

Appeal Decision

Site visit made on 7 October 2020

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

An Inspector appointed by the Secretary of State

Decision Date: 26 October 2020

Appeal Ref: APP/G5750/W/19/3238716

**Ground Floor and Upper Floor Flat, 41 Chobham Road, Stratford
London E15 1LU**

- 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 Bhajan Singh against the decision of the London Borough of Newham.
 - The application, ref. 19/01980/FUL, dated 10 July 2019, was refused by notice dated 9 September 2019.
 - The development proposed is described as 'Retrospective planning application for retention of 5 bedrooms flat used as a small HMO (5 persons). This flat is being let to 5 individuals since 2010.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note disagreement with regards to the current use class of the building. Whilst it is not for me under a Section 78 appeal to determine the current correct and legal use class of the building, I note that the last use of the property is as a C3 dwellinghouse. I have therefore made my decision on this basis. To that end it is open to the appellant to apply for a determination under sections 191/192 of the Town and Country Planning Act 1990 if they believe the lawful use is different and my determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal.

Main issues

3. The main issues are:
 - The effect of the development on the mix and balance of housing in the area;
 - The effect of the development on the living conditions of the occupiers of neighbouring dwellings; and
 - Whether there is an adequate provision of cycle spaces.

Reasons

Housing Mix and Balance

4. The appeal site is a two storey mid terraced building with basement level. According to the appeal documents the building has been split into a basement apartment, with the remaining ground and first floors being let on a room by room basis with a total of 5 occupants sharing the ground and first floors.
5. According to the accompanying text to Policy H4 of the London Borough of Newham Local Plan 2018 (LP), the Council have undertaken an assessment of their population and housing needs and that they seek to retain existing family housing stock (as per Policy H1 of the LP). The failure to do so would as the Council will fail to achieve) and hold onto existing family stock which result in a failure to achieve the strategic principles and policies as outlined in Policies S1 and SP3 of the LP. These policies seeking balanced and mixed communities is reinforced through the policies of the London Plan 2016 and supported by the Housing Supplementary Planning Document¹ (SPD) which seeks to promote opportunities for family dwellinghouses within London that provides housing choice and affordability.
6. Policy H4 of the LP presents criterion on the adequate protection and re-shaping of housing stock. For dwellings of 3 bed and 4 bed family housing, the policy seeks that they will be protected unless there is a replacement of at least the equivalent floorspace. Policy H3 of the LP seeks that large and small HMOs be purpose built or converted from premises other than family sized dwellings.
7. I acknowledge evidence submitted by the applicant which includes a letter from the Council's Property Licensing team of a License of Houses in Multiple Occupation (HMO) which was given in 2019. There are also comments relating to the building being let out as single rooms since 2010. The presence of a HMO license does not mean that a change in use in planning terms has occurred, or indeed whether the HMO use is appropriate when considered against policies of the development plan. It should also be noted that the C3 use class (Dwellinghouses) according to the Use Classes Order includes the use '*by not more than 6 residents living together as a single household (including a household where care is provided for residents).*' As such I disagree with the applicant that the family dwellinghouse designation of the building would not apply.
8. It is evident that the Policies H1, H3 and H4 of the LP places a clear emphasis on the retention of family housing which I give significant weight to. The proposal would not replace a family dwelling of equivalent floorspace; would not result in a purpose built planning unit for HMO provision, and would result in a loss of a family dwelling.
9. Consequently, I find that the loss of a family dwellinghouse would result in significant detriment to the housing mix which would be contrary to Policy H1 and H4 of the LP (which seeks to maintain a mix of housing tenures, and amongst other criterion, a preference for retention of family housing) and Policies S1, SP1, SP2 and SP3 of the LP which seeks to achieve a housing mix and balanced communities. The scheme would therefore also be in conflict with London Plan 2016 Policy 3.8 which seeks to achieve appropriate

¹ Published by the Greater London Authority, Published March 2016, updated August 2017

housing choice and affordability with a focus on providing family housing in London.

10. The Council have indicated that the scheme would fail emerging Draft London Plan policy GG4, and whilst the document is at a final stage in preparation, the document has yet to be adopted and is subject to further modification as per the Secretary of State's recommendation. I afford policy GG4 of the Draft London Plan moderate weight² within this decision with regards to the intent to create balanced and mixed communities and seek to retain family housing within London. The Council has not demonstrated which components of the National Planning Policy Framework (the Framework) that they believe the proposal would be contrary to. Given the non-compliance with the development plan, it is not necessary to consider the Framework in further detail in relation to this matter.

Living Conditions

11. The Council's concerns in respect of this main issue is that the use of the property would give rise to noise and disturbance to existing neighbouring occupiers. In this context, I note arguments put forward by the applicant with regards to the use of the building which they state has occurred since 2010 and an accompanying letter from a third party respondent with comments regarding the unkept condition and detriment caused from living near the property.
12. The appellant states that there has been no evidence submitted by the Council or registered complaints to Environmental Health regarding disturbance, noise or litter and that any detriment to living conditions is controllable as opposed to a single dwellinghouse. Although there may be no official complaints to Environmental Health, this is not necessarily reflective of there being no problems such as noise, disturbance or the unkept nature of the property with bins and rubbish left out.
13. Whilst there may be similar levels of overall occupancy in terms of the general number of inhabitants of a conventional C3 dwelling, HMO's typically increase the density of occupation which can, in turn, have an effect on the activity generated by both people and vehicles, as well as the likelihood of requiring additional refuse facilities and additional stresses on local infrastructure. The occupiers of a HMO are made up of several independent tenants who each may bring friends, have a different lifestyle, resulting in movements, noise and disturbance at different times of the day and night in comparison with what would be typically expected from a single family dwelling.
14. With the above in mind, and with regard to this main issue, I conclude that the development would be detrimental to the living conditions of existing neighbouring occupiers by way of noise disturbance through use and general activity. It follows therefore that the scheme is contrary to LP Policy SP8 where at section xiii the Policy seeks to minimise impacts to living conditions

² Paragraph 48 of the Framework states that Local planning authorities may give weight to relevant policies in emerging plans according to: a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

from developments. The scheme would also be contrary to LP Policy 7.4 which seeks new development to reflect the existing character of the area.

15. Policies S1, SP1, SP2, and SP3 of the Local Plan are referenced in the Reason for Refusal relating to the living conditions of the proposed scheme, however these policies relate to strategic principles around place making and urban design principles and are not directly relevant to the consideration of living conditions in relation to the proposal. Policies D1, D2, D3 of the Draft London Plan deal with public realm improvements, implementing design policies into local plans and strategic principles around inclusive design; they too are not relevant to the consideration of this appeal. Policies of the London Plan 2016 referenced in the Reason for Refusal including Policy 7.1 (Lifetime Neighbourhoods), 7.2 (inclusive environment), and Policy 7.5 (Public Realm), 7.6 (architecture) are not relevant to the determination of this matter.

Cycle provision

16. The Council maintain a number of policies which seek the provision of sustainable transport measures, such as access to alternative provision of the car such as public transport and cycling. The appeal site is within a Public Transport Accessibility Level (PTAL) of 3, meaning it has a moderate level of transport accessibility.
17. The Council note that there is no provision within the proposed scheme for cycle parking. The appeal documents state that adequate cycle facilities could be provided within the shed to the rear of the property, although the actual layout and dimensions of the space have not been detailed. I have no reason to dispute this claim, and that this matter could be resolved via an appropriately worded condition.
18. In relation to this matter, the proposal does have the ability to incorporate cycling provision and this could be implemented by an appropriately worded condition. As such the proposal would not be contrary to Policies SP2 of the LP (which seeks to improve cycling provision and the environment) or INF2 of the LP (which seeks to implement sustainable transport methods). The scheme would also be consistent with policies 6.1, 6.9 and 6.13 of the London Plan which seeks to reduce the reliance on vehicles and promote cycling as an alternative form of transport. Policies T11, T5 and T6 of the Draft London Plan also support the need for cycling and sustainable transport measures and the appeal has the ability to comply with these.

Conclusions

19. I have found in the appellant's favour with regards to a main issue that the site would have the ability to provide appropriate cycle facilities. However, this is insufficient to outweigh the other matters that were shown to be inappropriate such as the loss of a family dwelling and the living conditions as a result of an inappropriate neighbourly use. The proposal would also be contrary to the development plan when considered as a whole.
20. For the reasons given above, I conclude that the appeal be dismissed.

J Somers

INSPECTOR