



Appeal Decision

Site visit made on 15 September 2020

by M Seaton DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2020

Appeal Ref: APP/U5930/W/20/3252351

21 Fairlop Road, Leytonstone, E11 1BL

- 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 Attia Bilal against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 200323, dated 23 January 2020, was refused by notice dated 27 March 2020.
 - The development is a retrospective planning application for change of use from C3 to C4 small HMO for 6 people.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the conversion of the dwelling to a small HMO is contrary to local housing policies, results in an adverse impact on the living conditions of neighbouring occupiers, safeguards the living conditions of future occupiers, and how the development affects the existing on-street parking environment.

Reasons

3. The appeal site is occupied by a two-storey terraced building previously occupied as a dwelling set within a busy predominantly residential street. Prior to the works being undertaken, the house was most recently occupied as a large HMO with the appellant indicating that a licence to operate as such had been granted by the Council for a period of 5 years from 26 June 2014. However, there is no evidence that planning permission for a formal change of use of the dwelling to a large HMO was ever obtained, and as a consequence I see no reasons to disagree with the Council's contention that the lawful use of the property remains as a dwelling within Use Class C3.

Policy analysis

4. In assessing the principle of development, the Council has cited Policy DM6 of the London Borough of Waltham Forest Development Management Policies Local Plan, October 2013 (the Local Plan). This policy addresses Dwelling Conversions, Housing in Multiple Occupation (HMOs) and Buildings in Multiple Residential Occupation and sets out various criteria and conditions whereby a conversion would not be permitted.

5. The appeal property possesses an original gross internal floorspace of 113m² which is substantially below the required threshold of 124m² for a property suitable for conversion, and the appeal site is also located within Leytonstone Ward, which is identified as an area where the conversion of dwellings to HMOs is restricted. Whilst I have not been provided with any evidence as to whether there would be an over concentration of conversions within the street, an appropriate level of off-street parking commensurate with the occupation of the property as a small HMO cannot be provided. I do however recognise that securing the property as a car free development would appear to provide an alternative means of addressing this issue, and I return to this matter later in the Decision Letter.
6. Nevertheless, as a consequence of the gross internal floorspace and location within an area where the conversion of HMOs is restricted, the development does not accord with Policy DM6 of the Local Plan

Living conditions – neighbouring occupiers

7. The Council and interested parties have highlighted concerns over increased activity, general noise and disturbance, waste management practices and parking pressure from the property, with all contended to be having a detrimental impact on the amenity of the area. I address issues relating to parking separately.
8. I note that the property is positioned in a comparatively busy location with high levels of traffic passing the site but nevertheless recognise that the property would be likely to experience a greater intensity of comings and goings related to the HMO in contrast with that of the lawful Class C3 use. However, whilst the number of bed spaces within the HMO use would in all probability have been greater than would have been the case for the use of the property as a single dwelling, the potential difference in the quantum of occupation would not be so significant as to result in the harm contended by the Council.
9. Neither the Council nor interested parties have provided any robust support to the claimed harm to the character of the area or living conditions of neighbouring occupiers from comings and goings in connection with the use of the property as an HMO. However, irrespective of whether there is an impact, it would be reasonable to surmise that impacts associated with the occupation of either the lawful residential (C3) use or an HMO ultimately depend on the lifestyles of specific individual occupants or family groups. In this regard, I am not persuaded with any certainty that the claimed levels of noise and disturbance from the occupation of the property as an HMO would necessarily differ from that of a single dwelling.
10. Turning to matters related to the provision of refuse storage and recycling facilities, from my observations of the appeal site, I see no reason why the existing provision of refuse/recycling facilities would not be satisfactory for the HMO use, or that there would be an accumulation of rubbish on the appeal site resulting in harm to the living conditions of neighbouring occupiers.
11. For these reasons, I conclude that the development does not result in the contended adverse impact on the living conditions of neighbouring occupiers from the occupation of the property as a small HMO. I do not find there to be conflict with Policy CS13 of the Waltham Forest Core Strategy 2012 (the Core Strategy), and Policy DM32 of the Local Plan, which require all developments to

meet appropriate environmental standards and promote health and wellbeing, and ensure the provision of facilities for the storage, collection, and disposal of refuse.

Living conditions – future occupiers

12. The Council has expressed concerns over the overall quality of the internal accommodation, partly as a consequence of the overall deficiency in property size as already mentioned, but also the adequacy of available floorspace for Bedrooms 2 and 5, and concerns over the sufficiency of the available ceiling height to Bedroom 6. Furthermore, it is contended that the occupiers of bedroom 2 would be unable to maintain a reasonable degree of privacy due to the location of the window directly on to the communal rear garden.
13. My attention has been drawn to the minimum space standards as set out in Tables 7.1 and 7.2 of the Local Plan, which address bedroom sizes for HMOs and Buildings in Multiple Residential Occupation. In this regard, it is clear that neither bedroom 2 (10m²) nor bedroom 5 (9m²) meet the minimum space standard for single occupancy bedrooms of 11m², and as such would conflict with the requirements of Policy DM6. Whilst I accept that other bedrooms would comfortably exceed the standard, it is imperative given the nature of occupation that all bedrooms must meet the standard to ensure that the living conditions of future occupiers would not be impinged upon.
14. In this instance, I find that the aforementioned substantial shortfall in the overall GIA for the accommodation would undoubtedly result in the living conditions of future occupiers being compromised through reduced space. This adverse impact would be further exacerbated by the shortfall in the space standards for bedrooms 2 and 5.
15. With regards the impact of floor to ceiling height, I have not been provided with any measurements or cross-section details from which to assess the overall impact on the GIA of reduced floor to ceiling levels on either bedroom 6 or the overall GIA of the property. Furthermore, the ground floor window to bedroom 2 is clearly shown as immediately abutting the cumulatively used outdoor area accessed from the communal kitchen, and for which the appellant has provided no details of any arrangements or mechanism to secure the privacy of occupiers of bedroom 2. However, given the overall substantial shortfall in the GIA of the property and in individual bedrooms in any event, these issues ultimately do not prove determinative in this case.
16. Having regard to the above conclusions, the property fails to make adequate provision for future occupiers with regards the availability of internal floorspace, resulting in a poor quality of accommodation. This would not accord with Policies CS13 and CS15 of the Core Strategy, or Policies DM7 and DM32 of the Local Plan. These policies seek to ensure that development is well designed and promotes health and well-being by ensuring satisfactory amenity is provided for future occupiers by meeting planning and internal space standards.

Impact on parking

17. The appeal site is located within a Controlled Parking Zone (CPZ) and is within an area indicated to be subject to significant on-street parking demand from residents, visitors and commuters. This is not a conclusion which has been

disputed by the appellant and on the basis of my own observations of the location I also have no reason to disagree with this conclusion. As no off-street parking is included as part of the scheme the Council has indicated that in order to secure the development as car free, any permission should be subject to an obligation that removes permit eligibility for all future occupants.

18. I note that an obligation was not completed or signed during the progression of the planning application, and neither has one during the course of the appeal. I do not consider this to be a matter capable of being addressed by a planning condition either in respect of securing the development as car free, or through the use of a negatively worded condition requiring the appellant to enter into a planning obligation to secure the development as permit-free as there is no evidence of exceptional circumstances for such an approach as required by the Planning Practice Guidance.
19. In the absence of a feasible means of securing the development as permit-free, the development would harm the parking environment through the additional demand from the development, which would not be mitigated. This would not accord with Policy DM16 of the Local Plan which seeks to effectively manage parking and to ensure the provision of safe and attractive parking facilities by encouraging car-free and car-capped development in locations that are highly accessible by public transport; are accessible to opportunities and services, and/or have high levels of parking stress.

Planning Balance and Conclusion

20. The appellant has advocated there to be a demand for HMO accommodation in the area. However, whilst I accept that the appeal property may be occupied, this in itself is not definitive evidence that there is an overriding demand sufficient to set aside the policies of the Development Plan, and in the absence of any compelling technical evidence to the contrary, this has to be balanced with the demonstrable demand for larger family housing.
21. I note that the appeal site is located within an area which would have access to public transport and nearby services and facilities, and the local economy would have the potential to have some limited benefit from any expenditure from future occupiers, both of which I would attribute some limited weight towards in support of the development. I have also concluded that the development does not result in conflict with the Development Plan with regards the impact on the living conditions of neighbouring occupiers.
22. However, I find that the development does not accord with the spatial housing policies of the Development Plan, and that there is a failure to make adequate provision for the living conditions of future occupiers of the property. Furthermore, the failure to appropriately secure and address the need for mitigation of the impact on on-street parking would result in the development having an adverse impact on the existing on-street parking environment.
23. For these reasons, I am satisfied that the harm caused by the development would significantly outweigh any benefits, and the appeal is therefore dismissed.

Martin Seaton

INSPECTOR