



Appeal Decision

Site visit made on 14 June 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 August 2023

Appeal Ref: APP/G5750/C/22/3296572

Land at 224 Plashet Grove, East Ham, London E6 1DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Shyam Krishna Shrestha against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice was issued on 11 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use to emergency residential accommodation.
 - The requirements of the notice are to:
 1. Cease the use of the property as emergency residential accommodation.
 2. Remove all fixtures and fittings that solely facilitate the use of the property as emergency residential accommodation including, but not limited to, locks on doors, additional beds and additional mattresses.
 3. On completion of step 1, remove all materials and debris from the site.
 - The period for compliance with the requirements is: Six 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.
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Decision

1. It is directed that the enforcement notice is varied by:
 - At section 5 of the notice, the deletion of 'six' and the insertion of 'nine' so that it reads 'Time for Compliance: nine months from the date this notice takes effect.'
2. Subject to the variation above, 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 1990 Act as amended.

Ground (a)

3. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issues

4. The main issues of the appeal are:
 - The effect of the appeal scheme on the provision of housing for families in the Borough; and
 - Whether the appeal site provides satisfactory accommodation for occupants and future occupants; and

- The effect of the appeal scheme on the living conditions of neighbouring occupants, having regard to noise and disturbance.

Reasons

Provision of housing for families

5. The appeal site comprises a terraced dwelling, which is located along a row of similarly designed residential properties. The enforcement notice alleges the material change of use to emergency residential accommodation, which the Council suggest is a *sui generis*¹ use. In response to a Planning Contravention Notice (PCN), the appellant advised that the property is used to house vulnerable woman only.
6. The Council advise that the appellant has also previously stated that the tenants could be from one to [a] few days or weeks, that there is no long term residential agreement for any of the tenants and it is not a permanent place of residence for the women staying at the property. The appellant does not dispute that the breach has occurred and there is no appeal under ground (b). It is not disputed that the property was previously in C3 use or that the appeal scheme has resulted in the material change of use of a family dwelling.
7. Policy GG4 of the London Plan (2021)(the LP) seeks to deliver the homes Londoners need by creating mixed and inclusive communities, with good quality homes that meet high standards of design and provide for identified needs. Policy H10 of the LP concerns housing size mix and advises that applicants and decision makers should have regard to robust local evidence of need where available, or, where this is not available, the range of housing need and demand identified by the 2017 London Strategic Housing Market Assessment. Policy H1 of the Newham Local Plan (the NLP)(2018) seeks to secure a significant increase in family housing and policies S1 and H4 of the Newham Local Plan (2018)(the NLP) seek to protect family housing.
8. The appellant suggests that the mix of housing for families appears to be fully catered for in the ward and they have drawn my attention to Office for National Statistics data which indicate there are 3,706 household spaces in the ward of East Ham comprising 48.1% houses and 11.6% shared houses. However, while the ward may have a greater proportion of houses than shared accommodation, this is not itself an indication that there is a need for emergency residential accommodation. Nor is it an indication that there is no longer a need to protect family housing across the Borough.
9. Even if the appeal site is located within a ward with a higher proportion of family housing compared to other wards in the Borough, the policies of the NLP, unless specified otherwise, are applied across the Borough. Moreover, while policy H4 sets out the circumstances in which subdivision or conversion may be appropriate, the appeal scheme does not meet the criteria contained within the policy as it is not located above a commercial unit, nor has it resulted in a new 4 bedroom family dwelling unit.
10. Policy H3 of the NLP seeks to direct new specialist and *sui generis* nightly-stay housing towards local need. The appellant advises that the property provides emergency residential accommodation for 5 to 8 vulnerable ladies at any one time and asserts that within the immediate area there is no provision of such

¹ A Latin term meaning of its own kind or class.

emergency residential accommodation and therefore, such accommodation is under provided.

11. However, while the appellant suggests the occupants are directed from local authorities, the Council advise the property is not on its system for this type of tenant placement and no tenancies have been found for Newham-placed residents at this address. Although it may be possible that other London Boroughs are placing residents at the appeal site, there is no contemporaneous documentary evidence to support this.
12. Furthermore, while policy H3 of the Newham Local Plan (2018) supports the provision of specialist housing, it states that occupancy from residents from outside of Newham should not on average comprise more than 33% of total residents. There is no evidence to show that this requirement would be met.
13. The appellant has drawn my attention to appeal reference APP/Z5060/A/11/2167184, however, this appeal decision concerned a site in another London Borough and was issued in 2012. The policies which the Inspector considered in that case, and the evidence base was different. The supporting justification for policy H4, for example, 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.
14. The appellant asserts that the property has been vacant for a considerable period of time, and that it was actively marketed as a 6 bedroom dwelling. However, no substantive details of the marketing exercise have been provided through this appeal. Even if such an exercise were undertaken, I cannot be sure it was sufficiently robust. The appellant also asserts they have made a number of requests to Newham social housing to rent the property and that they have been advised it does not have a big enough family to occupy this size of property. However, I have been provided with no documentary evidence of such requests.
15. While financial incentives to landlords may not be available for properties similar to the appeal site, whether to offer financial incentives is matter for the relevant social housing provider and may not reflect the need of the area as a whole. Given the concern raised by the Council regarding the sub-division of family dwellings, and the policy approach set out above, I would be surprised if there was no demand for such a property.
16. The appellant asserts that the property is used to house vulnerable women only and that without such accommodation this vulnerable group would be homeless. They also suggest a number of charity organisations which recognise a 'huge demand' of properties like the appeal property. However, during my visit, the premises appeared to be occupied by males and, in their final comments, the appellant suggests that it is now mixed and the tenants are long term occupants.
17. Although emergency accommodation may be required by individuals regardless of their gender, this, in my view, undermines the appellant's case that there is a need for such emergency accommodation.
18. For the reasons given above, the appeal scheme has resulted in the loss of a dwelling for occupation by a family, which I consider is harmful to the supply of family housing within the Borough, contrary to policies GG4, and H10 of the LP

and policies S1, H1, H3 and H4 of the NLP, the requirements of which are set out above.

Living conditions: Internal standard of accommodation

19. The accommodation is laid out over four floors, with an office and living accommodation provided on the ground floor and bedrooms located over each of the floors. To the rear is a modest sized garden with a seating area, which is accessed via the kitchen and living area. The basement bedroom has an ensuite shower room with toilet. On the ground floor is a shower room with toilet and shower. There is a good sized bathroom on the first floor with a bath and on the second floor there is a shared bathroom with a shower. Although the bedrooms vary in size, they are all generally sufficiently large to accommodate a bed and some furniture.
20. The appellant suggests in their appeal submission that a reception/diner and kitchen is located on both the ground and first floor. However, during my visit the first floor appeared to be used predominantly for sleeping, with no kitchen facilities or reception diner. This is consistent with the Council's observations in its officer report. It is therefore likely that all occupants of the property, including members of staff, use the ground floor to cook, relax and spend time away from their bedrooms/office.
21. The ground floor bedroom located between the office and the ground floor communal area. Occupants of the premises may choose different times to use the communal areas, including times when others in the property are trying to sleep. In order to access the communal accommodation, occupants of the property, including employees, must pass bedroom 2. Individuals using the office and hallway are likely to generate noise and disturbance which is harmful to the living conditions of the occupant of the ground floor bedroom.
22. Given the vulnerable nature of the occupants of the building, I agree that individuals are more likely to require private space away from others. In my view, noise generated by users of the ground floor communal area is likely to disturb the occupant of the bedroom located on the ground floor and harm their living conditions, particularly given the fact that individuals may choose to use the communal living area when the occupant of the downstairs bedroom is trying to sleep.
23. Policy SP8 of the NLP seeks appropriate provision for communal spaces and private amenity spaces (e.g. bedrooms and places of retreat) in multiple-user buildings. While the provision of communal living space is relatively generous on the ground floor, the provision of communal space elsewhere in the property is limited.
24. I agree that occupants within the property may find it difficult to use the communal space comfortably when the majority of occupants and staff are in the same area. I have considered whether it would be possible to limit occupation of the ground floor to non-sleeping accommodation by condition, however, I consider such a condition would fail to meet the tests of reasonableness and would be difficult to monitor, requiring an intolerable degree of supervision.
25. The appellant suggests that tenants are vetted by local authorities and other charitable organisations and that 'inspection checks' are undertaken at the

property. However, I have no substantive evidence to show what these 'inspection checks' comprise, who carries them out, when or what the findings of the inspections are.

26. The appellant states they have secured an HMO licence for the property. However, full details of the licence have not been provided through this appeal. Furthermore, while the licence ensures the property would meet the minimum standard of accommodation fit for human habitation, policy S6 of the NLP seeks to improve housing quality. Policy GG4 of the London Plan and policy H1 of the NLP also both seek good quality homes that meet high standards of design, not just the minimum required for human habitation.
27. While I would agree there is sufficient bathroom provision for occupants of the appeal site, I consider the provision of communal living accommodation is insufficient given the number of individuals that are likely to use it. Furthermore, the location of the ground floor bedroom between the communal living accommodation and office is harmful to the living conditions of its occupant and future occupants.
28. Consequently, I find the appeal site does not provide suitable living conditions for its occupants, contrary to policies GG4 of the LP and policies S6, H1 and SP8 of the NLP, the requirements of which are set out above.

Living conditions: Noise and disturbance

29. The appeal site is located along a row of similarly designed terraced properties, along Plashet Grove, which comprises a mix of residential, commercial and community uses. During my visit I noted that Plashet Grove is well used by vehicles and pedestrians and as a result noise levels did not appear particularly low. Although the property is terraced, living accommodation has been located over four floors, meaning that up to 8² individuals could be accommodated at any one time. To the rear is a modest garden, with a seating area, which is presumably used by residents to enjoy the outside space. In addition to the occupants of the property, the building is accessed by employees.
30. The occupants of the property of the emergency accommodation are likely to stay at the property for limited periods and so are likely to lead separate lives to others. As a result, the comings and goings which are generated by the use of the property is likely to be much greater than would be generated by a single household. Nevertheless, given the mix of uses in the vicinity of the site and the comings and goings that are likely to already be generated in the area, I consider the increase is unlikely to be harmful.
31. While I note that complaints have been made to the Council regarding noise at the property, there is limited information as to the precise nature of the complaints or whether they have been upheld. The complaints are over 6 months apart. Were noise and disturbance generated at a level that it was considered harmful, I would expect there to be a greater number of complaints.
32. Although the occupants of the property are likely to change, given the other uses in the vicinity of the site which already generate noise and disturbance, I

² In their Statement of Case, the appellant describes the appeal site as having provided emergency residential accommodation for 5 to 8 vulnerable ladies at any one time.

consider it unlikely that the use of the property is likely to generate noise and disturbance which is harmful to the living conditions of neighbouring occupants.

33. The Council has drawn my attention to an appeal decision, reference APP/G5750/C/21/3269000, where the Inspector concluded that a HMO use with seven separate individuals/couples, had resulted in levels of noise and disturbance which adversely affect the living conditions of neighbouring occupants. However, I do not have full details of the appeal. Furthermore, the appeal scheme is not an HMO but is for the provision of emergency accommodation, which is supported by a member of staff. The presence of a member of staff is likely to reduce the likelihood of excessively noisy behaviour at the property. I do not, therefore, consider the aforementioned appeal to be comparable to the appeal scheme before me.
34. Thus, for the reasons given above I find the appeal scheme does not harm the living conditions of neighbouring occupants and there would be no conflict with policies H1, which seeks residential quality, SP2, which seeks to improve housing quality, SP3, which seeks a high quality of urban design and SP8, which seeks neighbourly development of the NLP.

Other considerations

35. The appellant suggests that without the appeal scheme, vulnerable ladies occupying the site would be homeless. However, the premises appeared to be occupied by men when I visited the property, which undermines the appellant's case in this regard. Nevertheless, while the appellant has not quantified the need for the provision of emergency accommodation for vulnerable women, it is not disputed that the accommodation provides additional homes.
36. The National Planning Policy Framework (2021)(the Framework) sets out the Government's objective of significantly boosting the supply of homes. I consider the contribution that up to 3³ additional homes will make to the overall supply of housing is very modest.
37. The Framework also sets out the aspiration to build a strong, competitive economy. The occupants of the appeal building are also likely to spend money in the local area, which would make a very modest contribution to the local economy. Individuals are also employed to manage the property, which makes a modest contribution towards the economy through direct employment.

Planning balance

38. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions. Paragraph 11d) of the Framework states where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date⁴, granting permission unless i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or ii. Any adverse impacts of doing so would significantly and

³ Assuming net non-self contained communal accommodation counts on the basis of a 1.8:1 ratio, with 1.8 bedrooms being counted as a single home.

⁴ This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74).

demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

39. While the Council accepts that it is unable to demonstrate a compliant 5 year land supply position currently, it asserts that the policies which are considered most important for the planning assessment, policies S1, H1, H3 and H4 of the NLP, remain in date. However, footnote 8 of the Framework triggers the need for a scheme to be considered against paragraph 11d)ii. I accept this, in itself, does not determine the weight to be attached to the conflict with any development plan policies relevant to that proposal, as established in *Gladman v SSHCLG, Corby BC and Uttlesford DC* [2020] EWHC 518 (Admin) and subsequently confirmed in the Court of Appeal - *Gladman v SSHCLG, Corby BC and Uttlesford DC* [2021] EWCA Civ 104.
40. There is no suggestion that paragraph 11d)i) applies and I am not aware of any policies in the Framework that protect areas or assets of particular importance which provide a clear reason for refusing the development proposed. Nevertheless, since the Council is unable to demonstrate a five year supply of deliverable housing sites, the test in 11d)ii) should therefore be applied.
41. Policy H4 supports the protection of family-sized homes, which it was demonstrated through the 2016 Strategic Housing Market Assessment, represents the bulk of the Borough's housing need. The purpose of this policy and others identified above, is to protect existing housing stock to meet an identified need, while allowing development to come forward where it is deemed appropriate.
42. The Council has provided me with a Housing Delivery Test Action Plan Update, which sets out the likely reasons for the shortfall, including market absorption rates, the complexities of delivering projects on Council land, building large scale, dense and tall strategic sites, the impact of Covid-19 and other potential constraints, such as schemes being capital intensive at early stages, housing-association-led schemes being dependent upon cross subsidy. The protection of existing housing stock does not appear to be a significant factor in the Council's inability to demonstrate a 5 year housing land supply.
43. The Council has identified a range of actions which it has been undertaking as well as proposed actions to address the shortfall. Some of these rely on securing funding to deliver housing on Council owned sites and taking other actions to bring forward social housing. In addition, the fact that the country is no longer subject to many of the rules brought in to respond to the Covid-19 pandemic is likely to have a positive effect on the ability of the house building industry to deliver sites. As a consequence, I consider the steps being taken to address the shortfall and other factors⁵ are likely to reduce the shortfall further.
44. The housing land supply shortfall is modest and while the appeal scheme would make a contribution of around 3 homes to the Council's land supply position⁶. I consider such contribution to be a modest benefit which is of modest weight in favour of the appeal scheme. Given the limited shortfall, the actions being taken by the Council to address the shortfall and the limited provision that would be made by the appeal scheme, I consider the weight to be attached to

⁵ Such as relaxation of Covid-19 restrictions.

⁶ Assuming net non-self contained communal accommodation counts on the basis of a 1.8:1 ratio, with 1.8 bedrooms being counted as a single home.

the conflict with policies S1, H1, H3 and H4 is substantial. I have also found that the appeal site does not provide suitable living conditions for its occupants. This is a matter to which I attach significant weight.

45. Drawing together the harms and benefits, I consider the adverse effects of the appeal scheme significantly and demonstrably outweighs the benefits, when assessed against the policies in the Framework taken as a whole. The appeal scheme does not therefore benefit from the presumption in favour of sustainable development.

Other Matters

46. The Council has cited policies D4 and D8 of the London Plan (2021) in its enforcement notice. However, policy D8 concerns design quality and policy D8 concerns proposals affecting the public realm. Since the appeal scheme does not include any modification or changes to the public realm, I do not consider the policy to be determinative in this case.
47. The Council has also drawn my attention to policy H8 of the LP, which concerns the loss of existing housing and estate redevelopment. While the appeal scheme has resulted in the conversion of a family dwelling, it provides a different form of housing and so there is no conflict with policy H8 in this regard.

Ground (a) conclusion

48. For the reasons given above, I find that the appeal scheme conflicts with the development as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (g)

49. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellant suggests that the 6 month period for compliance is too short given the 'current pandemic' [sic] with access to labour and materials. The appellant also suggests there are issues in relation to making transitional arrangements for vulnerable women and suggests a period 12 months should be allowed.
50. The effects of the pandemic may have previously affected the availability of materials and labour, given the passage of time, I consider delays are less likely to be encountered now and so extending the compliance period to 12 months would be excessive. Nevertheless, it is likely to be necessary to carry out any work to the premises once it has been vacated. While the premises did not appear to be occupied by vulnerable women at the time of my visit, it was occupied and so its occupants will still need to find alternative accommodation.
51. While the Council has powers under section 173A of the Act to vary the period of compliance, the exercise of such powers is entirely for its discretion. Varying the compliance period would give the appellant a degree of certainty, rather than submitting a request to the Council, which it may take time to consider. Having inspected the site, and having regard to the fact that the current occupants of the premises will lose their home, I consider it would be reasonable and proportionate to extend the compliance period to 9 months. Thus, the appeal under ground (g) succeeds to that extent.

Conclusion

52. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on ground (g) succeeds to that extent.

M Savage

INSPECTOR