



Appeal Decisions

Site visit made on 2 December 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 19 January 2021

Appeal A Ref: APP/U5930/C/20/3251317

6 Ruckholt Road, Leyton, London E10 5NP

- 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 Reazul Bhuiya against an enforcement notice issued by London Borough of Waltham Forest.
 - The enforcement notice was issued on 31 March 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the dwellinghouse to use as a House in Multiple Occupation (HMO)(Use Class C4)
 - The requirements of the notice are
 - 1.Cease the use of the property as a House in Multiple Occupation (Use Class C4)
 - 2.Remove all fixtures and fittings associated with the use of the property as a House in Multiple Occupation (Use Class C4) including but not limited to, all signage, door locks and door numbers.
 - 3.Remove from the property all associated debris resulting from compliance with the above steps
 - The period for compliance with the requirements is 8 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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.
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Appeal B Ref: APP/U5930/W/20/3251255

6 Ruckholt Road, Leyton London E10 5NP

- 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 Reazul Bhuiya against the decision of London Borough of Waltham Forest.
 - The application Ref 193304 dated 5 October 2019 was refused by notice dated 4 February 2020.
 - The application was for a change of use from a single-family dwelling(Use Class C3) to a House in Multiple Occupation (HMO) for up to six persons (Use Class C4)
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Decisions

1. Appeals A and B are dismissed, the enforcement notice is upheld and planning permission is also refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended.

Procedural Matters

2. There is an Article 4 Direction in force since 2014 which means that any change of use from use as a single dwelling house (Use Class C3) to a House

in Multiple Occupation (HMO) (Use Class C4) after 2014 requires express planning permission. There is no dispute that the current occupation of the appeal property falls within the definition of HMO (Use Class C4) which is occupation by between three and six unrelated individuals who share basic amenities such as a kitchen and/or bathroom.

3. Both appeals refer to the existing use of the appeal property as a House in Multiple Occupation(HMO). Appeal B is a Section 78 appeal against the refusal of planning permission for HMO use. Appeal A is an appeal against the enforcement notice which was served following the Council's refusal to grant planning permission for the same use. I can therefore deal with the appeals together.

The main issues

4. The main issues are the effect of the development upon
 - i) the housing stock of the area with particular regard to family sized dwellings
 - ii) the living conditions of neighbouring occupiers with particular regard to noise and disturbance
 - iii) the on- street parking environment in the vicinity of the appeal property
 - iv) the living conditions of occupiers and future occupiers of the appeal property with particular regard to adequate living space

Reasons

Housing Stock

5. Policy CS2 of the Waltham Forest Local Plan Core Strategy 2012 (the Core Strategy)is a strategic policy which prioritises the need for larger homes and therefore resists the loss of any existing larger homes (3 bedroom or more) to prevent further imbalances in the housing stock due to an overconcentration of smaller homes. Policy DM6 of the Waltham Forest Local Plan Development Management Policies 2013 (the DMP) states the conversion of larger homes to HMOs will not be permitted where the development fails to comply with any of the four defined criteria set out in the policy. The listed criteria excludes HMO use where a property is located within a Restricted Dwelling Conversion Ward.
6. The evidence indicates that the appeal property is in a Restricted Dwelling Conversion Ward as it falls within the Leyton Ward. With accommodation over 3 floors, it would still meet the Council definition of a larger home in having 3 or more bedrooms when in use as a family dwelling. Given the size of the appeal property and its location in a Restricted Dwelling Conversion Ward, the existing HMO use does not comply with Policy DM6 of the DMP. The appellant has referred to the problems of letting the appeal property to a family, I accept that it may be easier for the appellant to let the appeal property as a HMO. Nevertheless, these restrictions are within an adopted policy that has been consulted upon and examined and found sound. There is limited evidence before to show that the circumstances with regard to overconcentration of HMOs or the shortfall of larger homes has changed and the Council's delegated report refers to a number of existing HMOs within the vicinity of the appeal property on Ruckholt Road.

7. The development therefore fails to meet identified housing needs and conflicts with Policy CS2 of the Core Strategy and Policy DM6 of the DMP which collectively seek to resist the loss of larger homes other than where listed criteria are met in order to create a mixed and balanced community.

Living Conditions of Neighbours

8. The Council considers that 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. However, there is limited evidence that is the case and there is no evidence of any complaints with regard to noise and disturbance. Although the Council makes comparisons with family use, even with the ground floor bedroom converted back to family space, with 3 floors and 5 remaining bedrooms, the appeal property would be likely to accommodate a number of family members of various ages. Adult children or occupation by an extended family unit would not for example necessarily result in occupants all coming and going at the same time. Ultimately, any noise or disturbance impacts would depend upon the lifestyles of specific family groups or individual occupants. However, I am not persuaded with any certainty that HMO use is necessarily causing or likely to cause more disturbance to neighbours than occupation as a single dwelling.
9. For these reasons, I conclude that the development does not have a harmful effect on the living conditions of neighbouring occupiers with regard to noise and disturbance. In this respect, the development is therefore not contrary to Policy CS13 of the Core Strategy and Policy DM32 of the DMP which amongst other things seek to manage the impact of development on neighbours. It would also not conflict with the National Planning Policy Framework which seeks to secure a good standard of amenity for neighbours.

Parking

10. The appeal property is within a Controlled Parking Zone. Increased demand for on- street parking is a reason for issuing the enforcement notice and the absence of a legal agreement to restrict occupiers applying for parking permits to prevent increased demand from the appeal property a reason for refusal of planning permission. Policy DM16 of the DMP seeks to encourage car free and car -capped development and to effectively manage parking and provision of safe and attractive parking facilities. There is a dedicated car parking strip that runs parallel to the road on the opposite side of the road to the appeal dwelling for permit holders only. On the appeal dwelling side of the road, there is a dedicated cycle way as well as the pavement. The Council refers to a number of dwellings in the vicinity having off-street car parking with dropped kerbs. However, from my site visit observations, that is not the case as the parking strip and cycleway preclude off- street parking with dropped kerbs.
11. Nevertheless, I accept that on street parking would not be able to meet the demand if tenants of the appeal property were to apply for permits as parking is only available on one side of the road and is therefore unlikely to meet increased demand. Whilst, parking needs will vary at different times of the day and night, car spaces were all occupied at the time of my morning site visit. Whilst a family may require parking permits, it is unlikely that similar numbers would be involved in terms of adult drivers. The appellant has indicated that he has made clear to tenants that car parking spaces are not

available and none of the occupiers have applied for parking permits. The appellants refers to low income tenants not being able to afford cars and I note that the existing tenancy agreements refer to no car use. However, any grant of planning permission would run with the land and it would therefore be necessary to bind any future owners as well as the appellant from applying for parking permits under a binding legal agreement. Whether or not occupiers or future occupiers can afford cars would depend upon the circumstances of the individual occupier. To overcome this issue, it therefore would have been necessary for the appellant to enter into a Section 106 agreement to formally restrict the occupiers or any future occupiers from applying for parking permits.

12. In the absence of such a legal agreement, the development is contrary to Policy DM16 of the DMP which, amongst other things, refers to resisting development which would increase demand for on street parking where on street parking cannot meet existing demand.

Living Conditions of Occupiers

13. The Council's refusal notice for the planning application refers to an unsatisfactory living environment for occupiers and a failure to meet minimum space standards. That reason refers to a number of policies as well as the London Plan Supplementary Planning Guidance "Housing" (2016) and Technical Housing Standards – National Described Space Standards" March 2015. Whilst, later national standards would supersede earlier policy requirements, it is unclear which specific parts of the documents referred to are being relied upon. The Council did not subsequently rely upon that reason when issuing the enforcement notice after the refusal of the planning application.
14. There is a single reference to adequately sized rooms in the Council's statement for the appeals which quotes part of Policy 3.5 of the London Plan 2016, although that part of that statement relates to "Impact upon Neighbouring Amenity" and that policy document has not been provided.
15. Having regard to the above, I do consider that there is insufficient information before me to address this issue within these appeals. However, even if I had found in the appellant's favour with regard to this specific issue, that would not have overcome the other harm that I have identified.

Other Matters

16. The Council did grant a HMO Licence for the appeal property in May 2017. However, the letter enclosing that decision which has been provided by the appellant does state that whilst a HMO Licence would normally be granted for five years, in view of the absence of planning permission for the change of use, the Licence would run only for 1 year. The Council's expectation was that the use would cease after the one year period or the appellant could apply for planning permission although the Council did say that it was unlikely that planning permission would be granted. The appellant did subsequently submit applications for Certificates for Lawful Use in 2017 but one was withdrawn and the other was refused.
17. The appellant feels strongly that he was misled by the Council as he states that he was encouraged by the Council to convert the appeal property to the

Council and spent money in order to satisfy the HMO Licence requirements. The appellant has set out in detail the history of how the appeal property came to be in HMO use and has provided various certificates obtained with regard to matters such as energy.

18. Whilst, I note that the appellant is critical of the advice provided by the Council in the past, these are not matters that fall within my remit in determining the appeal. Whilst, I have no reason to doubt that the appellant has not understood what is required to operate as a HMO, it is nevertheless the case that the planning and licensing regimes are entirely separate. To operate as a HMO, the appellant does need planning permission where a change of use to HMO use from single family dwelling use has occurred, irrespective of the licensing position.
19. Similarly, whilst there is a letter of support from a neighbour, the letter refers to the conduct of the Council rather than the issues before me in determining this appeal. The current tenants have also indicated a wish to stay at the appeal property and have referred to the difficulties of finding alternative accommodation. I accept that finding new accommodation is unsettling for tenants but nevertheless the notice has to be complied with.
20. I note that the appellant has provided details about matters affecting his health and that he has found it stressful dealing with the HMO process. The appellant has also referred to having to consider selling the appeal property. However, the compliance period may enable the appellant to assess his options including alternative finance. Nevertheless, none of these matters either individually or collectively are sufficient to allow the appeal in light of the harm I have previously identified.

Overall conclusion

21. I have found that the development does not adversely impact upon the living conditions of neighbours with particular regard to noise and disturbance. I have insufficient information to address the issue of living standards of occupiers. However, I have found that the development does not accord with the Council's policies which seek to maintain a mixed housing stock. I have also found that there is not a Section 106 agreement in force that would restrict the occupiers from applying for parking permits.
22. For the reasons given, I conclude that the appeals should not succeed and I shall refuse planning permission on the deemed application made under Section 177(5) of the Act as amended.

E. Griffin

INSPECTOR