



Appeal Decisions

Site visit made on 22 September 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th October 2020

Appeal A Ref: APP/U5930/C/19/3234800

Appeal B Ref: APP/U5930/C/19/3234801

9 Oakhurst Gardens, Walthamstow, London E17 3PX

- 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 Mrs Mazhar Malik (Appeal A) and Mr Saleem Malik (Appeal B) against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice was issued on 10 July 2019.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the land from single family dwelling house (C3 Use Class) to Adult Learning Centre (D1 Use Class).
- The requirements of the notice are:
 - 1) Cease the use of the Land as a Use Class D1 Adult Learning Centre
 - 2) Remove all material, equipment and paraphernalia brought onto the Land to facilitate the D1 use.
 - 3) Remove all fixtures and fittings that facilitate the use of the Land as a Use Class D1 Adult Learning Centre; and,
 - 4) Remove all resulting fixtures and fittings, materials and general detritus from the Land following compliance with steps 1 and 3 above.
- The period for compliance with the requirements is 4 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (g) 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.
- Appeal B is proceeding on the grounds set out in section 174(2)(g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed for Appeal B.

Appeal A and B Decision

1. It is directed that the enforcement notice is corrected by replacing all references to 'Adult Learning Centre' with 'a place for day activities for adults with learning difficulties'; and varied by the deletion of 4 months in section 6 of the notice and its substitution with 12 months. Subject to this correction and variation the appeal is 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.

Preliminary Matters

2. The appellant denies the property is being used as an Adult Learning Centre. They say it is used as a place for day activities for adults with learning

difficulties. This is a matter most appropriately addressed pursuant to ground (b). I am satisfied this is a matter of misdescription which, for reasons of clarity, I may correct drawing on my powers under section 176(1)(a) of the 1990 Act. No injustice would be caused to the appellant or the Council as this correction makes no difference to the cases advanced by the parties.

3. The appellant states that 'it is denied that any breach of planning occurred'. This is a matter most appropriately addressed pursuant to ground (c). But no evidence to this effect has been provided so I have determined the appeals on the grounds pleaded.
4. The appellant considers there were and are lesser steps than those specified in the notice. This is a matter most appropriately addressed pursuant to ground (f). But no lesser steps have been suggested nor are there any which are obvious.
5. The Council has drawn my attention to unauthorised building work on the land. But no such work is alleged in the notice so I cannot consider the unauthorised building work referred to as part of this appeal.

Reasons

The ground (a) appeal

6. The main issues in the ground (a) appeal are:
 - whether the loss of the use of the appeal building as a family-sized dwelling is justified by an overriding need for the appeal development; and
 - the effect of the appeal development on the living conditions of neighbouring occupiers, with particular regard to levels of activity, noise and vehicular movements.

Loss of Family Dwelling

7. Amongst other things, Policy CS2 of the Waltham Forest Local Plan Core Strategy, adopted March 2012, (the Core Strategy) resists the unjustified net loss of residential accommodation. The supporting text of this policy explains that loss is resisted as it worsens the Borough's housing shortfall and widens the gap between supply and demand.
8. The change of use which has occurred has resulted in the loss of the use of the appeal building as a family-sized home. The ground floor is being used for daytime activities for adults of all ages with learning difficulties and daytime respite for their carers. Activities users of the building carry out include arts and crafts and gardening. Accommodation on the upper floor of the building is used for ancillary purposes, including an office, a kitchenette and storage.
9. Paragraph 5.14 of the Core Strategy specifies circumstances where the net loss of residential accommodation is justified, including where an overriding need for an alternative use can be demonstrated.
10. The appellant states the appeal property provides a 'home' away from home for its users, who need to feel they are part of a home environment and that this 'cannot' be achieved in other buildings. But limited evidence is provided to support this position. Moreover, in my judgement, there is nothing intrinsically better about the appeal development being carried out in a building previously

used as a dwelling, than it being carried out in any other building fitted-out to look and feel like a dwelling. So I give the appellant's argument limited weight in this regard.

11. Based on the information provided, I have no doubt that the appeal development is of benefit to its users and the wider community for reasons including health and social integration. But this must be weighed against the public interest of retaining existing family-sized housing. Moreover, there is no evidence in this case of the efforts made to seek alternative premises for the appeal development, with the requisite planning permission, which does not result in the loss a family-sized home.
12. I conclude the loss of the use of the appeal building as a single family-sized dwelling is not justified by an overriding need for the appeal development. So the appeal development results in the loss of residential accommodation, in particular a dwelling suitable for family occupation, contrary to Policy CS2 of the Core Strategy, referred to in the notice.

Living Conditions

13. The appeal site contains a detached building, close to the A104 Woodford New Road, a busy major road. Neighbouring buildings include a dozen or so detached and semi-detached houses, a large school and leisure centre. Levels of activity, noise and vehicular movements generated by the appeal development must be seen in this context.
14. The evidence indicates that on average the appeal premises are used by up to 15 adults and 5 staff between 9:00 am and 3:30 pm Monday to Friday. This is more people than would typically be found in a single family dwelling of this size. However, unlike a dwelling, the hours of use are limited and occur during the day when in general neighbouring residential occupiers are less likely to be disturbed.
15. The evidence indicates 3-5 of the adults using the appeal building come by public transport and about 10 car-share and are dropped off and picked up by means of 2 vehicles. Of the staff, the evidence indicates 2 or 3 come by public transport and 2 or 3 come by car, making use of space on the site for parking as the streets immediately surrounding the appeal site are in a Controlled Parking Zone (CPZ). The Council recorded that 8 cars were parked on the land on 10 July 2019. But the appellant states this was due to a party and does not represent the norm. There is no evidence before me this is not the case.
16. From all of the information available to me, including my observations at my site visit, the activities carried out on the appeal premises (noted above) generate a limited amount of noise and vehicle trips, despite the number of people involved. There is no evidence the noise or vehicle trips generated are significantly greater than is typically generated by a family home of this size.
17. There are situations where a material change of use may harm the living conditions of neighbouring occupiers. But based on the information provided in this case, considering all of the above points, in particular the site's context and its location within a CPZ, I am satisfied the appeal development has no harmful effect on the living conditions of neighbouring occupiers, with particular regard to levels of activity, noise and vehicular movements.

18. I conclude there is no evidence the appeal development harms the living conditions of neighbouring occupiers, with particular regard to levels of activity, noise or vehicular movements.

Other Matters

19. The notice refers to Policies CS5, CS12 and CS13 of the Core Strategy; Policies DM1, DM5, DM12, DM23, DM28, DM32 and DM35 of the London Borough of Waltham Forest Development Management Policies Local Plan, adopted October 2013; Policies 3.17, 7.4, 7.8 and 7.17 of the London Plan 2016 (as amended); and various chapters of the National Planning Policy Framework. But it has not been explained how any of these are directly relevant to the main issues in this appeal, so I consider they weigh neither for nor against the appeal development.
20. A property at 117 Essex Road in Leyton is said to have been converted from a care home into flats. The appellant has suggested that there is no net loss of residential accommodation therefore. I do not accept this argument as the evidence indicates that unauthorised use at No 117 has ceased so it cannot compensate for what has occurred at the appeal property.
21. My attention has been drawn to the Human Rights Act 1998 and specifically Article 8 which protects family life and home. But these rights are qualified rights. Having regard to legitimate and well-established planning policy aims to regulate the use of land, in this case I consider greater weight should be attached to the public interest of retaining family-sized residential accommodation. Dismissal of the ground (a) appeal is therefore a necessary and proportionate response and would not result in a violation of human rights.
22. Users of the appeal premises have various disabilities, mobility problems, autism and depression. So I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. But it does not follow from the PSED that the appeal should succeed. Dismissing the ground (a) appeal would mean that the appellant would have to consider other options for meeting their accommodation needs. There is no evidence before me to demonstrate that the appeal is the only means by which such needs may be reasonably met. Accordingly, dismissing the appeal would be a proportionate response given the identified harm.
23. The appellant considers that the Council has not used its discretion, acted constructively, reasonably, proportionately, or impartially, or come to any reasonable compromise. But the way in which the Council has handled the case is not a matter for me to consider in the context of an appeal under section 174.
24. The appellant has been under the misapprehension that no permission was required for the appeal development and relied on no reservations having been expressed by anyone, including officers of the Council who have visited the site many times. But this does not make the appeal development acceptable and so makes no difference to my overall conclusion.
25. I appreciate that the appellant may not have had the opportunity to ask neighbours to write in support of the appeal due to the Covid-19 pandemic. But a decision on ground (a) is based on the merits of the case. So letters of

support would not necessarily change the outcome of the appeal given the harm identified above in respect of the loss of residential accommodation.

Conclusion on ground (a)

26. Whilst I have not found harm in terms of the effect of the development on living conditions of neighbouring occupiers, because of the loss of residential accommodation I consider there is conflict with the development plan overall. Planning law requires that applications for planning permission¹ be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case, there are no material considerations that indicate a decision should be taken which does not accord with the development plan so I conclude the appeal on ground (a) fails.

The ground (g) appeals

27. The appellant considers the 4 month period to comply with the notice is unreasonable. They seek 3 to 5 years to find suitable alternative accommodation which has the requisite planning D1 use with a family home environment in the local area, obtain planning permission for any modifications and extensions and carry out that building work.
28. I appreciate adults with learning difficulties and their carers may need stability and certainty so that they do not relocate to an unsuitable site and sudden change may not be in the interests of this group. But 12 months is the maximum period I consider compassionate and reasonable in the circumstances, to seek alternative accommodation and comply with the requirements of the notice, even taking into account the Covid-19 pandemic.
29. Should this prove not to be the case, it is entirely a matter within the discretion of the Council to draw on its powers under section 173A(1)(b) of the 1990 Act, without prejudicing its right to take further action.
30. The Council has identified alternative premises for the appeal development, which are said to have the appropriate planning permission. But there is no evidence the property referred to is suitable for the appellant in all other respects.
31. I conclude the appeals on ground (g) succeed to the above extent.

Conclusion

32. For the reasons given above, I conclude that the appeal does not succeed. I uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

L Perkins

INSPECTOR

¹ Including deemed applications under section 177(5) of the 1990 Act.