



Appeal Decision

Site visit made on 10 August 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th November 2021

Appeal Ref: APP/G5750/W/20/3265578

6 Flint Close, Stratford, London E15 4QP

- 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 Irfan Hussain against the decision of the Council of the London Borough of Newham.
 - The application Ref 20/01766/FUL, dated 17 August 2020, was refused by notice dated 3 November 2020.
 - The development proposed is Construction of a single storey rear extension and rear dormer, and conversion of existing 6-bedroom Class C4 HMO into Sui Generis HMO.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On 2 March 2021 the London Plan (2021) (the London Plan) was published, replacing the London Plan (2016) and on 20 July 2021 the revised National Planning Policy Framework (2021) (the Framework) was published. I have given the Council and appellant the opportunity to comment upon the implications of these and taken them into account in determining this appeal.
3. The Council's reasons for refusal refer to conflicts with Policies of the previous London Plan (2016). As this has been replaced by the London Plan (2021) this is reflected in my findings in relation to each main issue below.
4. The Council's third reason for refusal refers to adverse effects through increased comings and goings and changes to patterns of movement and activities. Having regard to the delegated report, appellant's evidence, and views of interested parties, I have taken this to mean noise and disturbance. The reason for refusal does not specify receptors, so I have had regard to observations on my site visit in setting out the main issues below.
5. The Council's decision notice does not refer to the effects of the development upon the Epping Forest Special Area of Conservation (the SAC) as a reason for refusing permission. However, the appeal site lies within the 0 – 6.2km zone of influence (ZoI) of the SAC so I have considered this as a main issue, sought the Council's and appellant's views in respect of this issue, and taken these into account in reaching my findings below.
6. Appeal Ref APP/G5750/W/20/3265777 has been determined at the neighbouring No 7 for a similar development. I have had regard to the

decision and sought the Council's and appellant's views in respect of that development.

Main Issues

7. The main issues are:

- the effect of the development upon the Epping Forest SAC;
- the effect of the development upon the availability of accommodation suitable for family housing and achieving a suitable housing mix;
- whether the development would be in a suitable location having regard to policies in respect of Houses in Multiple Occupation; and,
- the effect of the development upon the living conditions of the occupiers of Nos 5 and 7 Flint Close and Nos 40 – 44 Tavistock Road, with particular reference to noise and disturbance.

Reasons

Epping Forest SAC

8. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require where a plan or project is likely to result in a significant effect on a European site (in this case the SAC), a competent authority is required to make an Appropriate Assessment (AA) of its implications on the integrity of the European site in view of its conservation objectives. Any likely significant effects (LSE) arising from a development needs to be considered alone and in combination with other development in the area, adopting the precautionary principle.
9. The SAC is designated due to the presence of three qualifying habitats (Atlantic beech forest, European dry heaths, Northern Atlantic wet heaths) and one qualifying species (the Stag Beetle). The conservation objectives for the SAC are to achieve the favourable conservation status of the qualifying features by maintaining or restoring the extent, distribution, structure and function of the qualifying habitats, the population and distribution of the qualifying species, and the supporting processes on which they rely.
10. The Council informs me the SAC represents a strong draw as a place for recreational activities. Based upon visitor surveys all new residential development within the ZoI would access the SAC for recreational purposes. Due to their proximity, I am informed by the appellant that frequent recreational activities from the appeal site area are likely to utilise places such as the Olympic Park, Wanstead Flats and Park, and West Ham Park. The appellant suggests recreational visits to the SAC area are typically infrequent. However, the research or evidence upon which these views are based is not clear, and it still advises there would be likely to be some visits to the SAC.
11. Recreational visits to the SAC result in disturbance causing damage to habitats and species through trampling vegetation, soil compaction and tree root damage. Without mitigation, the Council has confirmed that all new residential development within the ZoI, when considered either alone or in combination with other such development, would constitute an LSE upon the SAC. I have no reason to doubt this is not the case. If constructed, the appeal scheme

would facilitate a permanent increase in the number of people living within a short journey of the SAC, resulting in LSE.

12. Natural England (NE) is the Statutory Nature Conservation Body for the SAC. The Council informs me the Interim Approach to Managing Recreational Pressures on the SAC Strategic Access Management and Monitoring Strategy (SAMMS) by NE (October 2018) sets out costed schemes and resources needed to mitigate the harm of increased recreational pressure on the SAC. The Newham Interim Habitats Funding Statement (April 2019) (the IHFS), sets out the Council's approach to delivering the required financial contributions to fund strategic mitigation measures. It states the Council only collects contributions to cover the cost of SAMMS from major new residential developments within the 0-3km Zone of Influence, based upon housing trajectory estimates.
13. Based upon the Council's approach, no financial contribution or mitigation is required. NE is content the approach in the Council's statement is currently sufficient to avoid any adverse impact to the integrity of the SAC, provided the correct sum for the number of residential units is secured. NE is also of the view that as a change of use to a Large HMO, it is for the authority to determine whether this represents an individual household or not. I am of the view each new room is highly likely to be occupied as an individual household.
14. The approach to securing funding by the Council and agreed by NE appears to rely upon sites that may not necessarily come forward. Furthermore, neither NE or the Council has explained how it is guaranteed the correct funding will be secured to mitigate LSE for this specific development. There is no planning obligation before me securing a financial contribution to SAMMS or other alternative mitigation measures. Therefore, this appeal scheme makes no provision to mitigate recreational disturbance impacts and thus maintain a favourable condition and the integrity of the SAC.
15. While this is a different finding for the appeal at No 7 next door, applying the precautionary principle, based upon the evidence before me and in the absence of appropriate mitigation, the appeal scheme would have significant adverse effects on the integrity of the SAC due to increased recreational disturbance. For this reason, the appeal scheme would fail to adhere to the conservation objectives. The appellant has not suggested alternative solutions to providing unmitigated accommodation. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the SAC.
16. Therefore, the proposal would conflict with Policy SC4 of the Newham Local Plan (2018) (the NLP) which states development will only be permitted where it can be demonstrated that significant adverse impact on protected species and habitats is avoided. It would also not comply with the Regulations or paragraphs 179 and 180 of the Framework, which state where significant harm to biodiversity cannot be adequately mitigated, permission should be refused.

Family accommodation and housing mix

17. Policy H1 of the NLP seeks a significant increase in the provision of family housing to replace that lost to conversions. Policy H3 of the NLP seeks HMOs to be purpose-built or converted from premises other than family-sized dwellings. Policy H4 of the NLP states the strategy is to protect 3 bed and 4+

bed housing, and de-conversion of Houses in Multiple Occupation (HMOs) back to family houses is supported.

18. The appeal site is a three storey dwelling benefitting from certificates of lawfulness for the existing C4 HMO and for a rear loft dormer, as well as a prior approval for a ground floor rear extension. However, given the existing accommodation can satisfactorily accommodate 6 occupiers, it is by no means certain the extensions would be built out without permission to increase the occupancy, so this matter attracts limited weight.
19. The internal layout is one that could be de-converted back to a dwelling suitable for family accommodation with relatively limited works. Based upon the evidence before me, the addition of an additional floor and extension would not make de-conversion to a suitable larger family dwelling more difficult. Furthermore, the Inspector for APP/G5750/W/20/3265777 found Policy H4 of the NLP does not place any specific restrictions on the expansion of existing HMOs and is a positively worded policy so that it supports certain proposals, rather than restricting others. It has not been put to me that this is incorrect. On this basis the development does not conflict with the policy.
20. For the reasons set out above the development would not be harmful to the availability of accommodation suitable for family housing and achieving a suitable housing mix in the Borough. It would not conflict with the aims of Policies GG4 and H10 of the London Plan or Policies S1, S6, H1, H3, H4, SP1 and SP3 of the NLP. Amongst other things, these seek to protect dwellings suitable for accommodating families to retain a suitable dwelling mix to meet the needs of the local population and contribute to a balanced community. It would also not conflict with the aims of paragraphs 60 and 61 of the Framework which seek to ensure the needs of groups with specific housing requirements are addressed.

Suitable location

21. Policy H3 of the NLP directs HMOs to town and local centres or key movement corridors (KMCs), as such locations are more accessible with better public transport, infrastructure, facilities, and may benefit from the additional spend and investment. The site is close to services and supporting facilities on Romford Road and Vicarage Lane. These include a General Practice, Pharmacy, various food outlets, the University of East London, and a community centre.
22. The development would be likely to provide financial benefits and patronage of these services and facilities. Furthermore, it is approximately 235m from bus services on Romford Road (a KMC) being closer to stops than some locations on the Romford Road, which is a matter the Council has not disputed. Therefore, having regard to the purpose of Policy H3 in respect of location, I see no material harm as a result of the conflict with Policy H3.
23. For the reasons set out above the development would not be in a suitable location in conflict with Policies H1, H3, S6 of the NLP, insofar as these seek to restrict HMOs and direct them to town and local centres and KMCs. It would also conflict with paragraph 62 of the Framework insofar as this emphasises, the size, type and tenure of housing needed should be reflected in local policies. However, for the reasons already outlined, there would be no material harm as a consequence of the conflict with these locational policies.

24. In respect of this main issue, I do not find a conflict with Policies S1 and H4 of the NLP referred to in the Council's first reason for refusal, insofar as these relate to the protection of family dwellings. Neither do I find a direct conflict with Policy SP1 and SP3 of the NLP or Policy GG4 of the London Plan in respect of this main issue insofar as these seek a well-connected and integrated series of successful and distinctive mixed use areas. There is no conflict with Policies H8 and H10 of the London Plan as these specifically relate to accommodation to be lost and the mix of unit sizes, respectively.

Noise and disturbance

25. The appeal site is within a residential development of a number of flats and houses, with associated parking and servicing. The appeal site location was relatively quiet over the duration of my visit. The development would increase by two the number occupiers living largely independent lives, having reduced dependence on shared travel, generating a limited increase in the number of comings and goings. This could include private cars, taxis, delivery of meals and purchases, social visitors.
26. The Acoustic Technical Note (ATN) sets out the likely increase in comings and goings based upon 16 'events' in 1 hour would be likely to result in a 1.2 dB increase in noise, which would be imperceptible. There has been no history of complaints at the appeal site. Noise levels experienced within the neighbouring property would be between 27.6 and 30.6 dBA. No 7 Flint Close is a HMO and I am advised the cumulative effects would not be likely to result in harm. Given the communal access and large parking in that area, I am satisfied that movements from an additional two occupiers would not significantly increase noise and disturbance from activities to the front of the appeal site.
27. The internal construction could be undertaken in accordance with sound attenuation performance requirements of the Building Regulations. However, the existing layout of No 6 is such that the rear garden is accessed by a private bedroom. The new layout would result in the rear space being a communal room making the rear outdoor space more freely accessible than is currently the case. This and the number of occupiers is likely to result in the increased use of the garden and use of the new rear communal space with a large window opening, particularly during periods of warmer weather.
28. Given the proximity of neighbouring properties such as No 5 and those immediately adjoining the rear at Nos 40 – 44, these properties are likely to experience increases in noise levels due to the increased occupation, new rear layout, and associated use. Despite stating it is based upon a worst case scenario, the ATN does not state the prolonged use of the rear communal room with windows open, or the use of the reduced garden, has been taken into account. Therefore, I cannot be certain the development would not result in harmful living conditions to neighbouring occupiers from noise and disturbance. I am not persuaded that conditions could overcome my concerns. While the above is a different finding that for the appeal at No 7, I have based my findings upon the evidence before me and specific circumstances of this case.
29. The Council has provided extracts of appeal decisions where the Inspectors found the change of use would result in an increased level of noise. However, none of these appear to relate to properties where the existing lawful use was an HMO. Therefore, they are not directly comparable to the appeal proposal.

30. For the reasons set out above, I cannot be certain the development would not result in harmful living conditions to neighbouring occupiers at No 5 Flint Close and Nos 40, 42 and 44 Tavistock Road in respect of noise and disturbance. This would conflict with the aims of Policies GG3 and D3 of the London Plan, Policies H1, SP1, SP2, SP3 and SP8 of the NLP and paragraph 130f) of the Framework. Amongst other things these seek to ensure a high quality development that promotes health and well-being, and acceptable living conditions for the occupiers of neighbouring properties.
31. In relation to this main issue, I do not find conflict with Policies GG1, GG4 and D8 and of the London Plan which mainly relate to diversity and equality, strong and inclusive communities, and the public realm. I also do not find a conflict with Policies S6 and H4 of the NLP as these relate to over-arching strategic criteria and spatial strategy matters and protecting existing housing stock. Therefore, they are less relevant than those I have already mentioned.

Planning Balance

32. The development would result in a small temporary economic benefit during construction and some small, sustained benefit to the local economy upon completion. The provision of two additional spaces of what I am advised would be relatively affordable accommodation, and with an improved quality of accommodation including with a new communal area and fewer sharers per kitchen, are matters that attract limited weight in favour of the development. Overall, the benefits attract limited weight in favour of the scheme.
33. Compliance with policies in respect of matters such as car parking, location and accessibility, availability of family housing, cycle parking and provision for refuse storage are neutral matters of neutral weight. However, the policy compliance and benefits of the development do not overcome or outweigh the harm identified in respect of the Epping Forest SAC, and, as a consequence of the conflict with policies in respect of the living conditions of neighbouring occupiers. These are such that they attract significant weight against the scheme. Therefore, the harm significantly outweighs the benefits of the development.

Conclusion

34. The proposed development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR