



Appeal Decision

Site visit made on 27 February 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th April 2024

Appeal Ref: APP/U5930/W/23/3329588

79 Stirling Road, Waltham Forest, Walthamstow E17 6BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Derya Ertiryaki against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref is 223412.
 - The development proposed is conversion of residential dwelling house into 6 person HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Waltham Forest Local Plan Part 1 – Shaping the Borough 2020-2035 (LP1) was adopted by the Council on 29 February 2024 and replaces, in whole, the Waltham Forest Local Plan Core Strategy, adopted 2012 (CS) and the London Borough of Waltham Forest Local Plan Development Management Policies, adopted 2013 (DMP). This appeal was received before the adoption of LP1 and as such LP1, at that time was emerging policy and Policies from the CS and DMP were referred to in the decision notice.
3. However, both parties have had an opportunity to comment on the relevant policies within LP1. Moreover, both main parties have referred to it in their evidence. I have therefore given full weight to LP1 in my decision and assessed the proposal against LP1.
4. A revised National Planning Policy Framework (the Framework) came into force on 19 December 2023 with a further change published on 20 December 2023. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. Having considered the revisions, and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.

Background and Main Issues

5. The evidence before me indicates that the appeal property is already in use as a House in Multiple Occupation (HMO), however I have no evidence that the use has planning permission. I have considered the appeal on the basis that the use is being sought retrospectively and, only insofar as it is material to the appeal before me, I find the existing use of the property is a C3 dwellinghouse.
6. The internal layout of the property, that I saw at the time of my visit, does not reflect either the existing or proposed plans which were submitted with the

planning application. As part of the appeal, the appellant has submitted two amended plans. One altering the internal layout of the proposal to show six bedrooms, one with kitchen facilities, a separate kitchen, and a utility room. However, this amended floor plan also includes a self-contained unit on the ground floor providing a living room with kitchen, bedroom, and shower room. The second plan is a revised block plan showing cycle parking and bin storage.

7. The amended plans result in a material change to the nature of the proposal over what was considered at the planning application stage. Annexe M of the Procedural Guide – Planning Appeals – England advises that if an applicant thinks that amending their application proposals would overcome the Council’s reasons for refusal, they should normally make a fresh planning application. The appeal process should not be used to evolve a scheme. In considering whether to accept the additional information, I have had regard to Holborn Studios Ltd¹.
8. In the appeal before me the amended plan results in a fundamental change to the application over what was considered at the planning application stage. Although the Council has had an opportunity to comment on the amended plans as they were submitted with the appeal the proposal is fundamentally different to the planning application in that it proposes a five-bedroom HMO and a self-contained unit. Consequently, I have not accepted the amended plans for the purposes of this appeal. In the interests of natural justice, I have determined the appeal on the basis of the plans and information that the Council based its decision on.
9. The main issues are:
 - the suitability of the proposed development, having regard to the development plan’s approach to the provision of Houses in Multiple Occupation (HMOs);
 - whether or not the proposed development would provide appropriate living conditions for the future occupiers of the properties, with regard to internal living space; and
 - whether or not the proposed waste storage arrangements comply with local policy and guidance.

Reasons

Suitability of development

10. The appeal property is a semi-detached dwelling which has previously been extended to the side and rear, including a rear dormer to the roof providing accommodation at roof level. The site lies within a residential area and is on a street of similar properties.
11. The area is covered by a Borough-wide Direction made under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995, as amended. The Direction stipulates that planning permission is required for development consisting of a change of use of a building to a use falling within Class C4 (HMO) of the Town and Country (Use Classes) Order 1987, as amended, from a use falling within Class C3 (dwellinghouse) of that order. The

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

Article 4 is not a blanket restriction on conversion, it requires planning permission and consideration of such proposals against the adopted policy.

12. Policy 20 of LP1 is supportive, subject to criteria, of the conversion of larger homes to smaller homes, including HMOs. This is in line with the Government Guidance² referred to by the appellant. Part A of the policy advises that the conversion of a larger home to HMO use would not be permitted where i) the original gross internal floorspace is less than 124 square metres, or ii) it would result in the over-concentration of HMO conversions in one street or in the wider local area.
13. The policy is in accordance with the advice in the Framework, including paragraph 63, in providing for a range of housing sizes, types and tenures for different groups of residents.
14. From the evidence before me neither the street nor the wider area suffers from an over-concentration of HMOs. Neither have the Council sought to argue that the change of use of the appeal property to an HMO would tip the balance to result in an over-concentration.
15. However, both main parties agree that the original dwelling had a floor area of less than 124 square metres. It, therefore, would not meet the criteria for conversion within Policy 20 of LP1.
16. Moreover, both main parties agree that the original dwelling was a three-bedroom property. That one of the bedrooms in the original dwelling fell short of the NDSS³ is not determinative in this appeal and would not mean that the original dwelling was not capable of being used as a family dwelling as the appellant asserts. Given the advice in Part B i) of Policy 20 of LP1 that a larger family sized home is seventy-four square metres and three-bedroom plus, the original dwelling would be appropriate as a larger family dwelling. The proposal would result in the loss of a larger family dwelling, contrary to Policy 20 and also to Policy 15 which seeks to ensure a mix of dwelling sizes and tenures are provided.
17. The restriction on the size of the dwelling to be converted has also been retained from Policy DM6 of the DMP into Policy 20 of LP1 and remains a relevant consideration. The restriction within Policy 20 is also provided to ensure that dwellings are not extended and then converted, which would also result in the loss of a family dwelling. It is, therefore, not appropriate to assess the conversion of the extended property against Policy 20.
18. That the property could be converted back to a family dwelling would not outweigh the harm that would result from the loss of the dwelling to an HMO proposed in this appeal. The location of the property, in relation to services and facilities is equally important for family housing as it is for HMO accommodation. Moreover, that there are other family dwellings for sale on the same street is not indicative of a lack of need for family housing, or that there is a greater need for HMO accommodation.
19. As I have found that the proposal fails to comply with the floor space restriction in the adopted policy it is not determinative on my decision that LP1 no longer

² DLUHC - Houses in multiple occupation and residential property licensing reform: guidance for local housing authorities 2019

³ Technical Housing Standards – Nationally Described Space Standard 2015 (NDSS)

includes the restricted ward criteria which previously formed part of Policy DM6 of the DPD.

20. For the above reasons, I conclude that the proposal would result in an unacceptable loss of a family dwelling and is, therefore, not suitable development, having regard to the development plan's approach to the provision of HMOs. It would be contrary to Policies 15 and 20 of LP1 which, taken together, seek to create mixed and balanced communities with a range of housing sizes and tenures and resist the loss of larger family homes.

Living conditions of future occupiers

21. Notwithstanding that the 'existing floor plans' do not match the internal layout of the property, the 'proposed floor plans' (drawing P-02), as considered by the Council, show a six-bedroom HMO with a shared dining room and kitchen and utility on the ground floor and storage within the loft space.
22. I have no substantive evidence before me that the proposal, as shown on the 'proposed floor plans' would not provide appropriate living conditions for the future occupants of the HMO. The bedroom sizes all exceed the minimum room sizes shown in Table 8.5 of Policy 20 of LP1 and are all sufficient in size to function as bedrooms. The bedroom on the ground floor, at the rear of the property, and the bedroom within the roof space are also both large enough to meet the minimum for a room for sleeping with kitchen facilities in the room.
23. For the above reasons, I find no harm would result to the living conditions for the future occupiers of the properties, with regard to internal living space and I, therefore, find no conflict with Policy 20 of LP1 in regard to this main issue.

Waste storage

24. Policy 93 of LP1 requires all development, including changes of use, to provide accessible, adequate, and well-designed internal and external storage facilities for waste and recycling. The Council, in their revised Statement of Case have also referred to the North London Waste Plan, adopted 2022, (NLWP) and the Waltham Forest Waste & Recycling Policy for Developers, adopted 2022, (W&R Policy) and I have been provided with copies of both documents.
25. The NLWP has two main purposes: to ensure that there is adequate provision of suitable land to accommodate waste management facilities, and to provide policies against which planning applications for waste development would be assessed. As such, although supporting the reduction of non-recyclable waste the NLWP is not directly relevant to the appeal before me.
26. The W&R Policy seeks to advise developers on waste storage requirements, including detailing the internal and external storage requirements and, within paragraph 1.12 and Appendix A 1.1.4, the size of bins required dependant on the size of the property.
27. I saw at my visit that there are other properties along Stirling Road where bins are stored at the front. The provision of waste storage to the front would not be harmful to the character of the area and the bins would be within the boundary of the premises. The provision of four bins would be appropriate for the use of the property as a six-bedroom HMO.

28. Conditions could be imposed to require the submission of the details of waste storage facilities and conditions should be used to overcome matters, where possible. I have no substantive evidence that sufficient waste storage to meet the requirements of the W&R Policy, including for recycling and food waste, could not be provided through an appropriately worded condition.
29. I, therefore, find no conflict with Policy 93 of LP1 or with the W&R Policy in that the development would be provided with accessible, adequate, and well-designed internal and external storage facilities for waste and recycling.

Other Matters

30. That there are no refusal reasons relating to living conditions of the occupiers of neighbouring properties, highway safety or biodiversity matters are neutral factors. Furthermore, that there have been no objections from local residents or statutory consultees would not alter my decision on the main issues.
31. I noted at my visit that a cycle stand for four cycles had been provided within the hard surfaced area to the front of the property. Although the cycle storage represents a shortfall below what is required in Appendix 1 of LP1, the Council did not raise an objection on this matter and cycle parking did not form part of the reason for refusal. Moreover, the evidence before me indicates that there were no cycle parking facilities previously. Consequently, what has been provided is an improvement.

Conclusion

32. For the reasons given above the appeal should be dismissed.

K Townsend

INSPECTOR