



Appeal Decision

Site visit made on 30 April 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 26 June 2024

Appeal Ref: APP/G5750/C/23/3334741

50 Maud Road, Stratford, London E13 0JU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Balvinder Bhakar against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 6 November 2023.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the property to two self-contained units of residential accommodation.
- The requirements of the notice are to:
 1. Cease the use of the property as two self-contained units of residential accommodation.
 2. Remove from the property all but one kitchen.
 3. Remove from the property all but one dining room.
 4. Remove from the property all but one supply of electricity, gas and water.
 5. Remove from the site all debris arising from compliance with steps 1 to 4.
- The period for compliance with the requirements is six months from the date this notice takes effect.
- 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 the prescribed fees have been paid within the specified period, the application for planning permission deemed to made under section 177(5) of the Act as amended falls to be considered.

Formal Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Background

2. It appears that in 2021 works were carried out to create a basement flat, facilitated by the erection of a single-storey rear extension, permitted under 15/01771/PREHH. For Council tax purposes the appeal property was then banded as two separate flats in March 2022.
3. An application for a lawful development certificate (LDC) was subsequently made relating to the use of the basement as a self-contained flat. On the basis that the four-year immunity period had not been reached the Council subsequently refused to issue the requested LDC.
4. The Council then saw fit to issue an enforcement notice against the use of the property, requiring the cessation of use of both the lower and the upper floor flats.

Preliminary Matter

5. Reason 2 for issuing the enforcement notice, although referring to the accommodation not providing an adequate or healthy living environment, fails to mention policy D6 of the London Plan which is most relevant as it seeks to ensure the qualitative aspects of new residential development. However, it falls on me to determine the deemed planning application in accordance with the development plan, and its policies that bear relevance to the development undertaken. Accordingly, I have had regard to the aims and requirements of policy D6.

The Appeal on ground (a) and the deemed planning application (DPA)

6. Main Issues

7. These are:

- 1) the effect of the development on the borough's stock of family housing; and
- 2) whether the two self-contained flats created provide for a satisfactory standard of accommodation for all future occupiers.

Family-sized housing

8. Policy H4 of the Newham Local Plan (NLP) specifically indicates that the Council will protect 3-bed and 4-bed family dwellings and, to this end, will encourage the deconversion of flats to their original layout. This is reflected in the objectives of NLP policy S6.
9. The above policies were drawn up and predicated on a Strategic Housing Market Assessment (SHMA) undertaken by the Council in 2010. The research found that between 2001 and 2009, dwellings with 3 or more bedrooms had declined from 59.6% of the housing stock to 52.4%. In addition to the overall need for a net increase in the supply of housing of all types and tenures the SHMA established that if the proportional loss of family units continued at the same rate Newham borough would fail to provide enough family homes. The trend raised concerns around population transience with implications for convergence, community cohesion and integration brought about by population churn given the shortfall of housing suitable for expanding families who then consequently tend to leave the borough.
10. Given the Borough's existing and projected housing needs identified by the SHMA, relevant NLP policies were therefore developed to resist the loss of all family housing, in particular through the subdivision of the existing traditional housing stock. In illustration, a strategic principle of NLP policy H1 is to secure the delivery of a mix and balance of housing types, including a significant increase to family housing to replace that lost to historic conversion. The change of use, the subject of this report, is contrary to the objectives of all the said policies.
11. The SHMA's findings, produced on an evidence base, suggests that the reduction in housing choice has challenged the wider aspiration of stabilising communities and requires rectifying. Apart from increasing the rate of provision through new house building retaining the existing family dwelling stock is an essential element too. I also acknowledge that policy H4 recognises

that there are circumstances where conversion can have multiple benefits or more desirable outcomes than retaining a family dwelling.

12. The appellant indicates that the development provides for one 4-bed flat spanning the first and second floor level accommodation. Although the Council refers to this as a 3-bed unit in accordance with the layout drawing submitted alongside the earlier application made for the LDC.022, the appellant has now produced an 'existing' layout which shows that the dining room at first floor level has since been changed to a bedroom. The other flat created is a one-bed unit at lower ground/ground floor level, given that the land level drops towards the rear of the building.
13. I therefore find that, generally, the aims and objectives of Newham borough's policies which seek, fundamentally, to protect family-sized dwellings, including S1, SP1 and H1, and London Plan (LP) policies H8 and H10 are, on balance, satisfied, although there is significant conflict with NLP policies H4, S6, SP2, SP3 and LP policies D6 and GG4. I relate these, more specifically to the second main issue below.

Standard of accommodation

14. NLP policies H4, S6, SP2 and SP3 and LP policies D6 and GG4, amongst other things, aim to secure high quality living accommodation. In particular policy H4 says that the subdivision or conversion of large family dwellinghouses may be appropriate where all resultant new units are family sized units with at least 45 sqm of private amenity space provided. In parallel, policy D4 is concerned with the qualitative aspects of new residential development.
15. When inspecting the two flats it was clear that both had been vacated. In its case report compiled to justify the intended enforcement action the Council, in treating the development as a 3-bed, 5-person flat and a 1-bed, 2-person flat, measure the floorspace against the London Plan's gross internal floor area standards, and this shows that both units comfortably exceed these standards. Indeed, even if considering the upper floor flat as a 4-bed, 6-person flat, the appellant confirms that the 106 sqm gross floor area required is still exceeded, albeit by only 2sqm.
16. The National Planning Policy Framework (the Framework) expects planning decisions to ensure healthy living conditions, achieve good design and create better places to live, and this is reflected in policies within both the LP and the NLP, both of which set out a clear design vision and expectations. I consider that, in terms of natural light provision, ventilation and internal floorspace the two dual-aspect flats created are compliant. However, unlike the lower one-bed flat, the upper floor, family-sized unit has no access to the rear garden. LP policy D6 – which has direct relevance – requires for such and, given that 50 Maud Road benefits from a good sized rear garden area, the conversion has been carried out without full consideration of the requirements of its future occupants. In effect it is 'top heavy' and, when taken as a whole, the development amounts to an unsatisfactory form of development.
17. In the absence of any compelling information to the contrary I am not convinced that the conversion has provided a satisfactory standard of accommodation for the upper flat's occupants. Accordingly, in this particular instance, the manner of conversion undertaken flies in the face of the requirements of NLP policy H4 and LP policy D6.

18. In conclusion the development as carried out does not provide for a satisfactory standard of accommodation for all future occupiers.

Other considerations

Five year housing land supply

19. The appellant considers that Newham Council cannot demonstrate a five-year housing land supply. However, neither main party has provided compelling information to confirm or rebut this assertion. Accordingly, there is nothing convincing to show that the development plan's policies nor the Framework's guidance – fully support the breach of planning control enforced against.
20. Moreover, as I have shown, the adverse impacts of the unauthorised development significantly and demonstrably outweigh the benefits.

Epping Forest Mitigation Zone

21. Policy guidance supporting the NLP indicates that the Council has a legal duty to ensure that planning decisions comply with the Habitats and Conservation of Species Regulations 2017 (as amended) to protect the integrity of the nearby Epping Forest Special Area of Conservation. In this respect, during 2018, Natural England raised concerns that recreational pressures on the Forest was resulting in identified adverse effects and that management and mitigation measures were required. From 2019, the Council had an interim approach in place where it worked with the relevant local authorities, City of London Corporation & Conservators of Epping Forest and Natural England to develop a final Strategic Access Management and Monitoring Mitigation Strategy (SAMMS) and a new payment tariff.
22. The approach was subsequently finalised in 2022 and, in line with NLP's policies H1, SC5, INF2 and INF7, since February 2024, new residential developments, including both Class C4 and Sui Generis types, within the 0-6.2km recreational Zone of Influence are subject to HRA screening and appropriate assessment, plus with a tariff payment that must be submitted alongside the application via a completed Epping Forest SAMMS form. This requirement equally applies to the DPA as part of the current appeal.
23. The Council is not of the opinion that any financial contribution is required as the enforcement notice was issued prior to February 2024. However, in the face of the DPA, I disagree, as my assessment has to be made in accordance with the policy in place at the time of my decision.
24. In this instance, therefore, the proposal should be subject to project-level habitats regulation assessment screening and an appropriate assessment, along with a tariff payment subject to annual inflation. Although the appellant has indicated a willingness to comply with the said policy requirement, in the absence of any unilateral undertaking produced, there is no mechanism available to condition the permission to this end. Accordingly, even though I have concluded that the reasons for issuing the enforcement notice are not soundly based I am unable to allow this appeal, quash the enforcement notice and grant planning permission.
25. In light of my findings, how matters proceed now on this case will, in the first instance, fall on the appellant, and may then become a matter for negotiation between the two main parties.

The Appeal on Ground (g)

26. The appeal on ground (g) is that the period for compliance with the enforcement notice's requirements falls short of what is reasonable. The appellant considers that a six month period is too short and believes that a more reasonable period for compliance would be twelve months.
27. As I have mentioned, at the time of my visit, both flats had seemingly been vacated. However, I have no information as to any contractual arrangements that may be in place regarding any new tenants. I am also mindful that, given my findings, and the fact that a family-sized flat has been created along with a second unit of accommodation, the appellant will need to come to a decision as to the most appropriate way of resolving matters, and this could easily involve negotiations between the two main parties.
28. In the circumstances I consider that six months would fall short of being a reasonable period for compliance, and I shall therefore extend this to a period of nine months from the date this notice takes effect. The appeal succeeds, but only to this extent.

Timothy C King

INSPECTOR