
Appeal Decision

Site visit made on 19 April 2022

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2022

Appeal Ref: APP/U5930/W/21/3283750

453 Grove Green Road, Laytonstone E11 4AA

- 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 Eastway Property Services against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 210210, dated 26 January 2021, was refused by notice dated 30 March 2021.
 - The development proposed is the change of use of property from single dwelling house to house in multiple occupation (use class C4) for up to 6 people.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I noted on my site visit that the property was in use as a large HMO. This is also shown on the submitted 'existing' plans. However, there is no evidence that planning permission for a formal change of use of the dwelling to a large HMO was ever obtained, and as a consequence I see no reasons to disagree with the Council's contention that the lawful use of the property remains as a dwelling within Use Class C3.
3. There is a clear difference between the proposed development described above and that shown on the submitted plans. The submitted plans show a total of 8 bedrooms, and this matches what is in place on site. The development shown on plan therefore, and the development that has been carried out, represents a change of use to a sui generis large HMO, not a C4 use as described.
4. The appellants admit this is an error and have provided me with alternative plans which show a substantially amended layout, which includes the removal of two bedrooms, increased living/dining/kitchen facilities and add details regarding cycle storage. They describe this amended proposal as for a '6-bedroom, 7 person' HMO.
5. I have considered the revised plan under the principles established by the Courts in *Wheatcroft*¹. These plans significantly change the development from that considered by the Council. The appeal process should not be used to evolve a scheme. The amended drawings are intended to address reasons for refusal and have not been the subject of consultation. In my view, they materially amend the proposal. Therefore, were I to accept them then that may prejudice the interests of interested parties. Moreover, the amended plans as

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

described by the appellants do not match the description given above for a C4 use, which is restricted to a HMO for no more than 6 people.

6. Consequently, I have determined the appeal on the basis of the scheme considered by the Council. Should the appellants choose to amend the scheme for future applications it is of course open for them to do this.

Main Issues

7. As set out above, there is no argument between the parties that the submitted plans do not correspond with the description given to the development. Whilst a reason for refusal referenced to the inconsistent nature of the application, this related to living conditions.
8. As such, the main issues are:
 - the effect of the development upon the housing stock of the area, with particular regard to family sized dwellings;
 - whether the proposal would provide adequate living conditions for future occupiers with respect to the quality of the internal space;
 - whether the proposal would provide appropriate facilities for cycle parking; and
 - the effect of the development on highway safety, with particular regard to parking.

Reasons

Housing Stock

9. The appeal property is a two-three storey mid terraced dwelling, set along a busy and lengthy urban street, characterised near the appeal site as mostly residential, consisting of similar two storey terraced dwellings.
10. The property is within Leytonstone ward which is a 'Restricted Dwelling Conversion' ward which prevents the conversion of family-sized dwellings into smaller units. An Article 4 Direction is in place to restrict the loss of such homes in the area. Whilst the justification for the policy, as set out by the appellants, does not identify Grove Green Road in specific, it is clear that it identifies the immediate area as having an 'above average' concentration of HMO's (in 2011).
11. Policy DM6 of the Waltham Forest Local Plan Development Management Policies (2013) (DM) 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.
12. Given the size of the appeal property, having 3 bedrooms or more and over 74sqm, the property meets the Councils definition of a family-sized home. Due to its location in a Restricted Dwelling Conversion Ward, a HMO use does not comply with DM Policy DM6 and results in the loss of a large family home.
13. A key component of sustainable development relates to social impact. DM Policy DM6 is based upon the recognition larger family-sized housing is becoming increasingly unaffordable. The continued depletion of larger family-

sized housing through dwelling conversions to flats or HMOs is likely to exacerbate the affordability of family-sized housing further. The proposal would not represent sustainable development in this instance.

14. The appellants points to the criteria within DM Policy DM6 (i) that prevents conversions where the internal floorspace of the original property is less than 124sqm and sets out that the approximately 110sqm appeal property only marginally falls below this requirement. I do not consider this shortfall to be marginal, and in any case, as set out above, the property falls on criteria (ii) given its location within a Restricted Dwelling Conversion ward.
15. I conclude that the development therefore fails to meet identified need with regards to housing stock and conflicts with DM Policies DM5 and DM6 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.
16. The Council also reference Policy CS13 of the Waltham Forest Local Plan - Core Strategy (2012) (CS), which relates to promoting health and well-being. Therefore, this policy is not relevant in this instance.

Living Conditions of Occupiers

17. The submitted plans show 8 bedrooms, set over 3 floors, with a single shared kitchen/dining room on the ground floor with access to a small rear patio/garden area. There are 3 wc/shower rooms, one on each floor.
18. DM Policy DM6 sets out minimum floor space requirements. In this case, the Council set out that 2 bedrooms and the kitchen/dining room fall below the minimum requirement. Whilst the room measurements are not provided by the appellants, I note that they do dispute these findings. Furthermore, the location of one ground floor bedroom accessed through the kitchen and the lack of any separate living room results in an awkward and cramped living arrangement.
19. I conclude that adequate living conditions for future occupiers would not be provided, resulting in a poor quality of accommodation. The proposal therefore conflicts with the requirements of DM Policy DM6, in addition to CS Policy CS13, which seeks to ensure that developments result in healthy environments for residents.
20. The Council also reference DM Policy DM5 which relates to Housing Mix. As such, it is not relevant in this instance.

Highway Safety

21. Grove Green Road is a mostly residential street in this location, with good public transport links. The site is located within a Controlled Parking Zone (CPZ). There is parking on only one side of the road and at the time of my visit the street was heavily parked. As no off-street parking is included as part of the scheme the Council has indicated that in order to secure the development as car free, any permission should be subject to an obligation that removes permit eligibility for all future occupants.
22. I note the appellants contention that given the CPZ location, it would not be possible to apply for more parking permits than the previous C3 use. However, I have no substantive evidence of this, and I do not consider this to be a

matter capable of being addressed by a planning condition either in respect of securing the development as car free, or through the use of a negatively worded condition. This is because there is no evidence of exceptional circumstances for such an approach as required by the Planning Practice Guidance. I therefore consider a legal agreement appropriate.

23. The appellants refer to the fact that none of the current tenants own motor vehicles. 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.
24. In the absence of a feasible means of securing the development as car free, the development would likely place undue stress on the parking environment through the additional demand from the development. This would likely result in inconsiderate parking that would unacceptably increase the risk of conflict between vehicles and pedestrians.
25. I conclude therefore that the development would harm highway safety. This would not accord with the sustainable travel and parking management goals of CS Policies CS7 and CS15 and DM Policy DM16, which 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.

Cycle Storage

26. The submitted plans do not include any details of cycle storage areas, which is required by CS Policy DM16. The dwelling is set back from the highway, and therefore in front of the property there is an area of open space. The supporting text to this policy suggests that the Council will secure the provision of adequate facilities through the use of planning conditions, and I note that, should the appeal be allowed, the Council have suggested such a condition.
27. Whilst this area in front of the property is currently used for bin storage, I am satisfied that there is sufficient space to provide for the 5 secure cycle spaces required by this policy. As such, a condition requiring details of the cycle spaces, to allow the Council to fully consider and control the siting and its visual impact, is appropriate and would address this issue.
28. In this regard, there is no conflict therefore with the sustainable travel goals of CS Policy DM16 and CS Policies CS7 and CS15.

Planning Balance and Conclusion

29. The appellants have advocated that the dwelling provides a valuable housing resource for the local community and its principle is supported by the supporting text of the emerging Draft Local Plan (Policy 20). However, whilst I accept that the appeal property may be occupied and that there have been no complaints from nearby residents, this in itself is not definitive evidence that there is an overriding demand sufficient to set aside the policies of the adopted Development Plan, and in the absence of any compelling technical evidence to the contrary, this has to be balanced with the demonstrable demand for larger family housing.
30. The lack of harm identified to neighbouring residents is a neutral matter, not in favour of the proposal. I note that the appeal site is located within an area which would have access to public transport and nearby services and facilities,

and the local economy would have the potential to have some limited benefit from any expenditure from future occupiers, both of which I would attribute some limited weight towards in support of the development.

31. However, I find that the development does not accord with the spatial housing policies of the Development Plan, and that there is a failure to make adequate provision for the living conditions of future occupiers of the property. Furthermore, the failure to appropriately secure and address the need for mitigation of the impact on on-street parking would result in the development having an adverse impact on highway safety.
32. For these reasons, I am satisfied that the harm caused by the development would significantly outweigh any benefits, and the appeal is therefore dismissed.

B Phillips

INSPECTOR