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# Appeal Decision

Site visit made on 15 January 2024

by **David English BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 2 May 2024**

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**Appeal Ref: APP/U5930/W/23/3325968**

**163 Winchester Road, Chingford, Waltham Forest E4 9JN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission.
  - The appeal is made by True Pub Co against the decision of Waltham Forest London Borough Council.
  - The application Ref is 223487.
  - The development proposed is to change the use from Class 3 (single family home) to Class 4 (HMO) with minor interior alterations to facilitate layout changes.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The Government published a revised version of the National Planning Policy Framework (the Framework) in December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the main issues in this case are largely unchanged. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework from the parties, and that no party would be disadvantaged by such a course of action.
3. Since the appeal was submitted the Council adopted the Waltham Forest Local Plan Part 1 (February 2024) (the LP). The Council has confirmed that the policies relevant to the determination of the appeal contained within the London Borough of Waltham Forest Development Management Policies Local Plan (October 2013) (the DMP) and the Waltham Forest Local Plan Core Strategy (March 2012) have been superseded by the LP. The Council has also confirmed that it maintains its objection to the proposal and now relies upon Policies 20, 53, 56 and 57 of the LP. The appellant has had an opportunity to provide their views on the relevance of these new policies. I am required to determine this appeal on the basis of the development plan which is in force at the time of my decision, and that is what I have done.
4. I have been provided with plans<sup>1</sup> showing a proposal for alterations to the appeal property to create a 3-bedroomed House in Multiple Occupation (HMO). However, these alterations would materially and fundamentally change the proposal before me. There has been no specific consultation with neighbours adjoining the appeal site about this alternative proposal. For that reason, my consideration of such an alternative scenario, that is so changed in comparison to the proposal on which the Council made its decision, would deprive those

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<sup>1</sup> Revised plan: FLOOR PLANS Drawing No. PLN-1200 dated June 2023.

who should have been consulted on the changed proposal the opportunity of such consultation. The appeal process should not be used to evolve a scheme and it is important that what is considered by an Inspector is essentially what was considered by the Council, and on which interested people's views were sought. Accordingly, I have determined the appeal based on the plans on which the Council made its decision.

5. The Council's first reason for refusal refers to the original gross internal floorspace of the appeal property being less than 24sq.m. The Appellant has referred to this measurement being an error. Whilst the Council has not commented further on this matter, LP Policy 20 seeks to prevent the conversion of houses that have an original gross internal floorspace of less than 124sq.m. to HMO. I am satisfied that the Council's reference to 24sq.m. in its reason for refusal is a typographical error, and it is clear from the Council's evidence that its concern lies with the appeal property having an original gross internal floorspace of less than 124sq.m. and I have determined the appeal on this basis.

### **Main Issues**

6. The main issues are whether the proposal would:
  - be consistent with the Council's development strategy concerning houses in multiple occupation; and
  - provide satisfactory living conditions for future occupiers in respect of the size of the rooms.

### **Reasons**

#### *Development strategy for HMO*

7. The Council's strategy for homes in the Borough seeks to resist the conversion of existing dwellings to HMO where these have an original gross internal floor space of less than 124sq.m. The reasons for adopting this strategy are set out in the supporting text to LP Policy 20 and this includes an explanation about the Council's experience in enforcing against poor quality accommodation.
8. To support this policy, an Article 4 Direction was introduced by the Council across the whole of the Borough. This removes the permitted development right given under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of a dwellinghouse (Use Class C3) to an HMO (Use Class C4). The Council's evidence indicates that the Article 4 Direction was introduced to prevent the loss of larger family-sized homes through conversion to smaller-sized units.
9. The appeal building has been extended in the past, and I have seen nothing in the information before me to dispute this. The planning application form states that the gross internal floor area of the building measures 126.1sq.m. However, it is calculated by the Council that the building originally provided approximately 80sq.m. of gross internal floor space. I have seen no substantive evidence to explain how the Appellant reached their calculation, nor have I seen evidence that disputes the Council's calculation. From the information available to me, I am satisfied that, on the balance of probability, the original gross internal floor space of the appeal building is less than 124sq.m. That being the case, the proposal would conflict with the

requirements of LP Policy 20 which expressly states that the conversion of a larger home to an HMO will not be allowed where the house has an original gross internal floor space of less than 124sq.m.

10. The Appellant claims that the building has been in use as an HMO for some time. However, the Council advises that the use of the building as an HMO is unauthorised, and it is the subject of ongoing enforcement investigations. I have seen no substantive evidence that the use of the appeal property as an HMO is either permitted or lawful. Other means exist in the Act to establish whether a building or use is lawful, and this is not a matter I need determine. I therefore attribute no weight to the Appellant's claim regarding the current or past use of the property as an HMO.
11. I recognise that HMO are an important source of private sector housing for those on low incomes and for single people and young workers who cannot afford to rent alone. I also acknowledge that there is not a particularly high concentration of HMO in the area, and that following the recent adoption of the LP the site is no longer in a '*Restricted Conversion Ward*', a designation associated with superseded development plan policies. Nevertheless, as the proposal would involve a change of use to an HMO from a Use Class C3 dwellinghouse which had an original gross internal floor space of less than 124sq.m., even if there were no other HMO in the immediate area, the proposal would conflict with LP Policy 20. The proposal would result in an intensification of the use of the building through conversion to an HMO, and no substantive evidence has been presented to me to indicate that the appeal property would not be suitable as a family-sized dwelling.
12. Consequently, the proposal would not be consistent with the Council's development strategy concerning houses in multiple occupation because it conflicts with LP Policy 20 which states that the conversion of a larger home to an HMO will not be allowed where the house has an original gross internal floor space of less than 124sq.m.

*Living conditions for future occupiers*

13. Policy 20 of the LP and the associated Table 8.5 and Table 8.6 establish minimum room sizes in respect of floor area for bedrooms and living rooms in a range of HMO scenarios. Whilst Part C of LP Policy 20, to which the minimum room sizes relate, concerns HMO where the home proposed for conversion has an original internal floorspace of more than 124sq.m., the room sizes set out in this development plan policy provide a reasonable minimum expectation to be applied in the case before me.
14. The minimum room sizes defined in the development plan require the living room floor area in the proposal to be at least 16sq.m., and the three first floor single bedrooms to have a floor area of at least 10sq.m. All those rooms in the proposal fail to meet those minimum floor space requirements by a significant margin. Consequently, the proposal fails to accord with LP Policy 20 in this respect.
15. Whilst I note the Appellant's indication about their willingness to discuss and revise their proposal with the Council in respect of ensuring appropriate living space for residents, I also note that the Council's standards in respect of

minimum floor space requirements have not changed from the previous, now superseded, development plan policy.<sup>2</sup>

16. The underlying purpose of Policies 20, 53 and 57 of the LP is to seek to protect the quality of life of future occupiers by, amongst other things, providing a high standard of accommodation in an HMO; and by ensuring proposals are fit for purpose and demonstrate careful consideration of the needs of all building users. For the reasons I have given, the proposal would not provide satisfactory living conditions for future occupiers in respect of the size of the rooms. Accordingly, the proposal would conflict with Policies 20, 53 and 57 of the LP because it would not provide a high standard of accommodation.
17. The Council indicates that LP Policy 56 is relevant to the determination of the appeal. However, whilst I have had regard to this policy which, amongst other things, concerns internal and external space standards in new homes, I have not been directed to wording in LP Policy 56 that directly relates to the size of rooms in HMO and this is the specific matter in dispute in respect of this main issue.

### **Other Matters**

18. I note that the appeal property is well located in respect of public transport facilities, that adequate cycle parking and refuse storage arrangements would be made, and that adequate private or communal outdoor amenity space would be available to meet the reasonable needs of future occupiers. However, none of these matters would provide sufficient benefit to outweigh the harm that would arise to the Council's strategy for HMO and to the living conditions of future occupiers due to the size of the living room and the first-floor bedrooms.

### **Conclusion**

19. For the reasons given above, the proposal would conflict with the development plan when read as a whole. Material considerations, including the Framework, do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, the appeal is dismissed.

*David English*

INSPECTOR

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<sup>2</sup> Policy DM6 of the DMP required the same single bedroom and living room sizes in HMO as LP Policy 20.