



Appeal Decision

Site visit made on 16 January 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal Ref: APP/U5930/W/23/3325957

219A High Street, Walthamstow, Waltham Forest E17 7BH

- 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 Moishe Low against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 223167, dated 31 October 2022, was refused by notice dated 16 January 2023.
 - The development proposed is construction of rear dormer extensions to properties at 219-227 and 231-239 together with the conversion of existing flats above shops into 5-bedroom 5-person HMOs (Use Class C4). Associated refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development as shown in the banner heading above, the proposal includes two roof lights to the front roof slope of each property.
3. The appeal site is a row of flats which excludes No 229 High Street in the middle.
4. Revised plans showing cycle storage and refuse and recycling storage were submitted with the appeal. I have considered the revised plans, however, applying the principles established by 'Holborn'¹, I consider that they are a fundamental change to the proposal. It is important that the appeal is determined on the basis of the plans as originally submitted and upon which the Council based its decision. To do otherwise would prejudice the interests of third parties and consultees, who have not been consulted on the revised scheme. I have therefore proceeded to determine the appeal on the basis of the plans as originally submitted.
5. Whilst a revised version of the National Planning Policy Framework (the Framework) was published in December 2023, the principles relevant to this decision remain the same. Therefore, it has not been necessary to request observations from the main parties upon any implications of the revised Framework's publication.

Main Issues

6. The main issues are:

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

- the suitability of the site for the proposal, having regard to the development plan's approach to family housing;
- whether the proposed cycle storage is appropriate;
- whether the proposed refuse collection and recycling provision is appropriate; and
- whether the proposal would provide satisfactory parking arrangements and promote the use of sustainable transport.

Reasons

Family housing

7. The appeal site is a row of maisonettes located on the 1st and 2nd floor levels of a three-storey building on Walthamstow High Street. On the ground floor is a row of shops. The maisonettes are accessed by metal staircases at the rear which are reached via a passageway separated from the back of the shops by a high brick wall. The properties each contain three or four bedrooms.
8. The development proposal would convert the ten maisonettes into ten 'Houses in Multiple Occupation' (HMOs), each with five bedrooms over three floors. Rear dormer extensions and rooflights to the front of all the flats would enable the creation of the 'loft floor' providing additional accommodation over and above what is currently there. The proposed floor plans illustrate that there would be a shared kitchen area with a breakfast bar on the 2nd floor of each flat, with a utility room for washing on the 1st floor.
9. Policy DM6 of the London Borough of Waltham Forest Development Management Policies Local Plan (LP), 2013, does not permit the conversion of larger homes to smaller self-contained homes (C3) and houses in multiple occupation (HMOs) (C4) where i) there is a gross original internal floor space of less than 124sqm, ii) it is located within a 'Restricted Dwelling Conversion, HMO and Building in Multiple residential Occupation Ward', iii) it would result in the over concentration of conversions in one street, or iv) appropriate parking spaces cannot be provided off street.
10. Policy DM5 of the LP seeks to provide a range of dwelling sizes which particularly focuses on the provision of larger family sized housing, defined as three bedrooms or more. To assist with this, the Council also has an Article 4 direction in place removing permitted development rights for the change of use of a dwelling to a HMO (Class C4).
11. The appellant has provided a marketing report² which they consider demonstrates that the maisonettes being located above shops, in a town centre with no amenity space and poor access, are not suitable for family living. The report, however, only relates to one property, No 221A, and the marketing took place for a limited period, 10 July 2022 to 1 August 2022. This resulted in only one family visiting the property who chose not to rent it, as it was considered to be unsuitable for children as the entry was through the back of shops. Most of the interest had come from groups wishing to share the property. However, no evidence has been submitted as to the internal condition of either that property or any of the others in the row, although a letter from

² Watermint Property Group

an estate agent³ refers to the current state of the building resulting in challenges in letting the properties out to families. Therefore, there is no substantive evidence as to whether No 221A is reflective of the other maisonettes in this row, which is affecting the maisonettes being rented out to families.

12. Furthermore, the difficulties of access are focused on families of young children and the use of buggies. Whilst this may well be the case, the properties could be rented by families where there are no young children. In addition, no evidence has been provided as to whether the entrance to the site could be made more accessible for whoever occupies the flats.
13. Two letters from estate agents⁴⁵, which comment on the local property market, refer to the noise and traffic levels at the site. At the time of my visit, there were no cars on this part of High Street, as a large market was taking place. Furthermore, I noted from the road signs that the High Street is a pedestrian zone, with no vehicles allowed, except those loading and unloading at specific times. The road signs also showed that other areas of High Street are designated a Controlled Zone between 8.00 and 21.30 hours, Monday to Saturday, and 10.00 to 21.30 hours on Sunday. This suggests there would be minimal road noise and traffic for considerable parts of the week. Furthermore, Gillards Way to the rear of the building and the adjoining Westbury Road are residential streets where, as the site is within a Controlled Parking Zone (CPZ), parking would be restricted. Consequently, noise and traffic levels would be unlikely to harm the occupiers of the flats.
14. The site is acknowledged as having good transport links. This is considered to appeal to young professionals, who would also contribute to the vitality of the town centre. However, these factors equally apply to families occupying the maisonettes, as transport links are a short distance away, and families through the purchase of goods and services would contribute to the economy of the town. This is therefore a neutral factor.
15. Whilst the front of the maisonettes overlooks the high street, to the rear are small, modern blocks of apartments, and terraced housing on the adjacent Westbury Road and in the streets beyond. Therefore, the area is largely residential, characterised by a variety of housing which includes two-storey family sized dwellings. Although the houses do not have a traditional garden, there is some limited space to the rear. In any case, while families may generally prefer larger spaces, and this is reflected in development plan policy, the lack of a garden does not preclude their use as family housing. The use of the appeal site as family dwellings is, therefore, appropriate in this location.
16. I appreciate that the policies the appellant refers to in the London Plan (TLP), 2021 and the Waltham Forest Area Action Plan (AAP), 2014, support the provision of increasing the number and intensification of quality homes within the centre. However, it is not disputed here that the site is within a restricted conversion ward, where the internal floor space is unacceptable for the conversion to flats, and it would result in ten HMOs within a small row of maisonettes. This would result in an over intensification of conversions in this location through the occupation of the flats by 50 individuals, as opposed to ten

³ Portico, undated.

⁴ Portico, undated.

⁵ Prime Frontier Properties, unsigned, 5 June 2023.

families, which would result in different living patterns, with the comings and goings to the flats being much more frequent than that expected by a family group. An HMO Management Procedure was submitted with the appeal which sets out how the building would be managed. This would be a normal requirement for such a proposal and would not negate issues regarding overconcentration. It would also result in the loss of family sized housing which the Council seeks to retain. Consequently, for the reasons above I conclude that the site is not suitable for the proposal with regard to the development plan's approach to family housing.

17. It would not accord with parts i-iii of LP Policy DM6 and Policy DM5. It would also not accord with Policies CS2 and CS13 of the Waltham Forest Local Plan Core Strategy (CS) 2012, which collectively seek the creation of healthy and sustainable communities, improving housing quality and choice which includes resisting the loss of any existing larger homes.

Cycle storage

18. Policy CS7 of the LP seeks to provide a sustainable transport network by actively encouraging walking and cycling. The proposed ground floor plan shows covered cycle storage to the rear of No 225 and No 235, and two individual racks, which are not covered, to the rear of No 239. Whilst the amount of cycle storage would be acceptable, the storage areas could be accessed from the rear of shops in this row, and to reach the storage, cycles would have to be wheeled along a narrow alleyway where bins are already stored. Moreover, the security of cycles would also likely be a concern as the bike storage areas would not be outside individual flats or directly overlooked.
19. Therefore, the proposed cycle storage would not be appropriate for the development. It would not accord with LP Policy CS7 and CS Policy DM16 which requires high quality cycle parking as part of encouraging car free development.

Refuse collection and recycling

20. Twenty refuse bins are shown within the rear alleyway on the proposed ground floor plan. This would equate to two per property. However, no evidence on the size of the bins has been provided, whether they would be for waste or recycling or how often refuse is collected. Whatever the size of bin shown, two per property would likely be inadequate for 5 individuals living within an HMO. Moreover, the bins being located within the alleyway would mean that they could not be restricted to the occupiers of individual flats. When I visited the site, I saw that several larger commercial size wheelie bins, as well as domestic sized bins, were stored in this area. No evidence has been provided as to how dealing with refuse from 50 people occupying the flats, as well as the waste resulting from the eleven shops, would practically operate.
21. Therefore, for the reasons above, I conclude that the refuse collection and recycling provision would not be adequate for the proposed development. It would not accord with LP Policy DM32 and CS Policy CS6 which collectively require new development to provide adequate and well-designed provision for the storage, collection and disposal of refuse and recycling.

Parking and sustainable transport

22. The site is located in a Controlled Parking Zone (CPZ) and has a Public Transport Accessibility Level (PTAL) 6a area. In such areas, LP Policy DM16 recommends development to be car free. The site has no allocated parking. However, to ensure that any future residents would not apply for parking permits, the Council requires a planning obligation to be secured.
23. A Unilateral Undertaking (UU), detailing that the owner of the site would inform the occupiers of the development that they would not be able to obtain a residents car parking permit was submitted with the appeal. The UU is, however, not dated or signed and so does not provide the required planning obligation. Therefore, for the reasons above, I conclude that the proposal would not provide satisfactory parking arrangements and promote the use of sustainable transport.
24. It would not accord with CS Policies CS7 and CS15 and LP Policy DM16. These policies together encourage sustainable transport, encouraging car-free development, limiting on-site parking and creating CPZs, as well as creating well designed places and spaces. It would also not accord with iv) of Policy DM6 which does not allow the conversion of larger homes to HMOs where appropriate parking spaces cannot be provided off street.

Other Matters

25. The Council of the London Borough of Waltham Forest shares a boundary with the Epping Forest Special Area of Conservation (SAC) which is afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). It is also within a wider Zone of Influence (ZOI) based on the distance the majority of visitors will travel to visit the SAC. As such the whole of the Borough of Waltham Forest falls within the ZOI for recreational pressure. All new residential development within the ZOI constitutes a Likely Significant Effect (LSE) on the sensitive interest features of the SAC through increased recreational pressure, whether when considered alone or in combination. Sufficient mitigation measures are required to be in place to ensure that there would not be a harmful impact on the SAC as a result of the LSE.
26. As such, schemes of one or more residential units are subject to Strategic Access Management Measures (SAMM) which has been prepared by the City of London Conservators of Epping Forest (CLC). This is an approach that has been agreed with Natural England as long as the contribution is provided to the CLC to support the delivery of the SAMM in the SAC. In this case, there would be no increase in residential units, and as I am dismissing the appeal, I do not need to consider this matter further as it could not lead me to a different conclusion.
27. Two sites⁶ with planning permission for the conversion of flats into HMOs were submitted by the appellants, which they consider are similar to the appeal case. Although the sites were above existing shops within town centres where an internal floor space threshold is applied, both cases were determined by the Council of the London Borough of Haringey. Consequently, different planning policies and circumstances would apply. Therefore, the schemes are not

⁶ Ref: HGY/2021/0855 and HGY/2022/1488.

comparable to the development proposal before me, and I attach no weight to these.

28. The Council's Highway Team advised that a detailed Construction Logistics Plan (CLP) and a Highway Condition Survey would be required. To secure the CLP, a planning obligation would be required. An incomplete UU was submitted with the appeal and did not include the CLP, and so this provides no weight to the proposal.

Planning Balance

29. The appellants consider that the CS and LP are out-of-date as they pre-date the TLP, the Framework and the AAP. However, paragraph 225 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. I find the policies to be in accordance with the Framework's requirement to provide housing of different size, type and tenure to provide for different groups in the community and therefore given the conflict I have found with them is given full weight.
30. Both parties refer to the draft Local Plan⁷, which at the time of the determination of the application had been submitted to the Secretary of State for examination. Reference has been made to emerging Local Plan Policy 20 relating to the conversion of smaller self-contained homes (C3) to HMOs. No evidence has been provided, however, that the draft Local Plan has been adopted, and so this policy has only very minor weight given its stage of preparation.
31. The appellant contends that HMOs make an important contribution to housing delivery, with the proposal retaining housing above shops within a town centre location. However, whilst it has been stated that the proposed development would provide suitable accommodation for students or young professionals, no substantive evidence has been provided as to whether there is a demand by these groups within the area. I therefore give their provision minor weight. There would though be an increase in occupiers who would contribute to the local economy as would the provision of temporary jobs during the conversion of the properties. Overall, therefore, there would be moderate economic benefits.
32. The appellant contends that the presumption in favour of sustainable development, as set out in paragraph 11 of the Framework is a relevant consideration due to the Council's housing supply. Even if I were to conclude that there is a shortfall in the five-year housing land supply as suggested by the appellant, the proposal would not create any further housing units than currently exists and the adverse impacts of granting permission would significantly and demonstrably outweigh the benefit I outline above.

Conclusion

33. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, including the Framework, that outweigh the identified harm and associated development plan conflict.

⁷ Shaping the Borough –Waltham Forest Local Plan, April 2021.

34. For the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR