



Appeal Decisions

Site visit made on 1 February 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2024

Appeal A Ref: APP/G5750/C/22/3306327

Land at 8 Wintergreen Close, Beckton, London, E6 5UQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mariglen Agaqi against an enforcement notice issued by London Borough of Newham.
 - The notice was issued on 8 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use to five 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 all but one kitchen.
 3. Remove from the property all bathrooms that solely facilitate the use as self-contained flats.
 4. Remove from the property any internal dividing doorways and internal partitioning that solely facilitates the use as self-contained flats.
 5. Remove from the property all but one supply of electricity, gas and water.
 6. Remove from the site all debris arising from compliance with steps 1 to 5.
 - The period for compliance with the requirements is five 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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Appeal B Ref: APP/G5750/W/22/3304792

8 Wintergreen Close, Beckton, Newham, London, E6 5UQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mariglen Agaqi against the decision of London Borough of Newham.
 - The application Ref 22/01488/FUL, dated 13 June 2022, was refused by notice dated 4 August 2022.
 - The development proposed is retrospective application to retain the existing 5 self contained residential units.
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Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the deletion of five months and the substitution with 8 months for the time for compliance.
2. Subject to the variation, 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 Town and Country Planning Act 1990 as amended (the 1990 Act).

Appeal B

3. The appeal is dismissed.

Appeals A and B

Preliminary Matters

4. Since the appeals were submitted, a revised version of the National Planning Policy Framework (the Framework) has been published (December 2023) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not materially alter the most relevant policies to the appeals, I have not reverted to the parties for comment.
5. The reasons for issuing the enforcement notice, subject to Appeal A, and the reasons for refusing the planning application, subject to Appeal B, are broadly the same. My reasoning below therefore relates to both appeals unless I have stated otherwise.

Main Issues

6. The main issues are:

- the effect of the development on the Borough's stock of family housing;
- whether the property provides acceptable living conditions for its occupants, with particular regard to the provision of internal living space; and
- the effect of the development on the living conditions of occupants of neighbouring properties with particular regard to noise and disturbance.

Reasons

Housing stock

7. The appeal relates to a two storey, semi-detached property, with converted garage and extended roof space. It is undisputed that prior to its sub-division into five, self-contained flats, the property was a single, four bedroom house.
8. Newham Local Plan 2018 (NLP) Policy H4 states that the Council will specifically protect three bed and four plus bed family housing. Although the appellant argues that there is less demand for large dwellings in the local community, the policy justification explains, to the contrary, that family dwellings have the highest demand and that it is clear from analysis, 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 policy therefore largely resists new conversions and seeks where possible to support de-conversion.
9. I note that the appellant's submission that he has tried to advertise the property for rent but no interest was shown for a larger dwelling due to the impact of COVID-19 and finance. However, no such evidence is provided to show that the property was advertised for rent as a four bedroom house and that there was no demand for the same. Moreover, issues relating to COVID-19 now have little relevance. I therefore attach very limited weight to those arguments.

10. The appellant also argues that the flats are acceptable on the basis that their provision would contribute to a net increase of five units to the Borough's existing housing stock. However, notwithstanding the net increase would be four, the justification to Policy H4 further explains that there is sufficient capacity for flats through purpose-built new build, conversion of non-residential uses, and reuse of redundant premises above shops in town centres.
11. Therefore, the current configuration of the property for one, two-bedroom flat, three single bedroom flats and a studio flat, results in the loss of a family dwelling house and undermines the Council's ability to stabilise the community and reduce population churn, contrary to NLP Policies H1, H4, S1 and S5 and London Plan Policy GG4. Those policies support, amongst other things, the provision and protection of family housing.
12. The Council also cite conflict with NLP Policies SP1 (Borough-wide place-making), SP2 (healthy neighbourhoods) and SP3 (quality urban design within places). However, I find those policies to have limited relevance to this main issue.
13. Notwithstanding the intention of NLP Policy H4 to specifically protect family housing, the policy justification explains the circumstances where subdivision or conversion can have multiple benefits or more desirable outcomes than the status quo. To address this, the policy includes a criteria based clause that would allow subdivision or conversion of existing units in specified circumstances. However, the appeal property would not meet the locational and housing type criteria, and, for the reasons explained below, would not deliver high quality conventional housing.
14. The appellant raises concern that the Council did not give him opportunity to submit an appeal or an application for remedial work for less units to improve the quality and design of the development. Be that as it may, two previous planning applications to subdivide the property into less units (two) have already been dismissed at appeal in 2017 and 2018¹. In both cases, the Inspectors similarly concluded that such development would adversely affect the supply of quality family housing in the area.

Living conditions of occupiers

15. The Technical Housing Standards – Nationally Described Space Standard² sets out requirements for the gross internal floor area (GIA) of new dwellings at a defined level of occupancy, as well as floor areas and dimensions for key parts of the home.
16. The Council's assessment against those standards is made on the basis of flat 1 providing two-bedroom, three person accommodation, flats 2, 3 and 4 providing one-bedroom one person accommodation and flat 5 providing one person studio accommodation.
17. The Council's GIA figures, which are not contested by the appellant, show a substantial shortfall against the standards for flats 1 and 3, a significant shortfall for flat 4, and marginal shortfalls for flats 2 and 5. One of the bedrooms in flat 1 is also shown to fall below the minimum space requirement.

¹ Appeal References: APP/G5750/W/17/3171283 and APP/G5750/W/18/3196417

² Department for Communities and Local Government (March 2015)

18. Although the appellant states that the flats provide accommodation for single households or for couples, I saw at the time of my site visit that at least three of the flats were being occupied by families with either one or two children. Occupation therefore appeared greater than that envisaged by the Council, and rather than single occupancy of flats 3 and 4, the bedrooms in both had a double bed and cot. On that basis, occupancy is at least two persons but probably three. Consequently, the shortfall against the standards is likely to be even greater than that envisaged by the Council.
19. Based on my own observations, it comes as no surprise that most of the flats fall well below minimum standards intended to provide adequately sized homes that are fit for purpose. For the most part, they are woefully inadequate both in terms of overall size and flexibility, being cramped, with limited circulation, compromised functionality and with little opportunity for meaningful storage.
20. Although the identified shortfall of flat 5 against the standards is less, the use and flexibility of part of its floorspace is restricted by the ceiling height, being positioned within the roof space.
21. At the time of my site visit, it appeared that the pre-existing rear garden had been divided in two and that both ground floor flats had direct and dedicated access to one half each. On that basis, upper floor flats 3, 4 and 5 have no access to any private external amenity space, thereby compounding the identified deficiencies with their internal living accommodation.
22. However, the appellant states that the flats in the upper floors have access to the rear garden via a side gate. The Design and Access Statement similarly refers to a communal amenity area for the five flats, although the plans submitted with the application appear to indicate that rear garden is apportioned to flat 1 only.
23. If it is intended that the garden is used in a communal manner, that would lead to significant privacy concerns for the occupants of the ground floor flats due to the relative positioning of their patio doors. If used by only one of the ground floor flats, that would result in the same privacy issues for the occupants of the other ground floor flat.
24. Even discounting those issues concerning amenity space provision, I conclude that the flats provide wholly inadequate internal living conditions for their occupants, primarily due to their meagre size, contrary to London Plan Policies D3 and GG4, NLP Policies SP2, SP3 and H1, paragraph 135 of the Framework, the Nationally Described Space Standard and the London Plan Housing Supplementary Planning Guidance. Those state, amongst other things, that all new homes should meet the internal space standards of the London Plan as a minimum.
25. The Council also cite conflict with London Plan Policies D4 (delivering good design), D5 (inclusive design), D8 (public realm) and T5 (cycling), and NLP Policy SP1 (Borough-wide place-making). However, I find those policies to have limited relevance to this main issue.
26. Surprisingly, London Plan Policy D6 is not included within the policies cited by the Council, even though it specifically concerns housing quality and standards.

Living conditions of neighbouring occupants

27. The sub-division of the property to provide five flats will have resulted in a fundamental change to the character of its use. Instead of activity normally associated with one household, there are five separate households, each with separate routines and patterns of usage and behaviour, as well as movements for work, shopping and other day-to-day activities. Five different households will also generate a greater number of separate visitors and deliveries to the property, along with the associated noise and disturbance arising.
28. Consequently, such an intensive use of the property is likely to generate significantly more noise and disturbance than that which could reasonably be expected to be associated with a single family dwelling, even one occupied by a large family.
29. Moreover, the appeal property is located at the end of a cul-de-sac, where there is a relatively tight cluster of individual properties, and where such an intensified use is more likely to be keenly felt.
30. Although the adjacent property is used for two flats, the Council say that the area is largely characterised by family homes, and no evidence is provided by the appellant to show otherwise. In any event, the existence of two adjacent flats does not justify allowing five flats at the appeal property, where the noise and general disturbance generated will be significantly greater.
31. I therefore find that the use of the property for five flats results in significant and unacceptable harm to the living conditions of neighbouring occupants through noise and general disturbance, contrary to London Plan Policy D14, NLP Policy SP8 and paragraph 135 of the Framework. Those policies state, amongst other things, that all development is expected to achieve good neighbourliness and fairness from the outset by avoiding negative and maximising positive social, environmental and design impacts for neighbours on and off the site.
32. The Council also cite conflict with NLP Policies SP2 (healthy neighbourhoods) and SP3 (quality urban design within places). However, those policies have limited relevance to this main issue.

Other Matters

33. The Council highlights that the site is located in an area that has a Public Transport Access Level rating of 1b, which indicates low accessibility. In that context, two parking spaces for five units is likely to result in overspill parking on surrounding streets, thereby adding to levels of parking stress in the area. Moreover, four cycle parking spaces for five dwellings falls short of the minimum requirement of London Plan Policy T5.
34. I do not therefore agree that the site is located in close proximity to public transport modes or is likely to promote sustainable travel through walking, cycling and use of public transport, or that it is likely to provide sufficient onsite car parking and secured cycle storage spaces.
35. I have noted the appellant's concerns over the timing of the enforcement notice, but the date of issue was a day before the appeal was submitted against the refusal of the planning application. In any case, there is no reason

why an enforcement notice should not be issued whilst an appeal remains undetermined.

36. The appellant seeks to highlight that the Council is benefiting from increased revenue for Council tax and selective licences for five units. However, such matters are not relevant to the planning merits of the appeals.
37. The appellant has also raised issue over the fairness of having to pay another fee for the ground (a) appeal, but that is a procedural matter, over which I have no jurisdiction. In any case, it has been confirmed to be fee exempt.

Conclusions

Appeal A

38. For the reasons given above, I conclude that the material change of use to five self-contained flats is contrary to the development plan as a whole, and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The ground (a) appeal should not therefore succeed. I shall refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

39. For the reasons given above, and having considered all other matters raised, I conclude that the retrospective application for five self-contained flats is contrary to the development plan as whole, and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The appeal should be dismissed.

Appeal A on Ground (g)

40. The appellant considers that the five months given to comply with the enforcement notice is too short given financial constraints and the amount of work required. The appellant also argues that he would need time to give notice to the tenants and for them to vacate the property, with the possibility the latter may require court proceedings, taking more than six months.
41. Although it might be possible to timetable compliance with some of the requirements, I accept that there would be logistical constraints to being able to carry out meaningful remedial works whilst tenants still occupy the building.
42. Nevertheless, a period of 10 months, as suggested, is disproportionate and unjustified. Indeed, I have no evidence which substantiates the appellant's submission that it will be impossible to finance the works within the given time scale. I also consider the worse case time period for vacant possession to be unlikely. Nevertheless, as noted, at least three of the units are occupied by families with young children. Appropriate opportunity should therefore be provided for them to secure alternative accommodation that meets their needs.
43. A period of eight months would therefore be a proportionate response to the breach of planning control and would achieve an appropriate balance between any difficulties the appellant and tenants may encounter, and the public interest in this case.

44. I shall vary the enforcement notice as stated. The appeal on ground (g) succeeds to the extent explained.

Richard S Jones

INSPECTOR