



Appeal Decision

Site visit made on 10 January 2023

by Ms Watson BA(Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2023

Appeal Ref: APP/G5750/C/21/3283285

52 High Street South, East Ham, London, E6 6ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mohammed Amjad against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice, numbered 21/00343/ENFC, was issued on 24 August 2021.
- The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the property to two self-contained flats.
- The requirements of the notice are to: 1. Cease the use of the property as self-contained flats; 2. Remove from the property one of the two kitchens and associated plumbing, and internal dividing doorways and internal partitioning that solely facilitates the use as self-contained flats, duplicated doorbells, duplicate signage and duplicate waste bins; 3. Remove from the property all but one supply of electricity, gas and water; 4. Remove from the site all debris arising from compliance with steps 1, 2 and 3.
- The period for compliance with the requirements is 5 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the formal Decision.

The appeal on ground (a)

1. The main issues are the effect of the development on (i) the mix and balance of housing types in respect of community stability; (ii) the living conditions of occupiers of the flats with particular regard to their internal size and layout; and (iii) the living conditions of occupiers of neighbouring dwellings in respect of noise and disturbance.

Reasons

Mix and balance of housing

2. The property was previously a 3-bedroom house which has been converted to two self-contained flats.
3. Policy H1 of the Newham Local Plan 2018 (NLP) seeks to secure the delivery of a mix and balance of housing types. The explanation to the policy says that the creation of flats in former family housing reduces choice and erodes quality which leads to many people passing through the area rather than setting down roots. This in turn, it says, has affected community resilience and the extent to which people invest in improving their environment. It goes on to say that a choice of housing is vital to securing a successful, stable and inclusive place, ensuring housing supply can meet the differing needs of a diverse population. It explains that a choice of housing will help people to stay in the area

throughout their lives which will generate a resident population which has a strong stake in the borough's future.

4. Policy H4 of the NLP says that the Council will specifically protect 3-bedroom family housing. The explanation to the policy reiterates a particular emphasis on protecting family housing and explains that East Ham, amongst several other areas, has the highest proportions of converted dwellings in the borough. It says that although previously converted dwellings for rent can provide cheap accommodation for residents, this has challenged the wider aspiration to stabilise communities through the reduction of housing choice. It also says that such accommodation may support increased levels of transience. It explains that Newham will fail to provide enough family housing if it does not both increase the rate of new provision and hold onto existing family stock. The explanation also says that it is considered that there is sufficient capacity for flats and HMOs through purpose-built new build, conversion of non-residential uses and the reuse of redundant premises above shops in town centres.
5. The appellant points to the part of NLP Policy H4 which says that the subdivision of 3-bedroom houses may be appropriate. However, in this case not all of the criteria are met, e.g., the property is not above an existing occupied commercial unit, it does have access to external private amenity space, it does not have a poorly defined entrance and the development does not enhance the street scene. Furthermore, the policy only supports high quality accommodation which I will come onto in the second main issue. Therefore, NLP Policy H4 does not support the development.
6. The appellant has drawn my attention to the age of the Strategic Housing Market Assessment figures quoted in the Officer Report, which date from 2010 and pre-date the NLP. Whilst I accept that these figures are not up to date, the NLP covers the period to 2033. Therefore, there is no reason for me not to give full weight to the development plan policies.
7. I note the appellant's comments that there was little demand for renting out the house as a single dwelling, citing the use of the adjoining house as accommodation for young adults as being a deterrent. However, no substantive evidence of the house being difficult to let has been submitted to substantiate this claim.
8. I conclude that the development adversely affects the mix and balance of housing types in the local community. It conflicts with NLP Policies H1, H4, S1, S6, SP1, SP2 and SP3. It also conflicts with Policy GG4 of the London Plan (LP). In combination these policies seek to protect family housing, increase its provision, resist flat conversions, encourage de-conversion of family sized Victorian and Edwardian homes, ensure that the borough has a mix of housing and is attractive as somewhere to live.

Living Conditions – exiting occupiers

9. There is disagreement between the parties in respect of whether the development meets the minimum space standards for 3-bedroom units. Nevertheless, even if I agreed with the appellant that both dwellings contain enough space, there are other factors which I must take into account.
10. The first floor flat has no private amenity space. The appellant has suggested the construction of an external staircase so that the yard could be used by both

flats. However, this would turn the yard into a shared area whereas it is currently a private space for the ground floor flat. There could also be concerns in relation to the visual impact of an external staircase and overlooking. No information has been put forward by the appellant to demonstrate that these matters could be made acceptable. Even if the lack of external space were the only reason for dismissing the appeal, a condition to provide a staircase would be an inappropriate means to overcome it.

11. In addition, the partitioning of the hallway to create separate accesses to the two flats has necessitated the installation of additional doors. This results in a loss of light to the stairs and ground floor hallway resulting in an oppressive circulation space. Furthermore, one of the bedrooms in the ground floor flat does not have an external window.
12. For the above reasons, I conclude that the development fails to provide satisfactory living conditions for existing occupiers. Therefore, it conflicts with LP Policies D3, D5, and GG4 and NLP Policies SP1, SP2, SP3 and H1 which, in combination seek to ensure good design, high quality accommodation, appropriate standards of residential amenity and an improvement in Newham's housing quality.

Living Conditions – neighbours

13. The Council has not submitted any substantive evidence in respect of car parking and therefore, I have no reason to conclude that an increase in parking pressure would be harmful to living conditions.
14. Nevertheless, additional dwellings create the need for additional wheelie bins. I saw at my visit that there were a lot of bins at the front of houses in the street which looks untidy and therefore creates a poor living environment for residents. The subdivision of properties adds to the number of bins.
15. In respect of noise, a higher concentration of flats leads to more comings and goings in the area due to a higher concentration of people. Nevertheless, the property is on a busy road and, without specific evidence, I do not consider that additional residential comings and goings would add so much to the general activity around the property as to harm the living conditions of neighbours.
16. However, more people in a house leads to additional transmission of noise to adjoining dwellings. Whilst I appreciate that the neighbouring properties have been converted, this does not necessarily mean that the residents inside them should suffer from additional noise and disturbance as a result of the intensification of the appeal property. I note the appellant's comments that it might be the case that a single family would accommodate just as many people as two flats. However, there are now two households living in the property and the total number of bedrooms is 5 as opposed to the previous number of 3. This increase in bedrooms and households facilitates a more intense use of the residential floorspace. The appellant has suggested soundproofing, but I have no details before me of how effective this might be.
17. I therefore conclude that the development harms the living conditions of neighbours and conflicts with LP Policy D14 and NLP Policies SP2, SP3, and SP8. In combination, these policies seek to protect residential amenity, including protection against noise and to minimise environmental impact.

Conclusion on Ground (a)

18. I conclude that permission should not be granted for the change of use to two flats and the appeal on ground (a) should fail.

The appeal on ground (g)

19. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant argues that 5 months would be too little time to get the occupants to leave and then to undertake the physical alterations. He says that a notice under Section 21 of the Housing Act can give a minimum 2 months notice to quit but it cannot override a fixed term tenancy. He asks that the periods for compliance with all steps to be 12 months. Nevertheless, I have no evidence that the properties are subject to any fixed term.
20. I have found planning harm in respect of the mix and balance of housing and to living conditions. The enforcement notice will interfere with the occupants' rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life and their home. This is a qualified right, whereby interference may be justified if in the public interest, but proportionality is crucial.
21. The Council's decision to enforce was legitimate and in the public interest, given the harm caused by the development. However, I consider that the notice does not afford the occupants reasonable time to look for alternative accommodation, especially as they would have to leave the premises before the restorative works are carried out.
22. I consider 12 months is too long in comparison to the harm caused by the development, but a period of 8 months would provide a proportionate and reasonable amount of time to give notice to the tenants and undertake the work. To this extent, the appeal on ground (g) succeeds.

Formal Decision

23. It is directed that the enforcement notice be varied by deleting "5 months" and substituting with "8 months" as the period for compliance.
24. Subject to the variation, 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.

Ms Watson

INSPECTOR