
Appeal Decision

Site visit made on 27 October 2020

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 December 2020

Appeal Ref: APP/E5900/W/20/3251406
386 Bethnal Green Road, London E2 0AH

- 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 JCS Developments Limited against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/18/02937, dated 15 October 2018, was refused by notice dated 24 December 2019.
 - The development proposed is described as the regularisation of recently constructed works to change use into a house in multiple occupation (C4).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council amended the description of the proposed development to focus on the use rather than construction works, and refused permission for the 'change of use from 8 unauthorised self-contained residential units (C3) to a 6 bedroom HMO'. Both the appellant and the Council therefore describe the proposal as use as an HMO, although the Council's description is silent on whether the proposal would fall within the C4 Use Class which is limited to occupation by no more than six persons. The property is capable of occupation by more than that, with double beds presently constituting much if not all of the sleeping accommodation in the existing six units.
3. The appellant contends that the proposed use of the property would comprise a class C3(c) use which, although described by the appellant as an HMO, does not comprise an HMO but use as a single dwellinghouse by people living together as a single household. The appellant describes the intention to have 6 tenants at the property, but having 6 separate tenancies is indicative of residents not living together as a single household. Failing the use falling within Class C3, the appellant states that the appeal proposal is for a 6 bed HMO (unclassified or in C4 use). A C3 dwellinghouse, a C4 HMO and a *sui generis* 'large' HMO are all potentially materially different uses, and the application lacks clarity as to which is applied for.
4. Notwithstanding this uncertainty, I agree with the Council's contention made in their Statement of Case that the proposal does not ultimately constitute use as an HMO (or a single C3 dwellinghouse). The application plans reflect the present layout of the property which is of 6 self-contained flats and a further two communal rooms to the rear. Each of the flats contains, as well as sleeping

and sitting accommodation, a toilet, personal washing facilities and cooking facilities. Notwithstanding that communal accommodation is available (although at the time of my site visit it showed scant indications of any use) I find that each of the six flats is presently in use as a single dwellinghouse. The communal accommodation is superfluous.

5. The description by the appellant of the application as being to 'regularise' the works indicates that it is the actual present use of the property that is being applied for. Therefore, although I find that use to differ from any of the various options set out by the appellant, it is the present use of the property as six self-contained flats with some additional communal living space that I shall consider.

Main Issue

6. The main issue in the appeal is the acceptability of the living conditions of the occupiers of the property. The Council's three reasons for refusing permission are largely akin to the first three of their reasons for issuing an enforcement notice against the former use as eight flats on 31 January 2020, and additional issues concern the free flow of pedestrian movement on Bethnal Green Road (arising from waste) and the issue of cycle parking provision. The policies supporting the reasons for the enforcement notice are different from those on the notice of planning refusal, reflecting the Council's recent adoption of the Tower Hamlets 2031 Local Plan in January 2020. Although the Council's Statement of Case states that the policy framework is to be found in the Decision Notice and the Case Officer's Delegated Report, the current policy position appears instead to be as set out by the appellant at section 5 of their Statement, with a number of the policies cited in the Decision Notice having been superseded by the adoption of the 2031 Local Plan.

Reasons

7. My principal reason for dismissing the appeal against the enforcement notice directed against eight flats at the property is that the size of each of the flats is much too small to allow for an adequate standard of living. This reason is not overcome by the reduction to six flats. Although the flats are fewer in number than those constituting the breach giving rise to the enforcement notice, the communal areas do not appear to be put to extensive use, and the day-to-day living including cooking activities continues to be carried on in each of the remaining flats. As noted in my decision relating to the enforcement notice, the present national space standards (the Technical housing standards issued by DCLG in March 2015) anticipate a self-contained flat to contain an internal floor area of 37sqm which is nowhere nearly met by any of the flats here. At around 140sqm, the property might accommodate a 6 bedroomed house but, notwithstanding the parties' descriptions of the proposed development, that is not the proposal before me.
8. The Council expresses further concerns beyond the issue of floor space, asserting that substandard accommodation also results from the lack of amenity space, inadequate floor to ceiling height, mutual overlooking, poor outlook and lack of privacy as well as from insufficient refuse storage facilities. The latter issue raises an additional concern about the free flow of pedestrians on Bethnal Green Road. I do not consider that the Council's concerns relating to amenity space, outlook or refuse storage raise matters of sufficient concern to warrant dismissing the appeal, although I acknowledge that some policy

conflicts arise. As set out in my decision relating to the enforcement notice, the proximity of Weavers Field and the long-standing history of the property's use for residential accommodation of some form and recent permissions granted for built extensions militate against the concerns raised in respect of outlook and amenity space. The refuse storage arrangements can be improved in the six-flat configuration with some communal areas, as set out in the Waste Management Strategy, and thus it remains the case that I find no conflict with policy D.MW3 requiring space to separate and store waste for collection and nor do I consider that the free flow of pedestrians on Bethnal Green Road is likely to be hindered as a result of the waste storage or collection arrangements. Nor do I find any conflict with policy D4 of the London Plan or with the Mayor's Housing SPG on this issue.

9. The floor-to-ceiling height concern was not one raised in the enforcement notice and the Council's report refers to this being less than 2.5m rather than the 2.3m that is set out in paragraph 10(i) of the nationally described space standard. This concerns the upper floor flats which upon inspection did not appear oppressive or otherwise unacceptably harmful by reason of the ceiling heights. The section drawings suggest that, as asserted by the appellant, the technical standard is met. I find no harm in respect of this element.
10. The mutual overlooking and loss of privacy between flats also justified my decision to uphold the enforcement notice directed against eight flats, but this harm is considerably mitigated by the present arrangements. The former two rearmost flats are now the communal areas which on the evidence of my site visit were barely used. Nonetheless it remains the case that there is direct overlooking of the rear first floor flat ('bedroom 2') by the shared living room into its only aspect, which I find to be potentially unacceptably invasive of privacy for a self-contained flat. The windows of the shared facilities on both floors also look up and into 'bedrooms' 2 and 4. The appellant suggests a condition requiring screening. Whilst the Council point out that screening the 'bedroom' windows would exacerbate the poor quality of the accommodation, they have not commented on the effects of screening the shared facilities' rooms. As I find the shared facilities to be presently superfluous to the use of the property as six flats, I consider that a screening or frosted glass requirement relating to the windows of the shared facilities could overcome the privacy concerns without unacceptably affecting the standard of the living accommodation. Harm by reason of overlooking and loss of privacy can be overcome.
11. The Council in their Decision Notice cite a policy conflict in respect of cycle parking. Policy D.TR3 refers to parking standards set out in an appendix that has not been supplied. The appellant contends that the standards are not relevant, but this contention relies on the Use Class for which permission is sought, which I have found not to reflect the realities of the application. Although limited details are supplied I find that there is a policy conflict arising from the paucity of on-site cycle parking provision but again, as with my decision in relation to the enforcement notice, I give this very limited weight given the ample covered cycle parking facilities nearby and the otherwise excellent locational sustainability of the site.
12. Nonetheless the flats are unduly cramped and sub-standard, contrary to policy 3.5 of the London Plan (2016) requiring housing developments to be of the highest quality internally, to the Mayor's Housing SPG requiring compliance

with nationally described space standards, and to Local Plan policy D.H3 requiring development to meet the London Plan space and accessibility standards. I do not find any conflict with policy D.H7 cited in the Decision Notice because the proposal does not concern an HMO. Nor was I able to discern any conflict with emerging London Plan policy D4 but, taken as a whole, I find that the proposal does not comply with the development plan for the area and that no material planning considerations exist to overcome that conflict. Therefore the appeal is dismissed.

Laura Renaudon

INSPECTOR