



Appeal Decision

Site visit made on 22 September 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th November 2020

Appeal Ref: APP/U5930/C/19/3241095

247 Capworth Street, Leyton, London E10 7AJ

- 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 Mohammed Hayat against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice was issued on 17 October 2019.
- The breach of planning control as alleged in the notice is: Without planning permission,
 - I. Material change of use from a dwellinghouse (Use Class C3) into a Sui Generis large House of Multiple Occupation (HMO) and any associated works that facilitated the change of use.
 - II. The erection of a single storey rear and side wrap around extension, hatched in red [shown in appendix A].
- The requirements of the notice are:
 1. Cease the use of the Land as a House in Multiple Occupation;
 2. Remove the kitchen units, kitchen sinks and associated drainage connections, cookers, fridges, washing/drying machines from the first and second floor which facilitates the use of the Land as a House in Multiple Occupation;
 3. Remove shower, bath and toilet and sink facilities and associated drainage connection so that only two remain 'in their original location' to facilitate the use of the land as a single-family dwelling house;
 4. Remove all fixtures and fittings associated with the use of the Land as a House in Multiple Occupation, including but not limited to, all signage, door locks and door numbers;
 5. Demolish and remove the single storey rear and side wrap around extension as shown on the appendix;
 6. Remove all resulting materials, rubble and general detritus from the Land following compliance with steps 2-5 and undertake restoration works to relevant parts of the Land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) 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.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - (a) Deletion of "and any associated works that facilitated the change of use" from paragraph 3.I.
 - (b) Deletion of "hatched in red [shown in appendix A]" from paragraph 3.II.
 - (c) Deletion of "but not limited to," from paragraph 5.4.

- (d) Deletion of "as shown on the appendix" in paragraph 5.5.
 - (e) Deletion of "and undertake restoration works to relevant parts of the Land" from paragraph 5.6.
2. Subject to these corrections and variations, the appeal is dismissed, 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.

The Notice

3. Under section 176(1) of the aforementioned 1990 Act, I have a duty to get the notice in order. The notice contains vague and uncertain phrases, noted in paragraphs 1 (a), (c) and (e) of my decision. I am satisfied these can be deleted, without causing injustice to the appellant or the Council, as doing so would not materially change the alleged breach of planning control, or the steps required and the purpose of the notice would still be achieved.
4. The Council has confirmed that a red hatched plan, referred to in paragraph 3.II. and paragraph 5.5. of the notice was not included with the notice. Having seen the extension which is the subject of the notice, I am satisfied these paragraphs of the notice are clear without reference to this plan. So reference to this plan can be deleted, as per paragraphs 1 (b) and (d) of my decision, without causing injustice to the appellant or the Council.

Reasons

The ground (b) appeal

5. An appeal on ground (b) is that the breach of planning control stated in the notice has not "occurred". This is not the same as saying the breach of planning control is not "occurring". The appellant states the HMO use ceased on 18 February 2019. So on his own evidence it is clear that an HMO use has occurred. Moreover, it is clear from the plans and photographs provided that the change of use alleged in the notice accurately reflects what has occurred on the site. In addition, I have seen for myself that the single storey rear and side wrap around extension exists on the site. So considering the above points, it cannot be said that either breach stated in the notice has not occurred and so the appeal on ground (b) fails.

The ground (a) appeal

6. The main issues in the ground (a) appeal are:
- the effect of the development on the area's stock of housing, with particular regard to family-sized dwellings;
 - whether the appeal development provides an acceptable living environment for its occupiers;
 - the effect of the development on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance;
 - the effect of the development on the character and appearance of the area; and

- the effect of the development on the living conditions of occupants of the adjoining home, with particular regard to outlook, overshadowing, light, and enclosure.

Stock of Housing

7. Policy CS2 of the Waltham Forest Local Plan Core Strategy 2012 (the Core Strategy) resists the loss of any existing larger homes (ie 3 bedroom or more). Policy DM6 of the Waltham Forest Local Plan Development Management Policies 2013 (the DMP) states the conversion of larger homes to HMOs and Buildings in Multiple Residential Occupation (Sui Generis) will not be permitted where it is located within a Restricted Dwelling Conversion Ward.
8. The evidence indicates the appeal property is in a Restricted Dwelling Conversion Ward and that its lawful use is as a dwellinghouse, with at least 3 bedrooms. Therefore, the appeal development results in a loss of a larger home suitable for a family and this is contrary to Policy CS2 and DM6, noted above.

Living Environment for Occupants

9. From all the information available to me it is clear some parts of the notice have been complied with and some works integral to the unauthorised use removed. Nevertheless, it is clear from my own observations at my site visit and the plans and photographs provided that the accommodation for the appeal development was cramped. Moreover, there is no evidence the appeal development complied with any of the relevant space standards for the use.
10. Therefore, I conclude the appeal development did not provide an acceptable living environment for its occupiers, contrary to Policies CS2 and CS13 of the Core Strategy and Policies DM6 and DM7 of the DMP and Policy 3.5 of the London Plan (as amended) 2016 (the London Plan).
11. My attention has also been drawn to Policy DM23 of the DMP. But there is no explanation of how this policy is relevant to this main issue.

Living Conditions of Neighbours

12. The evidence indicates the appeal property has changed from a 3 or 4 bedroom house to an HMO which has accommodated 13 occupants from 7 different households across 8 bedrooms. In my judgement this is a significant intensification of the use and occupation of the property. The likely increase in activity and movement, including from the comings and goings of occupants, would have a significant harmful effect on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance, contrary to Policy DM6 of the DMP.
13. The notice refers to parking and associated Policy DM16 of the DMP. But no evidence has been provided of the effect of the development in this regard. My attention has also been drawn to Policy DM32 of the DMP. But there is no explanation of how this policy is relevant to this main issue.

Character and Appearance

14. The area is generally characterised by 2 storey terraced homes with 2 storey rear closet wings. Some have been extended with small single storey extensions to the rear. However, the extension which is the subject of the notice is significantly deeper and wider than any others seen within the context

of the appeal site. It entirely engulfs the rear closet wing of the property and covers the majority of the rear garden area. Consequently, it is a dominant and insubordinate addition.

15. Moreover, the extension is constructed of a variety of materials including red brick, white uPVC and brown framed windows. In this context, where the rear elevations are generally yellow brick with white framed windows, the extension appears as an incongruous structure. Its bulk and materials are clearly seen from neighbouring homes and gardens and from the road to the side of the property.
16. I conclude the appeal development harms the character and appearance of the area, contrary to Policies DM4 and DM29 of the DMP, Policy CS15 of the Core Strategy, Policies 7.4 and 7.6 of the London Plan, the design policies of the National Planning Policy Framework (the Framework) and the Waltham Forest Supplementary Planning Document Residential Extensions and Alterations 2010 (the SPD).

Living Conditions for Adjoining Home

17. Paragraph 4.VII. of the notice identifies an impact of the rear extension on the occupiers of 247 Capworth Street in respect of outlook, overshadowing, light and enclosure. However, No 247 is the appeal site itself and the Council's statement refers to the above effects as being in relation to No 249, not No 247. Having seen the appeal site in relation to the adjoining homes it is clear the Council's concerns are in relation to No 249 and not No 247. So I have assessed the appeal development on this basis in respect of this main issue.
18. I visited No 249 as part of my site visit including its rear garden. The single storey rear extension which forms part of the appeal development is built hard-up to the boundary with No 249. Due to its siting, depth and height, it looms large over the rear of No 249, particularly its garden. It therefore has a considerable enclosing effect on this property and harms the outlook of occupants of No 249.
19. The bulk of the appeal extension is sited broadly east of the rear of No 249. So in my judgment, due to its height and depth, for at least part of the day it significantly overshadows the rear of No 249, including its garden. Consequently, there is an effect on access to light for occupants of No 249 and no information has been provided which satisfies me this is not the case, in respect of sunlight or daylight.
20. I appreciate that, subject to the removal of some high level side windows, an existing occupant of No 249 may not object to the appeal extension. But this is not the determining factor as I must have regard to the living conditions of future occupants of No 249 as well as the representations of an existing occupier.
21. Considering the above points, in respect of this main issue I conclude the appeal development harms the living conditions of occupants of the adjoining home, with particular regard to outlook, overshadowing, light, and enclosure. This is contrary to Policy DM4 and DM32 of the DMP, Policy CS13 of the Core Strategy and the SPD.

22. My attention has also been drawn to Policy CS2 of the Core Strategy, Policy 3.2 of the London Plan and section 8 of the Framework. But it has not been explained how these are directly relevant to this main issue.

Other Matters

23. I have taken into account the representations of a current occupier of No 249, who has said that the appellant will need to keep their external wall intact as it is on the property boundary. But in my judgement, this is not a good enough reason to allow the extension at No 247 in light of the harm identified above.
24. Moreover, the representations provided indicate an extension that is being constructed at No 249 will be independent of that at No 247 and will have its own foundations and external wall. The concerns raised by the occupier of No 249 are a matter to be resolved between them, the appellant and the Council in light of the requirements of the notice.
25. The appellant has said that the extension was done 'with Council permission'. But from the information provided, the extension which is the subject of the notice does not reflect any planning permission for the site. Any approval from Building Control is entirely separate from the need to comply with Planning legislation, as was stated on the certificate of completion of works for the extension.
26. The evidence indicates an HMO licence has been granted for the property. But this is not a planning permission and so does not grant planning permission for the use alleged in the notice.
27. The appellant has raised concerns about the HMO licence and the behaviour of various Council officers. But these are not matters for me to consider in the context of an appeal under section 174 of the 1990 Act.
28. My attention has been drawn to the costs of demolition as a consequence of the notice. But this is not a good enough reason to allow the appeal in light of the harm identified above.

Conclusion on ground (a)

29. Considering all of the above points I conclude the appeal on ground (a) fails.

The ground (f) appeal

30. Under section 173(4) of the above Act, when serving an enforcement notice the Council may seek to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach. In this case, paragraph 4.VIII. of the notice indicates the purpose of the notice is to remedy the breaches of planning control.
31. Amongst other things, the notice requires that shower, bath and toilet and sink facilities are removed so that only two remain in their original location. The appellant considers bedrooms should be allowed to have en suite facilities and indicates internal alterations to a dwelling do not require planning permission.
32. Nevertheless, section 173(5) of the 1990 Act gives the power to require the removal of works for the purposes of remedying the breach and a notice directed at a material change of use may require the removal of works integral to and solely for the purposes of facilitating the unauthorised use, even if such

works on their own might not constitute development, so that the land is restored to its condition before the change of use took place. This is the case here.

33. The shower, bath and toilet and sink facilities facilitated the material change of use and there is no evidence they were part of a previous lawful use. So I am satisfied the steps required by the notice to be taken do not exceed what is necessary to remedy the breach. It makes no difference whether Building Control completion certificates have been issued for the above facilities, as is stated by the appellant, as Building Control is a separate regime to the control of development under planning legislation.
34. The notice requires that all fixtures and fittings associated with the HMO use are removed, including door locks. The appellant states the door locks are domestic door handles which are lockable, indicating his view that this requirement is excessive. But it is clear the locks have facilitated the unauthorised use so the notice may require their removal and therefore this requirement is not excessive.
35. The appellant states the extension has already been approved and built with a Building Control completion certificate and that the appeal building is a single family dwelling with permitted development rights. Be that as it may, there is no evidence that the extension which has been built reflects any planning permission for the site, express or otherwise. So the requirement to demolish the extension is not excessive bearing in mind the aforementioned purpose of the notice.
36. My attention has been drawn to a prior approval application from 2016 for an extension to the appeal property. But from the information provided, what has been constructed is materially different to the development described in the prior approval application. So in respect of operational development, it is not the case that all that is required to resolve the breach of planning control is to demolish the side infill part of the extension.
37. The appellant has requested the opportunity of a resubmission to assess the side infill part of the extension. But the information provided indicates the appellant has already applied for planning permission for the side infill part of the extension and that application was refused. Moreover, there is no information on how a resubmission would be different to the development that has already been considered, in both the previous application and in the enforcement notice.
38. Considering all of the above points, the requirements of the notice are not excessive and the appeal on ground (f) fails.

Conclusion

39. For the reasons given above, I conclude that the appeal does not succeed. I uphold the enforcement notice with corrections and variations 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