
Appeal Decision

Site visit made on 6 October 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 08 November 2022

Appeal Ref: APP/U5930/C/21/3280157

50 Fulready Road, Leyton E10 6DU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Sema Yildiz against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice, numbered 489022, was issued on 26 July 2021.
- The breach of planning control as alleged in the notice is without planning permission: The material change of use of the Land from single family dwellinghouse (Use Class C3) to three self-contained flats (Use Class C3).
The associated building works to convert the Land from a single family dwellinghouse to three self-contained residential flats.
- The requirements of the notice are to:
 - 1) Cease the use of the Land as three self-contained flats.
 - 2) Remove all means of sub-division from the Land and containment works, including partition walls and internal door divisions that facilitate the use of the Land as three self-contained flats.
 - 3) Remove all additional gas meters from the Land that facilitate the use of the Land as three self-contained flats so that only one remains.
 - 4) Remove all additional boilers from the Land that facilitate the use of the Land as three self-contained flats so that only one remains.
 - 5) Remove all additional kitchen's, sinks, cookers, washing machines, fridge freezers and other kitchen related furniture and accessories, fixtures and fittings from the Land that facilitate the use of the Land as three self-contained flats so that only one remains.
 - 6) Remove all additional showers and toilets, sinks and associated fittings and fixtures from the Land that facilitate the use of the Land as three self-contained flats so that only one remains.
 - 7) Remove all resulting materials, rubble and general detritus from the Land following compliance with requirements 1 - 6 resulting from the works.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (g) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Decision

1. It is directed that the enforcement notice be corrected by:

- Replacing section 5.5) with "Remove all additional kitchens (including their component sinks, cookers, washing machines, fridge freezers and other kitchen related furniture and accessories, fixtures and fittings) from the Land that facilitate the use of the Land as three self-contained flats so that only one remains."; and
- Replacing section 5.6) with " Remove all additional bathrooms (including their component showers and toilets, sinks and associated fittings and fixtures) from the Land that facilitate the use of the Land as three self-contained flats so that only one remains."

2. Subject to these corrections, the appeal is dismissed and 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.

The enforcement notice

3. Although I have seen nothing in the appeal papers to suggest that the appellant is uncertain as to what is required of her (and there is no ground (f) appeal arguing that the notice requirements are excessive), I have used my powers of correction under section 176 of the Act to clarify the wording of the requirements as regards works to the property's kitchens and bathrooms. Such added clarity only serves to improve ready comprehension of the notice, and causes no injustice to any party.

Ground (a) and the deemed planning application

Main Issues

4. The main issues in the ground (a) appeal are the:
 - the loss of a larger home;
 - the effect of the development on the living conditions of current and future occupiers as regards noise and disturbance;
 - the effect of the development on the level of waste created; and
 - whether or not there is sufficient parking provision for occupiers of the development.

Reasons

Loss of a larger home

5. It is uncontentious between the main parties that the pre-development lawful use of the property was as a 3-bedroomed family sized home, and that post-development the appeal property contains a 2-bedroomed flat on each of the 2 lower floors and a 1-bedroomed flat in the former loft space.
6. The appellant argues that the ground floor flat provides a larger family sized home but I do not agree – notwithstanding the size of the kitchen/lounge and rear garden access it does not, as a matter of fact, provide 3 bedrooms (or more) to enable it to provide accommodation under that definition¹.
7. The loss of such accommodation in Waltham Forest is of particular significance as I note the evidence within the appeal papers that the housing stock requirement within the borough is greater for 3-bedroomed dwellings than for any other type of accommodation, as is the requirement for larger dwellings in general over 1 and 2-bedroomed properties². This harm to housing provision is amplified by the submission of the Council (which has not been fully contested by the appellant³) that smaller units of accommodation created by the development fail to meet minimum space requirements⁴ and consequently provide cramped, low quality living conditions for their occupiers.

¹ Policy DM5, London Borough of Waltham Forest Development Management Policies Local Plan (2013).

² Data from the February 2019 Strategic Housing Marketing Assessment, as cited in the appellant's submissions.

³ I note that no Final Comments were made by the appellant upon the Council's statement, including 6.30.

⁴ *Technical housing standards – nationally described space standard* (March 2015); Department for Communities and Local Government.

8. The resulting significant harm is not outweighed by the appellant's arguments that the development as a whole, by optimizing housing densities and creating several housing units on previously developed land in a sustainable location, contributes to meeting housing targets. I do not accept that the land was under-utilised – since it was providing a larger family sized home particularly required in the borough – and the provision of sub-standard smaller units is not a benefit of the development since they do not add positively to the mix of well-designed homes that are required. Further, contrary to the appellant's arguments, overcrowding in the borough is not alleviated by the residential intensification of properties through the creation of homes that do not meet minimum space standards.
9. Accordingly, the development is in conflict with Policies DM5, DM6 and DM7 of the London Borough of Waltham Forest Development Management Policies Local Plan (2013) (DMPLP), Policies CS2 and CS13 of the Waltham Forest Local Plan Core Strategy (2012) (CS) and Policy D6 of the London Plan (2021) which together seek to ensure an appropriate mix within the borough of high-quality housing that prioritises the need for larger family sized homes of 3 bedrooms or more.
10. The appellant has suggested that the proposal would not be in conflict with the emerging London Borough of Waltham Forest Local Plan (EP), particularly as regards Policy 20. However, whatever weight I give to that policy of the EP as a material consideration in line with Paragraph 48 of the Framework, it is clear - as in the currently adopted development plan - that conversions will only be permitted where they provide at least one larger (3 bed plus) family sized home and meet high-quality design standards. Therefore, the development is in conflict with EP.

Noise and disturbance

11. A semi-detached house used as a single family dwellinghouse is materially different in its character of use to the same property in use as 3 self-contained flats, where it can be reasonably assumed that the 3 households will live independently from one another. In all likelihood, this will result in separate living patterns with fewer linked trips to and from the property and an overall increase in the number of visitors associated with the unrelated occupiers. These factors are likely in my view to give rise to some harm, albeit moderate in scale, to the living conditions of neighbouring occupiers through increased noise and disturbance in the relatively densely occupied urban environment.
12. Consequently, the development is in conflict with Policy CS15 of the CS which seeks to ensure that developments are well-designed and create healthy environments. For the same reasons, the development is in conflict with the design principles within Section 12 of the National Planning Policy Framework (the Framework).

Waste

13. The Council has provided a very limited substantive argument within its submissions as to why it considers there is planning harm in this regard, and I am otherwise satisfied from my site visit and from the appellant's submissions that there is sufficient space at the property for the safe storage and sorting of waste and recycling from the 3 flats. Accordingly, the development is in accordance with the development plan and Framework on this issue.

Parking provision

14. The appeal property has no off-street parking spaces. The Council's resistance to the development on this issue appears to be principally based on the application of the 'maximum car parking standards' set out in Appendix 4 of the DMPLP (which the main parties agree to be 1.2 spaces in the case before me).
15. Significantly, however, Policy DM16 of the DMPLP qualifies use of the Appendix in saying "as a general guide, the Council will encourage lower car parking provision than the stated maximum standards". Moreover, the Council is essentially silent on the planning harm caused by the lack of off-street parking provision. It simply says that on-street parking is limited on Fulready Road, which is located within a Controlled Parking Zone. I note, however, that an interested third party has said that there 'is lots of space always free' on Fulready Road and nearby Halford Road. It seems therefore, on the balance of probabilities that there are on-street parking spaces to meet the demand of the development which is also situated within an area of reasonable public transport access (PTAL 3).
16. Accordingly, I am not satisfied that the development causes harm on this issue nor is there is any associated conflict with the development plan or Framework.

Conclusion on ground (a) and the deemed planning application

17. The development does not comply with the development plan as a whole, and there are no considerations which outweigh this finding. Accordingly, the ground (a) appeal does not succeed and I will not grant planning permission.
18. Article 8 of the First Protocol to the European Convention on Humans Rights, as incorporated into the Humans Rights Act 1998, is engaged due to potential loss of homes for the appeal site's occupiers due to conflict with planning policies. Therefore, I have undertaken a proportionality assessment and considered whether the objectives of the planning policies could be met by a less intrusive action. However, the policies seek to protect the provision of larger family sized housing and prevent noise and disturbance and their objectives cannot otherwise be achieved other than ensuring that planning permission is refused in this case. The implementation of the policies in respect to the appeal site would not be excessive or disproportionate taking all into account.

Ground (g)

19. For success under this ground, I must be satisfied that the compliance period given in the notice falls short of reasonable. Having carefully considered the appellant's short submissions, I find that 6 months is a reasonable period for completion of all requirements whilst giving sufficient time for the existing tenants to look for alternative housing. Accordingly, ground (g) fails.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Andrew Walker

INSPECTOR