



Appeal Decision

Site visit made on 15 February 2021

by Sarah Colebourne MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2021

Appeal Ref: APP/U5930/W/20/3260519

24 Poppleton Road, Leytonstone, London, E11 1LR

- 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 Mrs M Goldstein (Eastbank Studios) against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 200024, dated 3 January 2020, was refused by notice dated 22 April 2020.
 - The development proposed is described as 'Conversion of the existing property from two self-contained flats (Use Class C3) to a large HMO (Retrospective)'
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of the existing property from two self-contained flats (Use Class C3) to a large HMO (sui generis use class) 7 bedroom 7 persons, including L-shaped dormer with 3 rooflights (retrospective) and proposed internal alterations at 24 Poppleton Road, Leytonstone, London, E11 1LR in accordance with the terms of the application, Ref 200024, dated 3 January 2020, subject to the conditions attached at the end of this decision.

Application for costs

2. An application for costs was made by Mrs M Goldstein against the decision of the Council of the London Borough of Waltham Forest which is the subject of a separate decision.

Procedural matters

3. The Council's decision describes the proposal as 'Retention of change of use to large scale HMO use (sui generis use class) 7 bedroom 7 persons including retention of L-shaped dormer with 3 rooflights and internal alterations'. The appellant considers that is inappropriate and I agree insofar as it relates to 'retention' because S55 of the Town and Country Planning Act 1990 describes 'development' as 'the carrying out of building etc. operations or the making of material changes of use' - and not as their 'retention' or 'continuation'. The rest of the Council's description describes the proposal more accurately and reflects the detail of the application, except for the internal alterations which the appellant says are not retrospective. I have therefore based my decision on a combination of the two descriptions as reflected in the formal decision above.
4. I have, however, noted that the Council considers that the dormer is lawful and have not therefore considered that part of the proposal in this appeal. It has

not referred to the rooflights or internal alterations but from what I have seen and on the basis of the plans those elements are acceptable.

5. I have not taken into account in this decision the late evidence submitted by the Council as part of its Costs Rebuttal as there is insufficient justification for that and no reason why that could not have been submitted at the appropriate stage in the appeal process.

Main issues

6. The main issues in this appeal are the effect of the proposed development on:
 - the supply of family-sized units in the Borough;
 - the living conditions of neighbouring occupiers with regard to noise and disturbance;
 - the living conditions of the future occupiers of bedroom no 7 with regard to size and layout of accommodation;
 - whether the absence of a legal agreement to restrict the future occupiers from applying for parking permits would lead to an unacceptable increase in travel by vehicles or discourage the use of sustainable travel modes.

Reasons

Supply of family-sized units

7. The appeal site comprises a semi-detached Victorian or Edwardian property located in a residential area of similar properties. For a number of years it was in use as two flats until 2015 when it was converted to a house in multiple occupation (HMO).
8. The Council's decision refers to three development plan policies. However, policies CS13 of the Waltham Forest Local Plan – Core Strategy (CS) (2012) and DM7 of the Waltham Forest Local Plan – Development Management Policies (DMP) (2013) are not relevant to this matter because they relate to health and well-being and accommodation standards.
9. The appellant argues that policy DM6 of DMP document is not applicable to this case because she considers that the previous lawful use was as two flats. Policy DM6 says that the conversion of larger homes to HMO's in Restricted Dwelling Conversion Wards, which includes the area in which the appeal site is located, will not be permitted. This is to ensure the adequate provision of larger homes which are needed in the Borough.
10. The Council's officer's report, in its description of the proposal, says that the last established lawful use of the site is as a single, family dwelling. Whilst it later goes on to say that it is not clear on whether that use has been lost, its decision refers to the loss of the family-sized unit.
11. I have noted the site's extensive planning history and that at an application (ref 193007) for a certificate of existing lawful use or development (LDC), described as for the existing use as two flats, was pending during the application process for the proposed HMO. After its decision on the current proposal but before the submission of this appeal, the Council decided in May

2020 that the use as two flats would not have been lawful at the time of the application (2019). The decision states that was because the submitted documentation was not sufficient to support the claim that the property had been in use for four years or more prior to the date of application.

12. Notwithstanding that an LDC relates to continuing uses of land and cannot be granted in respect of a previous use, lawful use is not dependent on an LDC to establish and can be based on evidence instead. The appellant claims that at the time of the conversion in 2015, the property was in lawful use as two flats as provided under section 191(2)a of the Town and Country Planning Act 1990 (as amended). The evidence she has provided with the appeal submission supports her claim of a continuous use of the property from 1998-2015 as two separate flat units. It is unclear to me whether or not the evidence is the same as that submitted for a previously refused LDC for continuous use as two flats in 2019 (ref 180142) as I do not have full details of that. She also says that the only evidence the Council found was council tax records that corroborate that the property was in use as two flats until 2015 when the register was amended to reflect the single use of the property as an HMO. I have nothing before me that would lead me to disagree with that.
13. A previous application (ref 171632) for retrospective planning permission for an HMO was refused in 2017 with a note that the matter would be considered for enforcement action. The appellant says that if the Council issues an enforcement notice in respect of the HMO, there is the potential for a reversion to the previous lawful use as two flats under the Mansi principle (*Mansi v Elstree Rural District Council* (1964) 16 P & CR 153, at 161 per Widgery J). However, the Council has not issued an enforcement notice and it is not for me to speculate about the potential for enforcement action or its implications. This is not, therefore, a relevant consideration in this appeal.
14. However, the size and layout of the previous two flats is relevant to whether or not policy DM6 applies to this proposal. The plans show that the previous layout for the two flats comprised a one bedroom flat at ground floor and a three bedroom flat at first floor. In the first floor flat, two of the bedrooms were very small and the total floorspace for the unit was below the floorspace requirements for two bedroom new dwellings as set out in the government's 'Technical housing standards – nationally described space standard'. I disagree, therefore, with the Council that the three bedroom flat constituted a larger home or family-sized unit. Neither of the previous flats could be considered as a family-sized unit and therefore policy DM6 cannot apply.
15. I conclude, therefore, that the proposal would not result in the loss of a family-sized unit and would not harm the supply of such units in the Borough. My findings are for the purposes of the current appeal only and do not prejudice any future application for a lawful development certificate and/or, where relevant, any enforcement proceedings.

Neighbouring occupiers' living conditions

16. The Council has said that because each room would effectively operate as a single unit, independent of each other, there would be a detrimental effect in terms of noise and disturbance for adjacent neighbouring properties. The appellant disputes that, on the grounds that an HMO is not independent living but communal living with shared living spaces. The plans confirm that and show that the occupiers share a large kitchen/living space and that there is a

shared bathroom on each of the three floors. As such, any noise or disturbance from domestic appliances such as washing machines is not likely to be significantly greater than that from the previous use as two flats which included two kitchens.

17. It is likely, however, that there would be an increase in the proposed number of occupiers from that of the previous two flats. There would be some additional noise and disturbance from the comings and goings of occupiers and their guests and from the use of technology and smaller appliances within rooms. However, given the layout of the property with four of the bedrooms separated by stairs from the wall with the adjoining property, the difference in noise levels and disturbance between this and the previous use as two flats would not be significant.
18. I have noted that there were no objections to the proposed use, despite it having been in existence for some time with eight bedrooms.
19. The appellant has suggested a condition for a management plan should the appeal be granted but I am not persuaded that this is necessary in this case given my findings on this matter and because other legislation exists which places a duty on managers and occupiers regarding the management of HMO's.
20. I conclude then that the proposal would not have an unacceptable impact in terms of noise and disturbance to neighbouring occupiers and would accord with development plan policies CS13 in the CS and DM32 in the DMP which seek to ensure that developments provide satisfactory standards of amenity for surrounding occupiers.

Future occupiers' living conditions

21. The Council's decision stated that as there was no section drawing with the application it could not be confirmed that the proposed development would not result in a cramped and unsatisfactory form of living environment for the occupiers of bedroom 7 in the loft conversion on the third floor. The appellant has submitted a section drawing as part of this appeal which I have taken into account as it simply provides clarity and does not change the nature of the proposal. Although the Council has not commented on this, it clearly shows that bedroom 7 would meet the requirements of policy DM6 for 10 sq m of floorspace and that the layout of the room would be acceptable.
22. I conclude, therefore, that the proposal would have an acceptable standard of accommodation and would not harm the living conditions of the future occupiers. Thus, it would accord with development plan policies DM6 in the DMP, CS13, CS15 in the CS and DM32 in the DMP which together seek to ensure that developments are functional and attractive and provide satisfactory standards of amenity for future occupiers. It would also accord with the government's 'Technical housing standards – nationally described space standard'.

Sustainable travel

23. Development plan policies CS7 and CS15 in the CS and DM16 in the DMP together seek to improve the way places function, promote sustainable travel and restrict the occupants of car-free developments from being issued with on-street parking permits.

24. The appeal dwelling has parking for two vehicles on-site. Poppleton Road is a residential street in a location with good public transport links. Most properties in the street are similar to the appeal property but many have no on-site parking. The site is located within a Controlled Parking Zone. At the time of my visit the street was heavily parked.
25. The Council's decision refers to the absence of a legal agreement to restrict the existing and future occupiers from applying for parking permits. A legal agreement in the form of a unilateral undertaking has since been submitted by the appellant which is necessary to make the development acceptable in these terms and would satisfy the other tests for planning obligations in the Framework.
26. I conclude then that, subject to the provisions of the legal agreement, the proposed development would not lead to an unacceptable increase in travel by vehicles or discourage the use of sustainable travel modes. It would accord, therefore, with CS policies CS7 and CS15 and with DMP policy DM16.

Conditions

27. The Council has not suggested any conditions should the proposed development be acceptable. However, although part of the proposed development is retrospective, the internal alterations are proposed and a standard commencement condition is therefore necessary as is a condition requiring that the development is carried out in accordance with the approved plans, to provide certainty.
28. A condition for cycle parking was referred to in the Council's officer's report and is necessary to provide an alternative transport option as sought in DMP policy DM16. That report also referred to a condition for waste management which is necessary to manage the impact of the development on neighbouring amenity, as sought in DMP policy DM32.

Conclusion

29. For the reasons given above, I conclude that the proposed development would accord with the development plan and there are no other material considerations that warrant determining the appeal otherwise. The appeal is allowed subject to the conditions attached.

Sarah Colebourne

Inspector

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 180/G/1 Proposed Floor Plans; 20/110/1 Sections.
- 3) Bin storage facilities shall be provided for the building in accordance with design, siting and materials details, which have been first submitted to and approved in writing by the Local Planning Authority. The bin storage facilities shall be provided within three months of the date of this decision in accordance with the approved details and retained thereafter.
- 4) Cycle parking facilities shall be provided for the building in accordance with design, siting and materials details, which have been first submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities shall be provided within three months of the date of this decision in accordance with the approved details and retained thereafter.

End of conditions.