



Appeal Decision

Site visit made on 14 July 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2022

Appeal Ref: APP/E5900/W/22/3291231

110 Whitechapel Road, London E1 1JE

- 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 P Singh against the decision of London Borough of Tower Hamlets.
 - The application Ref PA/21/00965, dated 29 April 2021, was refused by notice dated 8 November 2021.
 - The development proposed is the change of use of first, second and third floors to form a 6 room HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application plans considered by the Council did not show any cycle storage area. As part of the appeal documentation, the appellant has submitted an amended plan to show a cycle storage area. As this is a minor amendment, and the Council's concerns on the proposal are clear in their evidence, I do not consider that their interests would be prejudiced if I take this amended plan into account. I shall therefore determine the appeal on the basis of plan number S95062/3 Rev D.

Main Issues

3. The main issues are 1) whether or not the proposed development would provide acceptable living conditions for future occupants, 2) whether or not, having regard to development plan policy, the proposed development would result in a harmful loss of employment space, and 3) whether or not the proposed development would make satisfactory provision for refuse storage and cycle storage.

Reasons

Living conditions

4. The proposed development would create a six-bedroom house in multiple occupation (HMO). Each bedroom would have an en-suite bathroom and there would be a shared communal kitchen.
5. Policy D.H7 of the Tower Hamlets Plan (2020) requires that HMOs comply with relevant standards and satisfy the housing space standards outlined in Policies D.H3 and D.DH8. These policies require, amongst other things, that

- development achieve minimum levels of private outdoor amenity space, and ensure new habitable rooms have acceptable outlook.
6. The kitchen would be served by an existing, small, flat rooflight. This is located towards one corner of the room. Due to its overall size and siting it would provide an unacceptable level of outlook from this room for future occupants. Additionally, for these same reasons, it would provide poor levels of light to this room. Light levels would also be considerably less during winter months, than the amount of light I observed during my summertime site visit on a relatively clear day.
 7. The kitchen would provide the only area of shared communal space for future occupants. It is thus of greater importance that this room has satisfactory levels of outlook and light. However, this would not be the case.
 8. The appellant considers that the kitchen should not be classed as a 'habitable room' and that therefore the requirements for satisfactory outlook and light should not apply. As the Council have highlighted, the London Plan defines a habitable room as any room used or intended to be used for sleeping, cooking, living or eating purposes. The kitchen would therefore fall within the definition of a habitable room.
 9. Policy D6 of the London Plan (2021) and D.H3 of the Tower Hamlets Plan (2020) outline that development should provide a minimum of 5 sqm of private outdoor space for 1-2 person dwelling, and an extra 1sqm should be provided for each additional occupant. The property would not have any private outdoor amenity space, nor would there be any communal outdoor amenity space available for occupants. Such a lack of provision would contribute to a failure to provide acceptable living conditions for future occupants.
 10. The unit would be accessed from an existing doorway at street-level that leads to a staircase that occupants would use to access the unit. The appellant acknowledges that this would not provide suitable access for disabled residents, nor would it provide suitable access for any disabled visitors. I accept that, as the appellant highlights, this is the existing arrangement at the property and the physical make up of the property appears to prohibit alterations that would improve access for all users. Nevertheless, the proposed development would not be accessible to all and this weighs against the appeal, albeit by a minor amount given the existing use and arrangement.
 11. The Council have referred to inadequate ventilation of the property and small bathrooms. I have not been drawn to a specific requirement in the local plan on these matters and from my observations on site I do not consider that either of these aspects would be unacceptable.
 12. Cumulatively, taking the above matters into account, the proposed development would not provide acceptable living conditions for future occupants. It would be contrary to the requirements of Policies D.H3, D.H7 and D.DH8 of the Tower Hamlets Plan (2020) and Policies D5 and D6 of the London Plan (2021) as outlined above.

Employment space

13. The appeal site is located within the Whitechapel Local Employment Location (LEL) which the Council identify as an area which provides small office spaces meeting local needs alongside a bio-tech and life sciences sector, creative and

knowledge-based industries and a growing demand from an eastwards expansion of the City of London.

14. Part 2 of policy D.EMP3 of the Local Plan states that development should not result in the net loss of viable employment floorspace outside of the designated employment locations cited in Part 1 or Local Employment Locations (LELs), except where they: a. provide evidence of active marketing over a continuous period of at least 24 months at a reasonable market rent which accords with indicative figures or b. provide robust demonstration that the site is genuinely unsuitable for continued employment use due to its condition; reasonable options for restoring the site to employment use are unviable; and that benefits of alternative use would outweigh the benefits of employment use.
15. The supporting text to the policy states that applicants should outline where and how marketing has been undertaken, with details also provided to demonstrate that the asking rent has been at a realistic rate for the type, size and condition of the property/unit. It would also be expected that the property has been actively marketed, including appearing on local and national commercial property websites and visible display boards being displayed at the site. Applicants should provide a report detailing the level of interest in the property over the 24-month period, details of any viewings and offers, and details of why any interest had not been taken forward.
16. From the evidence before me which includes a statutory declaration, correspondences from estate agents and other marketing information, I am satisfied that the appellant has demonstrated a continuous period of marketing of at least 24 months. There is no evidence to dispute the appellant's evidence in this regard. Rental figures are interspersed throughout the evidence, however there is nothing before me to confirm that these are a reasonable or realistic market rental rates for a property of this type, size and condition, which accords with indicative figures, as required by the policy. Additionally, the requirement for a report detailing the level of interest in the property over the 24-month period, details of any viewings and offers, and details of why any interest had not been taken forward is also lacking.
17. I therefore find this aspect of the evidence less than robust. It does not have the strength and certainty as required by the policy outlined above and as detailed in the supporting text to justify the loss of employment space.
18. The policy also outlines that, alternatively, the loss of employment space may be acceptable where there has been a robust demonstration that the site is genuinely unsuitable for continued employment use due to its condition; reasonable options for restoring the site to employment use are unviable; and that benefits of alternative use would outweigh the benefits of employment use.
19. The evidence does not provide me with the assurance that the appeal property has no viable future use as employment space. It also does not provide a robust demonstration that the site is genuinely unsuitable for any other employment uses or that the benefits of an alternative use outweigh the benefits of employment use.
20. Part 3 of the policy also outlines that proposals involving the loss of employment floorspace within LELs must also demonstrate that alternative employment uses would not be viable and the loss of employment floorspace

would not compromise the operation and viability of the wider LEL. There is no substantive evidence that alternative employment uses would not be viable and there is no assessment that the loss of employment floorspace would not compromise the operation and viability of the wider LEL.

21. Policy D.EMP4 states that the redevelopment of Local Employment Locations (LELs) to include non-employment uses will only be supported if the existing level of employment floorspace is re-provided on-site. The proposed development does not propose to re-provide any of the existing employment space and although various fallback uses may be available there is nothing to suggest that these would not provide alternative employment opportunities. Therefore, based on the evidence before me, I do not consider that there would be adequate justification to depart from the requirement of the development plan in this regard.
22. The proposed development would therefore conflict with Policies S.EMP1, D.EMP3 and D.EMP4 of the Tower Hamlets Plan (2020) that seek to enhance the borough's designated employment locations and avoid the loss of employment space.

Refuse and cycle storage

23. There are no refuse storage facilities provided. The appellant suggests that such details could be agreed through the imposition of an appropriate planning condition. It is not clear however how storage and collection would operate, and I cannot be certain that an acceptable mechanism exists. Any longer-term storage of refuse internally is unlikely to be acceptable due to the impact of odours on living conditions, and any external storage on the public highway would be unacceptable.
24. Given the significance of the matter it would be appropriate to deal with it by planning condition, and a clearer commitment to how refuse storage and collection would be managed should be made at this stage. The appellant refers to the existing refuse storage and collection arrangements at the property in relation to its former use. Such refuse would likely to have been of a mainly clerical nature, markedly different from the refuse generated by a six-bedroom HMO. In addition, the previous arrangements would not have impacted upon living conditions.
25. Cycle parking is proposed to be provided adjacent to the first-floor kitchen. This would require residents to carry cycles up the stairs and negotiate a tight landing area to access the proposed storage area. Such an arrangement would be wholly inappropriate and would be unlikely to result in the use of the intended facility. The appellant has commented that folding bikes are light and portable however there is no assurance that these will be made available or used by future occupants.
26. The appellant has referred to on-street cycle parking facilities being able to be used by future occupants as an alternative to internal storage. On-street cycle parking is intended for short term use connected to, amongst other things, shopping, commuting and socialising. It is not intended to provide for longer term cycle storage as would be required by residents. Furthermore, on-street parking is neither as convenient or secure as providing a dedicated on-site storage facility, therefore on-street cycle parking would not be an acceptable alternative.

27. Therefore, satisfactory refuse and cycle storage facilities have not been put forward. This would be contrary to Policy D.MW3 of the Tower Hamlets Plan (2020) which requires that new development has acceptable waste storage and collection. Due to the lack of appropriate cycle parking, the development would fail to promote sustainable travel and would be contrary to Policy D.TR3 of the Tower Hamlets Plan (2020) and Policy T5 of the London Plan (2021).

Other Matters

28. One of the areas of disagreement between the parties is the lawful use of the premises. This is not a matter before me in the appeal. Even if I were to find in favour of either party on the matter, it would not, in any event, alter my findings in relation to living conditions and the refuse and cycle storage.
29. The appellant has referred to the proposed development providing much needed accommodation in a highly accessible location, close to jobs and services. These aspects weigh in favour of the proposed development; however they do not justify allowing development that would provide unacceptable living conditions for future occupants.
30. The appellant has referred to the provision of accommodation at sub-market rates and considers this could be secured by condition. I accept that such an aspect is capable of weighing in favour of the scheme, however I am not presented with an agreed mechanism to secure this. The financial and legally binding implications, including the need to allow for adjustable rates, mean that it is unlikely that a planning condition would be an appropriate means of securing this in any event.
31. The appellant considers that the proposed development is not a residential development. The proposed development is for a house in multiple occupation, which is a dwelling shared by three or more tenants who form two or more households and share a kitchen, bathroom or toilet. HMOs for between three and six people are classed as C4 whereas HMOs for more than six people are *sui generis*. Whether or not the proposed development is use class C4 or *sui generis* is therefore not determinative.
32. The appellant has referred to various other uses that may be permitted at the appeal property as a fallback. None of these other uses are, however, the same as the proposed development before me and I give them limited weight.

Conclusion

33. The development would not provide acceptable living conditions for future occupants or provide satisfactory cycle storage. Acceptable refuse storage and collection has not been demonstrated. There is insufficient justification for the loss of employment floorspace. Collectively, these matters outweigh the benefits associated with the proposed development.
34. The proposed development would therefore conflict with the development plan and there are no identified other considerations that outweigh this conflict.
35. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR