



Appeal Decision

Site visit made on 9 August 2022

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2022

Appeal Ref: APP/U5930/C/21/3274547

79-81 Pretoria Road, LONDON E11 4BB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stacey Watton against an enforcement notice issued by the Council for the London Borough of Waltham Forest.
- The notice, numbered 490495, was issued on 19 April 2021.
- The breach of planning control as alleged in the notice is without planning permission,
 1. In contravention of condition 2 of planning permission (ref: 163180) granted on 22/11/2016, namely the failure to carry out the development in accordance with the approved plans drawings 01/DT/08/2018 (Drawing No.1) and 02/DT/08/2016 (Drawing No.2).
 2. The two storey side extension has been constructed as a separate four bedroom dwelling (known as 81A Pretoria Road) with no internal method of access or egress between 79 and 81 Pretoria Road.
 3. The use of the two-storey storey side extension as a house in multiple occupation.
 4. The construction of a rear dormer roof extension used to facilitate the four bedroom dwelling.
- The requirements of the notice are to:
 1. Cease the use of the two storey side extension and dormer as a separate dwelling.
 2. Remove from the property all internal partitions which facilitates the use of the unauthorised dwelling 81a Pretoria Road and implement the approved drawings 01/DT/08/2018 (Drawing No.1) and 02/DT/08/2016 (Drawing No.2).
 3. Demolish and remove the unauthorised dormer that facilitates the unauthorised dwelling known as 81a Pretoria Road.
 4. Remove the additional kitchen including all cooking facilities, kitchen units, kitchen sinks and associated drainage connections, fridges, washing/drying machines from the two-storey side extension.
 5. Remove the additional energy meters from the flat known as 81a Pretoria Road.
 6. Remove the additional boiler from the flat known as 81a Pretoria Road so that only one remains.
 7. Remove from the property all associated debris resulting from compliance with the above steps 1-6.
- The period for compliance with the requirements is six (6) months.
- The appeal is proceeding on the grounds set out in sections 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of decision: Following correction of the enforcement notice, the appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Matters concerning the notice

1. The notice identifies that the alleged breach of planning control falls within s171A-(1)(a), carrying out development without the required planning permission. However, point 1 of the allegations refers to a breach of condition

2 of planning permission 163180¹ due to failure to complete the development in accordance with the approved plans. The approved plans show that the ground floor of the extension would provide additional accommodation to 81 Pretoria Road and that the first floor would provide additional accommodation to 79 Pretoria Road. The appellant asserts that the two-storey side extension and rear dormer roof extension were erected to form a single dwellinghouse. This is corroborated by the London Building Control 'Final Certificate' (dated 5 August 2019)², which is for a '*Side extension to create separate dwelling (to be known as 81a) and loft conversion*', which was provided in the Council's evidence.

2. There is no evidence to show that the two-storey side extension was erected separately to the rear dormer roof extension or that access doors ever existed between No79 or No81 and the two-storey side extension. Given the available evidence, it is more than likely that the two-storey side extension and rear dormer roof extension were erected as a single building operation to form a separate dwelling.
3. The erection of a two-storey side extension and the rear dormer roof extension to form a separate dwelling does not form part of planning permission ref: 163180. The breach of planning control is therefore incorrect insofar as it alleges a breach of condition 2 imposed on planning permission ref: 163180. The notice does however correctly identify that the breach of planning control falls within s171A-(1)(a), carrying out development without the required planning permission.
4. For accuracy, points 2 and 4 shall be amalgamated. Furthermore, the number of bedrooms and having '*no internal method of access or egress between 79 and 81 Pretoria Road*' are irrelevant to the corrected breach of planning control.
5. S176(1)(a) makes provision for the correction of any defect, error or misdescription in the notice, providing no injustice would be caused. The appellant and Council both understand that it is the erection of the rear dormer roof extension in conjunction with the creation of a separate dwelling, known as 81a, that constitutes the breach of planning control. No injustice would be caused by my correction of the notice in the terms set out below:

"Without planning permission, (1) the erection of a two-storey side extension and rear dormer roof extension to form a self-contained dwelling (known as 81a Pretoria Road), and (2) the use of the self-contained dwelling as a house in multiple occupation."

6. The notice shall be corrected accordingly, and I will proceed on that basis.

Appeal on ground (b)

7. For an appeal on this ground to succeed, the appellant needs to show, on the balance of probability that the corrected matters alleged have not occurred as a matter of fact. The appellant does not dispute that a two-storey side extension and rear dormer roof extension to form a self-contained dwelling has occurred. However, they claim that, once aware of the dwelling being occupied by 4

¹ Planning permission ref: 163180 was for the erection of a two-storey side extension to provide an additional bedroom to both 79 and 81 Pretoria Road

² Contained in the Council's Officer/Enforcement Report dated 14 April 2021

unrelated people, as a house in multiple occupation (HMO), steps were taken to cease that use.

8. It is not unusual for a notice to be issued sometime after the breach has been detected. Whether the breach has genuinely stopped or not by the time the notice is issued, or the appeal is determined makes no difference. The appellant's assertion that he sought to have the occupation by 4 unrelated people stopped confirms that the alleged breach as an HMO had occurred as a matter of fact.
9. For this reason, the appeal on ground (b) fails.

Appeal on ground (a)

10. An appeal on this ground is that planning permission should be granted for the corrected matters alleged. The appellant is only seeking planning permission for the self-contained dwelling and not for its use as an HMO. The starting point for my consideration is however the whole matters. The **main issues** are the effect on:
 - occupiers living conditions;
 - parking and waste disposal;
 - housing needs; and
 - the Epping Forest Special Area of Conservation.

Occupiers living conditions

11. The living space fails to meet minimum housing standards for a four bedroomed dwellinghouse. The internal layout of the dwellinghouse is such that the small room sizes coupled with the central staircase results in significant noise and disturbance to each of the 4 unrelated residents. The small entrance yard beyond the shared kitchen also fails to provide adequate outside amenity space. Occupation as a 4 bedroomed HMO would therefore result in unacceptable living conditions for residents.
12. The appellant has provided plans showing the dwelling laid out as a one bedroomed/2-person dwellinghouse, which provides a level of living accommodation for occupiers that exceeds the adopted minimum standards. The Council concede that the use as a one bedroom/2-person dwellinghouse would be acceptable. While the second-floor accommodation is split into 2 rooms, as the overall floor space almost meets the 2bed/3 person threshold, I see no justification to require the dividing wall to be removed. Use of the self-contained dwelling as a single dwellinghouse (Use Class C3) can be controlled through the imposition of a suitably worded condition.
13. The development of and use as a single dwellinghouse (one bedroom) complies with policies DM7 of the Waltham Forest Development Management Policies (October 2013) ('the WFDMP'), CS2 and CS13 of the Waltham Forest Core Strategy (July 2012) ('the WFCS') and 3.2 of the London Plan (2021) ('the LP'), which seek to deliver high quality living environments for occupied dwellings, amongst other things.

Parking and waste disposal

14. There are no parking facilities within the site. On-street parking provision is available for resident permit holders only. Secure cycle parking facilities are available on Pretoria Road. The site is within easy walking distance of public transport networks. The occupation of the self-contained dwelling would therefore have no significant adverse effect on parking.
15. Established provision for waste disposal and recycling is provided in the form of wheeled bins in the front yard of the property. There is no evidence to suggest that these facilities are inadequate to serve the additional self-contained dwelling.
16. For these reasons the development complies with policies CS6, CS7 and CS15 of the WFCS, WFD32 of the DMLP which seeks to promote car free development and waste reduction and recycling, amongst other things.

Housing needs

17. The land occupied by the development has previously been the subject of a planning permission to extend No79 and No81. That planning permission has not been implemented and the 2 residential properties remain. The development has not therefore resulted in the loss of a dwellinghouse. Subject to the imposition of a condition preventing use as an HMO, there is no conflict with policies DM6 of the WFDMP and CS2 of the WFCS, which promote housing growth, prevent the loss of dwellings and control the provision of HMOs, amongst other things.

Epping Forest Special Area of Conservation

18. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') require competent authorities, before granting planning permission, to carry out an appropriate assessment (AA) in circumstances where the development is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. The Epping Forest Special Area of Conservation (the SAC) comprises of ancient semi-natural woodland, old grassland plains, wet and dry heathland, and scattered wetland, 3 of which are Annex I habitats. The site also hosts an Annex II species.
19. Natural England issued an Interim Advice Letter on 6th March 2019. A subsequent update on 5 March 2021, in relation to the SAC, is based on updated research on the impacts on the SAC. Measures are proposed to mitigate those impacts, with reference to those understood to arise from the recreational impact generated by occupiers of new development. The visitor survey results confirm that new residential development within the zone of influence will have a likely significant effect on the sensitive features of the SAC, through increased recreational pressure, either alone or in combination.
20. Natural England's Interim Advice refers to mitigation measures taking a threshold approach. The threshold approach requires all residential development within 3 km of the SAC to make a financial contribution to strategic mitigation measures to manage recreational pressures, as set out in the Strategic Access Management Measures (SAMMs), provided by the Conservators of Epping Forest.

21. The appeal site is within 3 km of the SAC. The SAMMs levy is calculated at £100 per unit. I am satisfied that the effect that any intensification of use of the SAC arising from this development could be mitigated by the financial contribution.
22. Due to the costs associated with managing and monitoring planning obligations, the Council advises that the SAMMs levy is however only required to be paid for residential developments of 10 units or more. If the Council were to resolve to grant permission for this self-contained dwelling, they would not therefore require the financial contribution to be secured through a planning obligation. Natural England has confirmed its support for the Council's approach, provided the total expected contribution is delivered. The Council recognises that there may be a shortfall in the total contributions received and regular review mechanisms are to be put in place to address changing costs, housing delivery and any potential shortfall.
23. While the appellant indicates a willingness to pay, as he has not previously been made aware of the SAMMs Levy, a completed unilateral undertaking (UU) does not accompany this appeal. In the absence of the UU, the SAMMs Levy could not be secured. The lack of a mechanism for securing the SAMMs Levy needs to be weighed against the Council not normally requiring the SAMMs Levy to be paid for this scale of residential development, the potential for someone to lose their home, and that the development is acceptable in all other respects.
24. On balance, I am satisfied that any impact on the SAC arising from the development can be effectively mitigated through the SAMMs. In coming to this conclusion, I have taken account of the response from Natural England and the comments provided by both the appellant and the Council. I have also read the appeal decision³ provided by the Council and consider that the Council's threshold approach has been satisfactorily explained, along with details addressing any future shortfall.
25. For these reasons, the proposal accords with Policy CS5 of the WFCS and Policy DM35 of the WFDMP, which seek to protect and enhance habitats, species and sites of international, national and local importance including the SAC. The development also complies with the Regulations.

Other considerations

26. The reasons for taking enforcement action do not identify that the operational development elements of the breach of planning control have caused harm to the character or appearance of the area. The notice does not require the demolition of the two-storey side extension as the Council has granted planning permission for an extension of similar scale and appearance previously.
27. The notice does however require the rear dormer roof extension to be demolished and removed. The only reason for requiring its demolition is that it facilitates the unauthorised use as a self-contained dwelling in use as an HMO. I have already found that the occupation of the s self-contained dwelling by a 2-person household would be acceptable whereas occupation as an HMO would not. The site lies in an area where permitted development rights have been removed for the change of use of single dwellinghouses to small HMOs. As the

³ APP/U5930/W/20/3245750

self-contained dwelling already exists, the imposition of a condition relating to use as a single dwellinghouse would clarify the position. Controlling the occupation of the single dwelling house through the imposition of a suitably worded condition is therefore necessary, relevant, enforceable and reasonable in all respects.

Conclusion on ground (a)

28. For the reasons given above, the appeal on ground (a) succeeds in part, and planning permission is granted for the erection of a two-storey side extension and rear dormer roof extension to form a self-contained dwelling.

Appeal on ground (f)

29. Given the partial success on ground (a), steps 1 to 7 cease to have effect as far as they are inconsistent with the deemed planning permission. The notice is however upheld in respect of the alleged use as an HMO. The steps required to be taken do not provide for the use as an HMO to cease and they would not have had to as an HMO is a dwelling. Step 1 would therefore have sufficed to cease the use as an HMO and a dwelling.
30. Given that the use as a dwelling (Use Class C3) now benefits from planning permission, the requirements would need to be varied so as capture the use as an HMO (Use Class C4). S176(1)(b) provides for the variation of the terms of the enforcement notice, providing that variation will not cause injustice to the appellant or the local planning authority. Ceasing the use as an HMO is less onerous than ceasing the use as a dwelling therefore no injustice would be caused.
31. The appeal on ground (f) succeeds to this limited degree.

Appeal on ground (g)

32. An appeal on this ground is that the period specified in the notice falls short of what should reasonably be allowed. The appellant argues that, because of the pandemic, there is a shortage of building materials and securing quotes for the works would take longer than 6 months. A period of 12 months is requested.
33. Given the partial success on grounds (a) and (f), the remaining requirement would not require materials or building works to be carried out. As such, the period of 6 months is reasonable.
34. The appeal on ground (g) fails.

Overall conclusion

35. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the erection of a two-storey side extension and rear dormer roof extension to form a self-contained dwelling (known as 81a Pretoria Road), but otherwise I will uphold the notice with a correction and a variation and refuse to grant planning permission in respect of the use of the self-contained dwelling as a house in multiple occupation. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Formal Decision

36. It is directed that the enforcement notice is corrected and varied by:

In section **3. The Matters Which Appear to Constitute The Breach Of Planning Control**, delete all the words and substitute the words '*Without planning permission, (1) the erection of a two-storey side extension and rear dormer roof extension to form a self-contained dwelling (known as 81a Pretoria Road), and (2) the use of the self-contained dwelling as a house in multiple occupation.*'

In section **5. What You Are Required To Do**, add '8. Cease the use as a house in multiple occupation.'

Subject to the correction and variation, the appeal is allowed insofar as it relates to the erection of a two-storey side extension and rear dormer roof extension to form a self-contained dwelling (known as 81a Pretoria Road) and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a two-storey side extension and rear dormer roof extension to form a self-contained dwelling (known as 81a Pretoria Road) at 79 – 81 Pretoria Road, Leytonstone, London E11 4BB and subject to the following condition:

- 1) Notwithstanding the provisions of Class L, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the dwelling hereby approved shall not be used for any other purpose than a self-contained dwellinghouse (Use Class C3).

The appeal is dismissed, and the enforcement notice is upheld as corrected and varied insofar as it relates to the use of the self-contained dwelling (known as 81a Pretoria Road) as a house in multiple occupation and planning permission is refused in respect of the use of the self-contained dwelling (known as 81a Pretoria Road) as a house in multiple occupation at 79 - 81 Pretoria Road, Leytonstone, London E11 4BB on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Madge

INSPECTOR