



Appeal Decision

Inquiry held on 17 May 2023

Site visit made on 17 May 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2023

APP/U5930/C/21/3280591

Land at Chingford Mill Pumping Station, 35 Lower Hall Lane, Chingford, London E4 8JG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by the Company Secretary, Seasons Property Limited, against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The notice, numbered IN_427540, was issued on 12 July 2021.
- The breach of planning control as alleged in the notice is: Without planning permission (1) The material change in use of the Pumping Station to self-contained flats; (2) The material change in use of the Turbine House into a self-contained dwelling; and (3) Demolition of an existing dwelling and erection of 5 two storey dwellings.
- The requirements of the notice are: (1) Cease the use of the Pumping Station as self-contained flats; (2) Cease the use of the Turbine House as a self-contained dwelling; (3) Cease the use of the 5 two storey dwellings; (4) Demolish the 5 two storey dwellings, the rear extensions and outbuildings; (5) Remove all fencing which delineates the curtilage area of each of the 5 two storey dwellings; (6) Remove all areas of hardstanding associated with the 5 two storey dwellings; and (7) Remove all materials as a result of compliance with steps (1) - (6) from the land.
- The period for compliance with the requirements is: Within 12 months after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Act. 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.

Application for costs

1. An application for costs made by the Council of the London Borough of Waltham Forest against Seasons Property Limited is the subject of a separate Decision.

Preliminary matter

2. The Inquiry sat for one day and was concerned with certain aspects of the appeal, namely financial viability, the planning obligation and conditions, and legal submissions on the scope of the deemed planning application (DPA). All other aspects of the appeal and supplementary submissions relating to the service of the notice were the subject of written representations.

Service of the notice

3. The notice does not state how many flats had been formed within the Pumping Station ("the PS") when it was issued but it became clear during the appeal that the building had been converted to 18 flats. Accordingly, the development that had been carried out when the notice was issued comprised 24 dwellings, 18 within the PS, 1 within the Turbine House ("the TH") and a terrace of 5 houses ("the 24-dwelling scheme"). Noting the demolition of an existing dwelling included within the allegation, this is a net increase of 23 dwellings.
4. However, copies of the notice were only served on the occupiers of Flats 1 to 8 within the PS because the Council had not known that 18 flats had been formed within the building. While the appellant noted in their appeal form that the notice had been properly served and an appeal was not made on ground (e)¹, this requires consideration as a matter of fact. Section 176(5) of the Act allows that such a failure may be disregarded if neither the appellant nor any person who was not served has been substantially prejudiced by the failure.
5. The Council considers it would have been better informed if the appellant had responded to a planning contravention notice (PCN) issued 4 months before the enforcement notice. While it is possible the appellant would have volunteered that the PS had been converted to 18 flats, the PCN did not ask how many flats there were. It appears to have been drafted, at least in part, with the aim of establishing whether a planning permission that included the formation of 8 flats within the PS ("the 2009 permission")² had lapsed. Subsequent evidence indicates that permission had not been lawfully implemented.
6. It is not clear what efforts the Council made to establish the facts in the absence of a response to the PCN, other than a conversation with the principal contractor and caretaker during a site inspection on 2 July 2021. Counting the number of front doors within the PS might have led the Council to question its assumption that only 8 flats had been formed.
7. Tenancy agreements ("TAs") indicate that all 18 flats were initially occupied between June 2016 and June 2017. Every TA allowed for extension of the tenancy and only 3 more were created, each recording a change in tenant. This points to the PS being converted to 18 flats in a single building project. While the Council has no notes on file to indicate that there were 18 flats in the PS at the time of the site inspection, it has accepted that there were 18 on the date the notice was issued, 10 days later.
8. The Council points out that there was no Companies House record of the landlord company at the time the TAs were signed and that a TA does not, of itself, prove that the flat in question was occupied. However, it remains fact that 18 flats had been formed within the PS when the notice was issued. Furthermore, the Council accepted that people were likely to be living in the building because it served copies of the notice on the occupiers of Flats 1 to 8, the number of flats it assumed to exist. In the absence of evidence that it confirmed that Flats 9 to 18 were unoccupied at that time, there is insufficient reason to doubt that the TAs demonstrate occupation of at least one of the flats 9 to 18 when the notice was issued. While some occupiers were employed by

¹ That copies of an enforcement notice were not served, as required by s172 [of the Act].

² 2005/0029, granted 22 September 2009.

the appellant and did not pay rent, they had an interest in the land by reason of living there.

9. The appellant states the primary lender on the development was not served with a copy of the notice. No indication of how this might have prejudiced the lender has been provided and there is no reason to believe the appeal would have been pursued any differently had the lender been served with a copy.
10. The facts concerning the flats within the PS confirm there was a failure in service of the notice. However, there is nothing to suggest that any occupier or the primary lender had evidence that the appellant did not already have, or, if they had been served, would have pursued an appeal on different grounds from the appellant. Noting the provisions of section 176(5) of the Act, substantial prejudice will be avoided to occupiers, the primary lender, and the appellant if I consider the merits of the 24-dwelling scheme that existed when the notice was issued.

The appeal on ground (a)

The deemed planning application

11. Section 4, paragraph 8 of the notice confirms that it aims to remedy the breach of planning control. The 2009 permission had been granted for a 14-dwelling scheme, a net increase of 13, including the conversion of the PS to 8 flats. The appellant seeks planning permission to reconfigure that building as 8 flats and to retain the single dwelling in the TH and the terrace of 5 houses ("the proposed 14-dwelling scheme"). The implications of this for the scope of the deemed planning application (DPA) and the fee payable for it are the subject of submissions by the parties.
12. Section 177(1)(a) of the Act states that, on the determination of an appeal under section 174, planning permission may be granted in respect of "the whole or any part" of "the matters stated in the enforcement notice as constituting a breach of planning control". It must therefore be determined whether the proposed 14-dwelling scheme is part of those matters.
13. Both parties refer to the *Ioannou*³ and *Bhanda*⁴ judgements in this matter and the Council also refers to the *Arnold*⁵ judgement. The notice in *Ioannou* had alleged the formation of 5 flats within a building and the appellant sought approval to reconfigure it as 3 flats. However, they would not have been 3 of the 5 flats stated in the notice and which existed when it was issued, so they, and the works required to form them, were not "part of the matters".
14. The appellant's intention to reconfigure the PS from 18 flats to 8 flats as part of the proposed 14-dwelling scheme is comparable but there are 2 notable differences in facts from *Ioannou*. The first is that the matters stated in the notice in this appeal include an unspecified number of flats within the PS. This is significant because section 177(1)(a) of the Act indicates that the power to grant planning permission in response to an appeal on ground (a) should be exercised with regard to what the notice states.

³ *Ioannou v SSCLG & Enfield LBC* [2014] EWCA Civ 1432.

⁴ *Bhanda v SSHCLG & Bromsgrove DC* [2020] EWHC 2724 (Admin); [2021] JPL 611.

⁵ *Arnold v SSCLG* [2015] EWHC 1197 (Admin), [2017] EWCA Civ 231; [2017] JPL 923.

15. The second difference is that an appeal had also been made on ground (f)⁶ in *Ioannou* (and in *Bhandal* and *Arnold*). In each case, that allowed consideration of whether an alternative form of development might, as a lesser step, remedy the breach of planning control or any injury to amenity which it had caused.
16. In *Arnold*, proposed reconfigurations of a dwelling the subject of a notice involved redesigning internal arrangements, footprints and elevations at ground floor level. It was noted that, applying the conclusions in *Ioannou*, these went beyond being part of the dwelling constructed and enforced against.
17. The judgement in *Bhandal* confirms that a very narrow view should not be taken of what might be granted planning permission in an appeal on ground (a). The judgement included comparison with *Ioannou* that is relevant to this appeal, namely that "The extent of new work required by an alternative development might well indicate that, upon analysis, it does not relate to a part of the development as built. The need for new work will therefore be an important factor in the exercise of planning judgement. It is not, however, right to say that the need for *any* new work at all is determinative of the matter."
18. This indicates that deciding whether the proposed 14-dwelling scheme is "part of the matters" must begin with what existed when the notice was issued, including how the PS was configured. It must then consider the nature and extent of the works that would be necessary to reconfigure the building as 8 flats in the context of the entire development.
19. The appellant contends that, if I do not find the proposed 14-dwelling scheme to be "part of the matters", the Secretary of State's power to grant planning permission for an acceptable alternative scheme would be emasculated. They further contend that this would cause delay to the planning system, as the proposal would then need to be pursued through a fresh planning application. In their submission, *Bhandal* confirms this would be contrary to Parliament's intention in drafting sections 177(1)(a) and 70C of the Act.
20. I agree that Parliament intended that an appeal on ground (a) should obviate the need to make a subsequent application for planning permission for the same development, and thus avoid unnecessary delay. However, that does not alter what must be drawn from *Bhandal*, that the extent of works necessary to realise the alternative scheme must be considered. The judgement as to whether those works result in the proposed alternative being "part of the matters" must logically be made before, and independent of, any assessment of planning merits.
21. Drawings showing how the PS would be reconfigured confirm that works would be carried out on all floors, apart from the lower ground floor. The drawing showing the current layout of the lower ground floor confirms that it contains a single dwelling, Flat 18. As no changes are proposed in this part of the building, it is open to question whether the proposed changes would result in 8 or 9 flats within the building. However, this could be addressed by means of a planning condition stating the maximum number of flats if necessary.
22. On the ground floor, existing Flats 1 and 2 would be combined to form a new Flat 1. This would be achieved by removing an internal wall, a kitchen and the

⁶ That the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by (the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

front doorway to existing Flat 2. However, greater changes are proposed for existing Flat 3, including removing or repositioning nearly all internal walls and relocating the kitchen and bathroom. More significantly, a new staircase would be inserted, leading to the first floor, allowing existing Flats 3 and 6 to be combined as a new duplex Flat 2. The insertion of the staircase would be accompanied by the removal of the bathroom from existing Flat 6 and the front door to that flat would be closed off.

23. Other alterations at first floor level include changes to existing Flats 4 and 5 identical to those proposed for existing Flats 1 and 2, resulting in a single new Flat 3, and merging existing Flats 7, 8 and 9 to form a single new Flat 4. The latter would be achieved by removing 2 internal walls, 2 kitchen areas, and repositioning the front doorway of Flat 8 to serve the new flat. The proposed plans also show the formation of steps outside the doorway of new Flat 3.
24. At second floor level, existing Flat 10 would not change, but would become new Flat 5. New Flat 6 would be formed by combining existing Flats 11, 12 and 13 with similar changes to those proposed for existing Flats 7, 8 and 9 below.
25. The third and fourth floors are currently laid out as 4 duplex flats reached from a corridor on the third floor. They would be altered to form 2 new duplex units, Flats 7 and 8. These new flats would have an unusual layout, each with rooms either side of the corridor. To pass between those rooms, an occupier would need to climb one flight of stairs to the fourth floor, pass through a new opening, and then descend another flight, returning to the third floor on the other side of the corridor. The changes on these floors also include the removal of 4 internal walls at third floor level and the removal of 2 kitchens at fourth floor level.
26. Any view that a scheme including the 8-flat configuration is "part of the matters" must rely heavily on the fact that the notice does not state that 18 flats existed in the PS when it was issued. Viewed solely from the perspective of the wording "The material change in use of the PS to self-contained flats" set out in the notice, the approval of any number of flats may seem possible.
27. However, I am not convinced that the absence of a number automatically means that any alternative configuration of the building comprising self-contained flats may be granted planning permission. With no appeal having been made on ground (b)⁷, the matters stated in the notice must be held to reasonably relate to what existed when the notice was issued. The appellant knew what that was, even if the Council was unsure. It follows that the degree to which a scheme including the proposed reconfiguration resembles what had been carried out is central to whether that scheme is "part of the matters".
28. The structural changes to walls, doors and openings described above, and the associated alterations in facilities comprising plumbing and electrical wiring, amount to a significant internal reorganisation of the PS. Furthermore, the insertion of a new staircase between the first and second floors, to facilitate the formation of a duplex flat, is of itself a major change in the fabric and character of the building.
29. Even when the absence of proposed changes to the TH and the terrace of 5 houses is taken into consideration, the proposed 14-dwelling scheme is

⁷ That (the matters stated in the notice which may give rise to the breach of planning control) have not occurred.

materially and significantly different from what existed when the notice was issued. That is owing to the scale of works inherent in the proposed reconfiguration of the PS, which could only be achieved through extensive building works. By reason of the nature and extent of building works that would be necessary to realise it, the 14-dwelling scheme is not part of what existed when the notice was issued, and which enforcement action could be taken in respect of. Accordingly, the scheme cannot reasonably be held to form part of the matters stated in the notice, even though it did not recite how many flats had been formed within the PS.

30. For these reasons, the proposed 14-dwelling scheme cannot be considered in the appeal on ground (a). However, the 24-dwelling scheme, which existed on the date the notice was issued, can and should be considered.

31. The main issues in this appeal are:

- Whether the conversion of the PS to self-contained flats and the conversion of the TH into a self-contained dwelling constitute inappropriate development in the Green Belt ("the GB").
- Whether the demolition of an existing dwelling and erection of 5 two-storey dwellings constitutes inappropriate development in the GB.
- The effect on the openness and purposes of including land in the GB.
- The effects on heritage assets.
- Flood risk.
- The effects on the site's contribution to recreation.
- The effects on air quality.
- The effects on greenhouse gas emissions.
- The need for and provision of affordable housing, having regard to the financial viability of the development.
- If any part of the DPA constitutes inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the conversions constitute inappropriate development in the GB

32. The PS and the TH are of permanent and substantial construction. Provided their re-use preserves the openness of the GB and does not conflict with the purposes of including land within it, it is not inappropriate development.

33. The building works involved in converting the PS into 18 flats and the TH into a self-contained dwelling have not had any effect on the openness of the GB and do not conflict with the purposes of including land within it. However, the level of activity associated with 18 flats in the PS, and the provision of car parking for them, cause some loss in openness, both spatially and visually. The Council suggests this could be mitigated by ensuring the car parking is located close to the building and not spread across the site, a matter that could be the subject

of a planning condition. So long as that location of parking does not prove undesirable for any other reason, I would agree in terms of the visual component of openness. However, the siting of car parking will not mitigate its spatial effect, or the effect of other increased activity arising from the more intensive residential use of the PS.

34. The conversion of the PS to 18 flats therefore does not preserve the openness of the GB. It is therefore inappropriate development in the GB. Inappropriate development is harmful by definition and should not be approved except in very special circumstances.

Whether the demolition of an existing dwelling and erection of 5 two-storey dwellings constitutes inappropriate development in the GB

35. The construction of new buildings is inappropriate development in the GB. However, and by exception, the replacement of one building with another, provided it is in the same use and not materially larger, is not inappropriate.
36. The dwelling that was demolished had a significantly smaller footprint than the terrace of 5 dwellings that has replaced it, which is therefore materially larger. Accordingly, the demolition of the dwelling and the erection of 5 two storey dwellings is inappropriate development in the GB that should not be approved except in very special circumstances.

The effect on the openness and purposes of including land in the GB

37. The appeal site is within a linear part of the GB that follows the course of the River Lea and the River Lea Navigation along much of the borough's western boundary. This tranquil and relatively undeveloped corridor is dominated by a series of reservoirs, separating, and sharply contrasting with the urban areas to the east and west. The increased built form, with attendant greater activity, has therefore diminished the openness of the GB in visual and spatial terms.

Heritage assets

38. The PS, the TH and the railings adjacent to the road frontage are grade 2 listed buildings. Notwithstanding any subsequent changes in policy, the 2009 permission indicates that the conversion of the TH to a single dwelling has been found acceptable. Furthermore, it indicates that the conversion of the PS to form flats should, in principle, be acceptable in terms of its effect on the heritage asset. I note the Council's concern that inappropriate materials, including uPVC windows and doors, have been used, but this could be addressed by planning condition if all other aspects of the development were found acceptable.
39. The appellant contends that, if permission were refused, the listed buildings will fall into disrepair. However, they also state that refurbishment works have been undertaken, enabled by the development already carried out. Accordingly, it has not been demonstrated that complying with the notice would place the listed buildings at risk, although that could occur if they were to remain vacant and not be maintained for a prolonged period.
40. The 2009 permission also confirms that the demolition of one dwelling and the construction of a terrace of 5 dwellings has been found acceptable in terms of its effect on the setting of the listed buildings within the site. One noticeable difference is that the terrace of 5 dwellings includes a lean-to rear extension

along its full length that was not part of the development permitted in 2009. However, the appellant does not seek permission for this, and its removal could be secured by condition should the DPA prove otherwise acceptable.

41. The conversion of the PS to 18 flats has involved greater subdivision of the listed building than would have been undertaken had the 2009 permission been lawfully implemented. No assessment of the effect of the associated building works, including the provision of services, on the fabric of the listed building, and therefore on its significance, has been made.
42. The increased number of dwellings within the PS, more than double those permitted in 2009, must be expected to be accompanied by a corresponding increased demand for car parking. While the Council suggests a planning condition should ensure car parking is located close to the PS, to limit the effect on the GB, no details of how this would be laid out have been provided. Neither has any assessment of how siting sufficient car parking for 18 flats close to the PS might affect its setting or that of other listed buildings within the site been produced.
43. The site plan⁸ of the 2009 permission shows how car parking for 14 dwellings and visitors would have been laid out in accordance with the standards then operative. It is apparent from this that the increased provision for the 24-dwelling scheme would result in a layout dominated by car parking that would, unless very carefully designed and sited, not sustain or enhance the significance of the heritage assets within the site. Even if the required parking were sited away from the heritage assets, it would not necessarily prevent unofficial parking close to them, which would have a similar effect.
44. It has therefore not been demonstrated that car parking could be provided for the 18 flats in a way that conserves the significance of heritage assets or promotes their conservation, enhancement and enjoyment. The 24-dwelling scheme therefore results in less than substantial harm to those heritage assets. It has not been demonstrated that the 24-dwelling scheme would secure the optimum viable use of the PS and no public benefits have been identified that would outweigh the less than substantial harm to the heritage asset. The DPA is therefore unacceptable in this regard.

Flood risk

45. The appeal site lies within Flood Zones 2 and 3 and therefore includes areas at risk of flooding. No flood risk assessment or details of site drainage have been provided, although the grant of the 2009 permission suggests that suitable arrangements may be made. However, there are 2 significant differences between the 2009 permission and the DPA.
46. The first is that open storage and the raising of levels on adjacent land within the appellant's control has reduced the volume of floodplain storage, with an attendant increase in flood risk elsewhere. However, that will be remedied through compliance with a notice in force⁹ requiring the storage use to cease and the land to be restored to its original levels. The second difference is that the schedule of drawings approved in 2009 confirms there was no accommodation at basement level, whereas Flat 18 is shown at that level in the

⁸ Drawing A8611-G-101 Rev A.

⁹ Reference ENF/200030, subject of withdrawn appeal APP/U5930/C/21/3280597.

drawings presented in this appeal. A flat entirely below ground level within Flood Zone 2 or 3 would be particularly vulnerable in a flood event.

47. Accordingly, and without an up-to-date flood risk assessment, it has not been demonstrated that there has been no change in flood risk and, by extension, the measures necessary to manage it since the 2009 permission was granted. Planning permission should not be granted in these circumstances.

Recreation

48. The site is within the Lea Valley Regional Park, an area safeguarded for a range of recreational and leisure activities. While the Council also refers to conflict with recreational objectives of the Lea Valley Regional Park Development Framework, a copy of that document has not been provided. The 2009 permission confirms that housing has been accepted in this area, but the Council contends that was because it provided for a cycle route through the site. While the appellant questions the need for the cycle route now, citing the lack of progress with the scheme that the 2009 permission would have supported, no evidence of a change in policy objectives has been produced.
49. The DPA does not include the creation of a cycle path, so it could only be secured by means of a planning obligation, and no such provision has been made. The DPA therefore fails to complement and improve the quality of open space uses in the area, does not plan for good local cycling connections, and fails to take the opportunity to deliver enhancements to recreation and access to open space. Specifically, it does not take the opportunity to improve cycle access to the Lea Valley Regional Park. For these reasons it is unacceptable.

Air quality

50. As a major development proposal, the 24-dwelling scheme should be accompanied by an air quality assessment and achieve air quality neutrality. No such assessment has been provided. However, a pragmatic alternative approach of a financial contribution toward air quality monitoring, based on the number of dwellings and the number of car parking spaces, has been identified. This could be secured by means of a planning obligation and the parties agree how the sum should be calculated. However, there is no obligation to secure the contribution that would be required for the 24-dwelling scheme.

Greenhouse gas emissions

51. LP policy SI 2 requires major development proposals to be accompanied by a detailed energy strategy to demonstrate that net zero-carbon will be achieved or to make an appropriate carbon offset payment in lieu. A strategy has not been produced in this instance but, pragmatically, an appropriate contribution to a fund dedicated to implementing projects that deliver carbon reduction would prove acceptable. A planning obligation that would secure the sum calculated for the 24-dwelling scheme has been drafted, although the wording of the obligation ties it to the 14-dwelling scheme.

Affordable housing and financial viability

52. Paragraph 34 of the National Planning Policy Framework ("the Framework") states that development plan policies which set out the contributions required from development, including the provision of affordable housing, should not undermine the deliverability of the plan.

53. Development plan policies set an expectation that major residential development includes a minimum proportion of affordable housing but allow that this may be subject to financial viability testing. This is in line with paragraph 58 of the Framework, which states, "Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage."
54. Thus, where the rigid application of policy requirements for affordable housing would jeopardise the delivery of housing in line with the development plan, they may be applied flexibly, or even set aside, according to the circumstances.
55. The appellant had not included any affordable housing within the DPA and contends that a financial contribution for its provision elsewhere should not be made either. While they contend, and maintained in the Inquiry, that both options would make the 14-dwelling scheme financially unviable, no submissions have been made in respect of the 24-dwelling scheme.
56. The justification for flexible application of policy requirements may be clear where a lack of financial viability would threaten the delivery of housing. While planning permission may be granted in respect of development that has already been carried out, it is plain that there cannot be any threat to the delivery of housing that already exists.
57. The appellant stated in the Inquiry that a financial contribution toward the provision of affordable housing would cause bankruptcy, albeit this was in the context of the 14-dwelling scheme. Such a claim could not be objectively assessed without comprehensive evidence concerning the company's finances, including financial appraisal of other projects in hand, none of which is before me. Even if that evidence were forthcoming, it would still be necessary to consider whether the financial survival of a given developer is capable of being a matter of public interest in planning. Even if it could, a further determination would be necessary as to whether it should be afforded greater weight than the achievement of affordable housing in line with policy expectations.
58. In the absence of evidence justifying a determination other than in accord with the development plan in this regard, the 24-dwelling scheme is unacceptable.

Other matters

59. Because it is not the appellant's preferred option and because the Council did not initially realise it had been carried out, neither party has made a detailed assessment of the living conditions achieved for occupiers of the development. Nevertheless, the demolition of a dwelling, the construction of the terrace of 5 houses and the conversion of the TH to a single dwelling are essentially what was found acceptable when the 2009 permission was granted. While there have been changes to the development plan since then, no current policies specific to living conditions have been cited.
60. However, the 2009 permission included conversion of the PS to 8 flats and the 18 flats within the 24-dwelling scheme is a very different proposition. It has not been shown that the increased car parking provision this entails can avoid less than substantial harm to heritage assets. Even if it could be avoided or reduced by moving parking away from the listed buildings, the greater provision would

reduce opportunities for amenity space to meet the needs of the occupiers of the flats within the PS. That need is increased in line with the greater number of flats, resulting in the unacceptable combination of more occupiers with less amenity space. Furthermore, the configuration of flats within the PS includes access through narrow corridors with limited natural light and ventilation. This does not achieve a high standard of amenity for the occupiers.

Conclusion on ground (a)

61. The re-use of the TH preserves the openness of the GB and does not conflict with the purposes of including land within it. It is therefore not inappropriate development. However, for the reasons given, the material change in use of the PS to self-contained flats and the demolition of a dwelling and erection of 5 two storey dwellings are inappropriate development and harmful to the openness of the GB. This carries substantial weight and there is conflict with policy GG2 of the London Plan ("the LP"), policy CS5 of the Waltham Forest Core Strategy ("the CS"), policy DM12 of the London Borough of Waltham Forest Development Management Policies Local Plan ("the DMP") and Part 13 of the Framework.
62. There is additional harm to heritage assets through the scale of car parking required to serve the conversion of the PS to 18 flats. This is contrary to policy HC1 of the LP, policy CS 12 of the CS and policy DM28 of the DMP.
63. It has not been demonstrated that the 24-dwelling scheme is acceptable in terms of flood risk or recreation, contrary to policies SI12 and GG2 of the LP, policies CS4 and CS13 of the CS and policies DM34 and DM12 of the DMP respectively. The DPA is also contrary to LP policies SI 1 and SI 2 in terms of air quality and greenhouse gas emissions.
64. The failure to include or make appropriate provision for affordable housing is contrary to policy H4 of the LP, policy CS2 of the CS and policy DM3 of the DMP. An exception to the requirements of those policies has not been justified.
65. Additionally, The DPA fails to achieve a high standard of amenity for existing and future users, specifically the occupiers of the 18 flats within the PS, contrary to paragraph 130 f) of the Framework.
66. While no representations were made on the matter, I have considered the human rights of the occupiers of the dwellings. In doing so, I have had regard to Article 8 of the European Convention on Human Rights ("the ECHR") and Article 1 of the First Protocol to the ECHR. This is a matter to which I attach significant weight, even though those occupiers within the PS would have stood to lose their homes if the 14-dwelling scheme had been considered and found acceptable. However, neither this nor the advanced considerations in support of the 24-dwelling scheme, individually or cumulatively, on balance, clearly outweigh the harm to the GB. Consequently, the very special circumstances necessary to justify the development do not exist. As such, any adverse impact on human rights would be a proportionate response.
67. Some of the concerns identified above might be satisfactorily addressed by means of a planning obligation specific to the 24-dwelling scheme. However, that would not alter the harm to the GB, the less than substantial harm to the heritage asset of the PS and the unacceptable living conditions within the

converted PS. Consequently, even if a suitable planning obligation had been provided, it would not have made that scheme acceptable overall.

68. Accordingly, the appeal on ground (a) should not succeed.

Conclusion

69. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

70. In reaching this conclusion I am mindful of the planning history, which indicates that residential re-use of the PS and the TH is acceptable in principle. While the option to exercise the power conferred by section 70C of the Act exists, so does the desirability of sympathetic change that would ensure heritage assets remain used and valued¹⁰. The 12-month period for compliance with the notice thus affords an opportunity to explore options for acceptable forms of development and for any planning and listed building applications to be made to that end.

Formal Decision

71. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Mark Harbottle

INSPECTOR

¹⁰ Planning Practice Guidance, historic environment, paragraph 002 Reference ID: 18a-002-20190723.

APPEARANCES

FOR THE APPELLANT:

Georgina Fenton

FOR THE LOCAL PLANNING AUTHORITY:

Charles Streeten

He called

Andrew Jones BSc MRICS, Director, BPS Chartered Surveyors

Documents submitted at the Inquiry

- 1 Letter of notification of the Inquiry
- 2 Copy of press notice giving notice of the Inquiry
- 3 Agreed Statement of Common Ground
- 4 List of suggested conditions