for parking and does not result in any demonstrable harm to highway safety. As such I find no conflict against Policy DM 16 of the Local Plan, which seek to effectively manage parking and to ensure the provision of safe and attractive parking facilities. However, this is but one matter in the overall assessment, and does not alter my findings in the first two issues mentioned above.

#### *Other Matters*

17. The demand and benefits for providing affordable HMO accommodation, the absence of other nearby HMOs, and compliance with the space standards for all bedrooms are noted. However, these do not outweigh the harmful effects of the development outlined above, and therefore do not alter my decision. Nor am I convinced that conditions/management plans would be sufficient to overcome the harms identified above.

#### **Overall conclusion and planning balance**

18. The development results in the unacceptable loss of a single family dwelling house and provides unacceptable living conditions for nearby occupiers with regards to noise and disturbance. The development is contrary to the development plan and the Framework and no material considerations indicate that planning permission should be granted. The appeal on ground (a) must therefore fail and the application for permission deemed to have been made will be refused.
19. Dismissal of the appeal will involve some interference with the occupiers' rights to respect for private and family life under Article 8 of the European Convention on Human Rights and the right to protection of property, including peaceful enjoyment of possession under Article 1 of the First Protocol. However, these are qualified rights. The interference will be the minimum necessary and a proportionate approach to the legitimate aim of protecting the supply of family housing and ensuring satisfactory living conditions.
20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*R Satheesan*

INSPECTOR