



Appeal Decision

Site Visit made on 15 June 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 8 September 2021

Appeal Ref: APP/U5930/C/20/3258074

Land at 438 Larkshall Road, London, E4 9JF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Murat Yavuz against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice, numbered 088801, was issued on 24 July 2020.
 - The breach of planning control as alleged in the notice is
 - 1) Without planning permission, the subdivision of the Land to facilitate:-
 - a) the material change of use of the dwellinghouse (Use Class C3) to two separate self-contained flats (Use Class C3), and
 - b) the material change of use of the domestic garage (Use Class C3) for the maintenance/repair/cleaning of motor vehicles (Use Class B1) together with the ancillary storage of motor vehicles and other items associated with the Class B1 use;
 - 2) Without planning permission, the erection of a garage building (as shown in attached Photograph A).
 - The requirements of the notice are set out in Annex A.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the ground 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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Decision

1. 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.

Preliminary Matters

2. Since the appeal was lodged The London Plan (2021) (the new London Plan) has been published by the Mayor of London and it is now part of the development plan, along with the London Borough of Waltham Forest Local Plan Core Strategy 2012 (the Core Strategy) and the Development Management Policies Local Plan 2013 (the Local Plan DMP).
3. The policies within the London Plan (2016), which are referenced in the enforcement notice, are therefore no longer extant and some of the policies contained in the Draft New London Plan have changed. The parties have had an opportunity to comment on the new London Plan in relation to the case during the appeal process.
4. The Council has provided Policies D3 and D6 of the new London Plan to me and to the appellant and it has highlighted sections of these policies. I have not

received any comment from the appellant. I am satisfied that both parties have had the opportunity to consider the relevance of the new London Plan to the appeals and neither party would be prejudiced if I take Policies D3 and D6 into account in my decision.

5. On 20 July 2021 the Government published its revised National Planning Policy Framework (the revised Framework). The revised Framework replaces the previous version published in February 2019. Policies within the revised Framework are material considerations which should be taken into account for decision-making from the day of its publication. Consequently, I have given the main parties the opportunity to make comments on the relevance of the revised Framework to the matters which have been raised by the appeals. I have not received any comments from either party.
6. The appellant did not submit his appeal on the basis of ground (b) which is that the matters to which the notice relates have not occurred. However, in his submissions he argues that the garage is operated as an ancillary use to the host dwelling and is not and will not be occupied as a separate commercial use. As the Council has addressed this argument in its statement, no prejudice would arise, and I have therefore addressed the appellant's appeal under ground (b) in my decision.
7. In his response to the Council's statement the appellant says that there has been a material change in the use of the building on the site and that it now accommodates two 1-bedroom flats each with a secondary room providing a homeworking office/study. He also says that he would be willing to provide a financial contribution towards off site local open space works in lieu of the provision of amenity space on site for the first floor flat.
8. I have given the Council the chance to consider these additional points and it has confirmed that the additional comments made by the appellant do not overcome the Council's objections. As both parties have had the chance to comment no injustice would arise if I were to address the appellant's additional points in my reasoning.

The Enforcement Notice and Ground (b)

9. The appellant argues that the garage is operated as an ancillary use to the host dwellings and that it is not in use as separate commercial use. The Council's position as set out in the notice is that the site, which previously accommodated a dwelling house, garden and garage, has been subdivided to form two planning units. Effectively one planning unit is now two flats and the other the garage.
10. I observed during my site visit that there is a door from the garage into the garden which serves the ground floor flat but that it is locked and does not appear to be regularly used. A short stretch of fencing has been erected perpendicular to the road which also precludes direct access to the garage. On this basis and in the absence of any evidence to support the appellant's statement that the occupier of the ground floor flat uses the garage, it appears to me that the site has been subdivided as described in the notice and two new planning units have been formed as argued by the Council in its statement.
11. With regard to the change of use of the garage, the Council argues that it has received complaints about the use and that officers have witnessed vehicles

being worked on and waiting on the street. The Council concedes that it is possible that the appellant has stopped using the garage as set out in the notice. I also saw no evidence of a Class B1 use of the garage during my site visit. However, under ground (b) the question is whether the breach had occurred at the date of issue of the notice.

12. Ground (b) is a legal ground of appeal and the onus of proof lies with the appellant, the standard of proof being the balance of probabilities. The appellant has not submitted any evidence to demonstrate how the garage was being used at the time when the notice was issued. In these circumstances, notwithstanding the absence of evidence before me from the Council, the appellant has not provided evidence which is sufficiently precise and unambiguous so as to show that the garage was not in Class B1 use when the notice was issued.
13. For the reasons set out above the appeal under ground (b) does not succeed and no corrections or variation of the notice to clarify the breach are necessary.

Ground (a) and the Deemed Planning Application (DPA)

14. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.
15. The DPA is derived from the breach of planning control as set out in the notice.

Main Issues

16. The reasons for the notice and the Council's submissions set out the reasons why it considers that planning permission should be refused for the development as described on the notice. On the basis of this evidence, the main issues are:
 - Whether or not the change of use to two flats makes adequate provision for internal and external space.
 - The effect of the loss of on-site car parking provision.
 - The effect of the change of use of the dwelling to two flats on the supply of family housing.
 - The effect of the development on the living conditions of occupiers of neighbouring dwellings with particular regard to the potential for noise and disturbance.
 - The effect of the garage building on:
 - the character and appearance of the site and the surrounding area and;
 - the living conditions of the occupiers of 1 Coolgardie Avenue, with particular reference to overshadowing.

Reasons

Internal and external space

17. The notice does not define the number of bedrooms in the two flats but the Council has assessed the internal floorspace provided on the basis that each has a double bedroom and a single bedroom and accommodates 3 persons. An assessment against the internal space standards which are set out in Policy DM7 of the Local Plan DMP demonstrates that neither of the flats fully meet the standards. If the same standards are applied in the case of the two one bedroom flats which the appellant says the flats now accommodate, the upper floor flat does not meet the standards.
18. The adoption of the London Plan introduces a new set of standards for private internal space which in some respects are less restrictive than those set out in Policy DM7 of the Local Plan DMP. However even under those standards both of the two bed and the one bed flat scenarios fail the tests in at least one respect.
19. There is no substantive evidence before me to show that the deficiencies in internal space are outweighed by the provision of a study as argued by the appellant even taking into account the impacts on homeworking which have arisen as a consequence of the Covid-19 pandemic.
20. Turning to external space, the arrangement described by the appellant is for the occupiers of the ground floor flat to access the rear garden and the occupiers of the upper floor flat to use the front garden. However, he also puts forward an alternative arrangement whereby the rear garden would be subdivided to serve both flats.
21. Although the entrance to the upper flat is via a doorway facing Coolgardie Avenue, the front garden is between the building and Larkshall Road in common with other houses in the terrace. Anyone using the front garden would be exposed to high levels of noise and disturbance from passing traffic. Whilst this space may be large enough to fulfil external space standards it is not suitable as a private, well-designed amenity space as required by Policy DM7 of the Local Plan DMP.
22. The appellant's suggestions regarding the enclosure of the front garden to provide greater privacy are not set out in detail, consequently I cannot be sure that such action would resolve the harm which I have identified or give rise to other adverse effects.
23. In terms of the proposal to subdivide the rear garden, again there are no details of the intended layout or allocation of space before me or the Council. Although the rear garden is of a scale which provides sufficient space when subdivided, in the absence of further details it has not been demonstrated that such an arrangement would meet the needs of the occupiers in terms of its design.
24. The appellant has indicated that he would have no objection to providing a financial contribution in lieu of the absence of amenity space to serve the upper flat. However, neither the appellant nor the Council have set out the circumstances in which such an approach would be appropriate and the appellant has provided no mechanism by which the financial contribution could be made.

25. Drawing all these strands together and considering the various permutations for the use and layout of the site, I conclude that the change of use to two flats does not make adequate provision for internal and external space. The development is therefore contrary to Policy D6 of the new London Plan and Policy DM7 of the Local Plan DMP which seek to deliver housing of a high quality and standard in terms of living space.

Loss of on-site car parking provision

26. When the site was previously in use as a single dwelling house, it is reasonable to assume that the single garage was used for car parking for the residents. This would have provided one off road car parking space, but it would have prevented some on-street parking to allow for access to it.
27. The provision of a garage adjacent to a dwelling is an anomaly in the residential streets surrounding the appeal site and it appears that the majority of residents rely on on-street car parking. Larkshall Road accommodates a variety of uses and is subject to parking controls but Coolgardie Avenue which provides access to the garage and surrounding streets are uncontrolled. I observed a substantial degree of on-street car parking during my site visit, which is likely to arise from the lack of off-street car parking opportunities for residents and the close proximity of local services, including Higham's Park station. Given these circumstances, competition for on-street car parking is likely to be significant.
28. It will be seen from my reasoning above that I have accepted the Council's argument that the development would result in the formation of two planning units and that the garage no longer provides car parking for the occupiers of the dwelling which has been converted into two flats. Therefore, the residents, which are effectively two households would be reliant on on-street car parking. Furthermore, as the alleged use of the garage extends beyond the storage of cars it is probable that cars waiting to access the garage to be maintained, repaired or cleaned would also occupy on-street car parking spaces.
29. There is no substantive evidence in the form of parking surveys to quantify the impact of any additional car parking demand on existing levels of on-street car parking. However, taking account of the site context, the high level of on-street parking and the likely parking demand generated by two unconnected uses, it is reasonable to assume that the increased demand for car parking is not capable of being absorbed on-street.
30. The appellant argues that in terms of the demand for car parking, the two 1-bed units would not generate a greater need than that of a 4-bed house. However, there is no evidence to support this claim and in any event the house in this case had the use of the garage which the new units do not.
31. Drawing these strands together, I conclude that the development leads to a reduction in on-street parking provision in an area where on-street parking space cannot meet existing demand. The development is therefore contrary to Policy DM16 of the Local Plan DMP.

The effect on the supply of family housing

32. Prior to the development the site accommodated an end of terrace house with front and rear gardens and off-street parking in the form of a single garage. It is reasonable to assume that this would have been a suitable home for a family

given its size and the level of residential amenity available to the occupiers. The appellant also accepts in his comments on the Council's case that the subdivision of the main property did result in the loss of a large dwelling capable of housing a family.

33. Policy DM6 of the Local Plan DMP, amongst other things, does not permit the conversion of houses with a gross original internal floorspace of less than 124 sqm to be converted into smaller self-contained homes. The appellant does not dispute that the floorspace of No. 438 Larkshall Road is considerably less than 124 sqm. It follows that the development is contrary to Policy DM6.
34. The appellant initially argued that the development delivers a 3-bed flat and a 2-bed flat which could be occupied by families, which in his opinion would meet the aim of the policy. However, the justification for Policy DM6 sets out that the threshold of 124 sqm was chosen as this was the smallest floorspace which could successfully incorporate two flats, of which one is family sized, based on the internal space standards in the London Plan.
35. It follows that as I have found that the flats, as they were configured at the time when the notice was served, do not meet the current space standards, they are unsuitable for family occupation of the type envisaged by Policy DM6. Therefore, the development does not meet the Council's aim of ensuring that a larger family home is included in any conversion. Furthermore, the effect of the development would be to reduce the supply of family housing which would be harmful to the Council's aim of protecting the existing housing stock in order to ensure that there are opportunities for families to live in the borough.
36. The appellant argues that the previous use as a large single-family dwelling could have been lost through a permitted change to a House in Multiple Occupation. However, there is a Borough-wide Article 4 Direction which has removed such rights, consequently this argument carries no weight. The appellant's suggestion that the flats now have one bedroom and a study also significantly undermines his argument that the flats which are created are suitable for occupation by families.
37. I conclude that the change of use of the dwelling to flats would have a harmful effect on the supply of family housing. The development is therefore contrary to Policy DM6 of the Local Plan DMP which seeks to control the conversion of larger homes into self-contained homes.

Living conditions of neighbouring occupiers

38. The Council considers that the use of the garage for the maintenance/repair/cleaning of motor vehicles would be harmful to the residential amenities currently enjoyed by neighbours. In its view this would take the form of noise and air pollution arising from vehicles waiting to access the garage and their occupation of on-street car parking space and noise and disturbance as a result of the use of the garage outside normal working hours in the evenings and at weekends. The appellant argues that such impacts will not arise because the garage is not in use as a commercial garage.
39. From my findings above, it follows that the inadequacy of off-street car parking to serve the B1 use on the site is likely to result in some instances of vehicles being parked on the road awaiting space becoming available in the garage building. This could give rise to vehicles manoeuvring in the street causing

noise and localised air pollution. However, given the location of the site close to a road serving a mixed use, commercial area and the comings and goings of people parking their cars in the street to access services, the noise and air pollution generated in the street by the use of the garage would not be significant during the day.

40. The noise and fumes generated by the drivers and their vehicles parking in the street could be controlled in the evenings and at weekends by the imposition of an operating hours condition on the use of the garage. This would also address the concerns of residents with regard to noise generated by the activities in the garage during these times.
41. In terms of noise and disturbance arising from the flats, this would be mitigated by the location of the access to the building which as I observed during my site visit faces Coolgardie Avenue and is therefore distant from the accesses to neighbouring dwellings. Furthermore, the site is of a sufficient size that amenities such as refuse, and recycling bins and cycle parking could be accommodated without having a significant impact on neighbouring residents.
42. I conclude that, subject to the imposition of a condition to control the operating hours of the garage, the conversion to flats and the garage use would not have a harmful effect on the residential amenities currently enjoyed by neighbouring occupiers. The development therefore complies with Policy DM32 of the Local Plan DMP which requires the impact of development on occupiers and neighbours to be managed.

Garage building - Character and appearance

43. The garage building forms part of the street scene of Coolgardie Avenue, which is characterised by two storey, terraced houses under pitched roofs set back from the carriageway behind paved, front gardens. The appearance of the buildings is regimented and uniform with two storey bay windows under a projecting gable being a dominant feature. The neighbouring property, 1 Coolgardie Avenue (No. 1) has a single storey flat roof element which fills the gap between the end gable of the terrace and the appeal site and which projects forward of the bow windows on its front elevation.
44. The evidence before me shows that prior to the garage building being constructed this part of the appeal site accommodated a single storey garage of domestic appearance. Whilst in the absence of similar single storey buildings in the street, this building would have appeared an anomaly, it had a pitched roof running perpendicular to Coolgardie Avenue and presented a gable end to the road which was compatible with the gable features on the adjacent houses.
45. Although the current garage building is larger than the structure which it replaced, it occupies a similar position on the site and has a wide opening facing the road. However, the substantial area of flat roof in combination with the increased height at eaves level result in it being a much more dominant feature in the street scene. By comparison the earlier garage had a modest impact moderated by its roof design.
46. Flat roofs are generally not a feature of the street scene, the exception being the projection at No. 1. However, that feature is smaller in size and reads as part of the house as opposed to the garage building which as a separate building has a discordant and incongruous impact on the street scene.

47. The appellant has no objection to his being required to paint or render the garage building. However, there is no evidence before me to demonstrate the effect of such works on the appearance of the garage and the contribution which it makes to the street scene. Even had such information been available, given that the harm arises from the size, design and extent of the flat roof of the garage, an alternative colour treatment would not address these harmful impacts.
48. I conclude that the garage building has a harmful effect on the character and appearance of the site and the surrounding area. The development is contrary to Policy D3 of the new London Plan, Policy CS15 of the Core Strategy and Policy DM29 of the Local Plan DMP which require that new development responds positively to and reinforces local context and character.

Garage building – Living conditions

49. The garage building has been constructed in close proximity to the boundary with No. 1 in a similar position to the previous garage building. Both buildings were located forward of the flat roofed projecting element of No. 1, which contains a bow window facing the road. Both buildings also sit to the west of No. 1 and given their alignment both have the potential to cast a shadow in the evening towards No. 1.
50. Although the garage building has a higher eaves height than the previous garage, I have no evidence before me to demonstrate the degree of additional overshadowing which would arise. In terms of the probable impact on No.1 the area between the house and the front boundary wall is hard paved and is unlikely to be used as sitting out space/private amenity space. The bow window may be subject to some additional overshadowing and I have not been provided with any details of the use of the room served by the window. Nevertheless, given the respective positions of the garage building and the window any overshadowing would be of limited duration and unlikely to have a significant adverse effect on the residential amenity of the occupier of No. 1.
51. I conclude that the garage building is not harmful to the living conditions of the occupier of No. 1 Coolgardie Avenue, with particular reference to overshadowing. The development is in accordance with Policies DM29 and DM32 of the Local Plan DMP, which require that new development addresses the potential impact on neighbouring amenity.
52. As the new garage building is in commercial use it is neither a residential extension nor alteration, therefore, Policy DM4 of the Local Plan DMP and the guidance set out in the Council's SPD 'Residential Extensions and Alterations' (2010) are not relevant in this case.

Other Matters

53. The appellant regards the development as sustainable development and as such he considers that it should be afforded substantial and significant weight in favour of the granting of planning permission. However, he has not argued that there are no relevant development plan policies or that the policies that are most important for determining the appeal are out of date. He is relying on his view that the development accords with the development plan, that the presumption in favour of sustainable development applies and that this is a material consideration in the determination of the appeal. However, it will be

seen from the foregoing that I have not reached the same conclusion and that I have found conflict with the development plan. On that basis the presumption in favour of sustainable development does not apply.

54. The appellant argues that the two families who occupy the flats will be made homeless if the appeal is not allowed. However, there is no information to support this contention or to demonstrate that there is no alternative accommodation available to the residents. Consequently, this argument attracts very limited weight in favour of allowing the appeal and does not outweigh the harm which I have found.

Conclusion in respect of ground (a) and the DPA

55. Whilst, subject to the imposition of a planning condition to control operating hours, the development would not have a harmful effect on the living conditions of neighbouring occupiers, it is contrary to the development plan for other reasons which are set out above. Therefore, and also having regard for material considerations, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Conclusion

56. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Sarah Dyer

INSPECTOR

Annex A

The requirements of the notice

- 1) Cease the unauthorised use of the two self-contained flats;
- 2) Remove all additional energy meters from the Land so that only one remains;
- 3) Remove all additional boilers from the Land so that only one remains;
- 4) Remove all additional kitchens, sinks, cookers, washing machines, fridge freezers and other kitchen related accessories, fixtures and fittings from the Land so that only one remains;
- 5) Remove all additional showers and toilets, sinks and associated fittings and fixtures from the Land so that only one remains;
- 6) Cease the Class B1 use of the garage (as shown in attached Photograph A) for the maintenance, servicing, cleaning and/or repairs of any motor vehicles;
- 7) Cease the use of the garage (as shown in attached Photograph A) for the storage of motor vehicles or any other items associated with the unauthorised Class B1 use;
- 8) Remove from the garage (as shown in attached Photograph A) all items brought onto the Land which facilitate the unauthorised use of this garage;
- 9) Following compliance with Steps 1) – 8) above, carry out one of the following steps:-
 - a) Either demolish and remove the garage (as shown in attached Photograph A) in its entirety,OR
 - b) Amend the garage so that it satisfies all conditions and limitations to benefit from permitted development pursuant to Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended); and
- 10) Following compliance with Steps 1) – 9), remove from the Land any resultant debris or detritus.