



Appeal Decision

Site visit made on 4 June 2024

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th June 2024

Appeal Ref: APP/G5750/W/23/3324845

24 Elderberry Way, East Ham, Newham, London E6 6JL

- 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 Lekan Shanu against the decision of the Council of the London Borough of Newham.
 - The application Ref is 22/02625/COU.
 - The development proposed is described as a “retrospective planning application for conversion of dwellinghouse (Class C3) to 3 Person HMO (Class C4).”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the Framework, and I am satisfied that no party’s interests would be prejudiced by my taking this approach.
3. The appeal property is already in use as a House in Multiple Occupation (HMO). The appellant asserts that as the appeal site has been in continuous use as a HMO since 2017, the change of use does not require planning consent. However, resolving an issue with regard to the lawful use of land or buildings is not a matter for determination as part of an appeal made under section 78 of the Town and Country Planning Act 1990 (the Act). Therefore, it is open to the appellant to apply to have this matter determined under section 191 of the Act.
4. Furthermore, the description of development states that the development is a 3 person HMO, whereas the appellant’s appeal statement indicates it would provide accommodation for up to 4 persons. For clarity, the appeal has been determined based on the development applied for and the plans submitted with it.
5. Based on the evidence submitted, the appeal site is covered by an Article 4 Direction, which has the effect of requiring planning permission to be obtained for a change of use from Use Class C3 (dwellinghouses) to Use Class C4 (House in Multiple Occupation), which would otherwise be covered by “permitted development” within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Main Issues

6. The main issues are:

- the effect of the development on the supply of family sized housing in the Borough;
- the effect of the development on the living conditions of the occupiers of neighbouring properties, with regard to noise and disturbance, and
- whether the development encourages sustainable transport methods, having regard to car and cycle parking.

Reasons

Supply of family sized housing

7. Policy S1 of the Newham Local Plan 2018 (NLP) sets out the spatial strategy and strategic framework for the area. While this includes a strategic principle to secure transformational change for the Borough, it also seeks to secure the protection of family housing.
8. NLP Policy H3 supports the delivery of family sized housing, including ensuring that HMOs are purpose built or converted from premises other than family-sized housing. The supporting text to this policy advises, among other things, that an overriding concern of the Council is to ensure housing provision that meets a full range of local and strategic needs, which at times means prioritising local requirements against those of pan-London to redress the imbalanced housing supply.
9. NLP Policy H4 states that the Council will specifically protect 3 bed and 4+ bed family housing. The policy is supported by justification that the projected growth in households over the local plan period effectively means that there should be no (net) reduction in the housing stock, with a particular emphasis on the protection of family housing.
10. Based on the evidence submitted, prior to the change of use to a HMO, the appeal property comprised a three bedroom dwelling. While the appellant asserts the principle of the change of use is acceptable, the development plan policies, nevertheless, seek to resist the loss of family sized housing. As such, the change of use to a HMO has resulted in the loss of accommodation suitable for a family, for which there is an identified need.
11. While an appeal decision¹ highlights that single dwellings may not necessarily be occupied by those who will stay longer, limited substantive evidence demonstrating the need for single person accommodation has been submitted. Notwithstanding this, while the Council highlight there is evidence in respect of an overall need for a net increase in the supply of housing, for all types and tenures, within the Borough, the development plan policies, nevertheless, identify a specific need for family homes and, as such, seek to protect them.
12. While the Mayor of London Housing Supplementary Planning Guidance March 2016 (SPG) supports the provision of HMOs, it also advises that the boroughs remain responsible for assessing their own requirements in respect of housing need. In this regard, the Council has identified a specific need in respect of

¹ Appeal decision reference APP/G5750/W/17/3190798

family homes. Therefore, while support for HMOs is reflected in NLP Policy H3, it is clear that they should be purpose built, or converted from premises other than family sized dwellings.

13. The support for student accommodation, as set out within NLP Policy H3, is in respect of purpose-built student accommodation, not the conversion of existing buildings, such as that sought by the appeal scheme. Moreover, there is no mechanism before me which would restrict the occupation of the premises for students only.
14. For these reasons, the development results in an unacceptable reduction in the supply of family sized housing in the Borough, contrary to Policy GG4 of the London Plan 2021 (LP), NLP Policies H1, H3, H4, S1, SP1, SP2 and SP3 and the guidance within the SPG. Collectively, these seek, among other things, to protect family-sized homes and create mixed and inclusive communities, with good quality homes that provide for identified needs. It also conflicts with the Framework which requires development to take into account identified needs for different types of housing.

Living conditions

15. Properties along Elderberry Way are predominately in residential use. While the development may attract single persons with professional jobs, that may not spend much time within the dwelling, occupants of the HMO are likely to be unrelated and have their own individual and separate routines and attract their own visitors and deliveries, at different times of the day.
16. As such, the use of the property as an HMO is likely to have created greater levels of comings and goings and differing patterns of behaviour than those associated with a single-family dwelling, including one with children. Consequently, I am satisfied that there has been a materially harmful increase in noise and disturbance to neighbouring occupants as a result of the appeal scheme. In addition, there is limited substantive evidence to demonstrate that the existing sound proofing is sufficient to mitigate against the harm identified.
17. As a result, the appeal scheme has had a harmful effect on the living conditions of the occupiers of neighbouring properties, with regard to noise and disturbance. This is contrary to LP Policy D14 and NLP Policies SP2, SP3 and SP8, which seek, among other things, to secure high quality development, which achieve good neighbourliness by avoiding negative, and maximising positive, social, environmental, and design impacts for neighbours on and off the site. It is also contrary to the Framework which seeks, among other things, to ensure development proposals have a high standard of amenity for existing users.

Sustainable transport methods

18. There is a requirement for the appellant to provide 2 cycle parking spaces at the appeal property, in accordance with LP Policy T5. No such provision is identified on the submitted plans, although the appellant has indicated that the required parking could be provided within the site frontage and secured by a condition.
19. While noting the Council's concerns in respect of the location of such provision, they also confirm that the cycle parking details could be secured by a condition.

20. Given the size of the appeal site and the modest number of spaces required, I am satisfied that the required cycle parking spaces could be suitably located within the confines of the appeal site. If I were otherwise minded to allow the appeal, an appropriately worded condition could therefore secure the provision of suitable cycle storage. In view of this, the provision of suitable cycle parking would encourage sustainable transport methods.
21. While existing and proposed parking is not shown on the submitted plans, I observed during my site visit that No 24 benefits from one off-street parking space. Having regard to this, the provision of cycle parking and noting that the site lies within a Controlled Parking Zone (CPZ) where parking permits for residents can be controlled, I am satisfied that the proposal would not materially add to parking stress within the CPZ area.
22. I therefore conclude that the development would encourage sustainable transport methods, having regard to car and cycle parking, in accordance with the sustainable transport and parking requirements of LP Policies T1, T2, T5 and T6 and NLP Policies INF2 and SP8. It also accords with the Framework in respect of promoting sustainable transport.

Other Matters

23. The appellant asserts that the development provides a high quality living environment for future occupiers, that it offers alternative accommodation compliant with the LP and would optimise the potential of the site, ensuring it is put into effective use, as encouraged by the Framework. Furthermore, the appellant states that as there are no external alterations, the development respects the character of the area. Given the scale of the appeal scheme, even cumulatively these benefits attract limited weight.
24. The appellant has highlighted text from various paragraphs of the Framework, however, in the absence of further explanation, it is not clear how the appeal scheme relates to these sections. For instance, reference is made to upward extensions, but no such extension is included within the appeal development. In any event, I find conflict with the development plan as a whole and there are no material considerations, including the Framework, that indicate otherwise.
25. The appeal site is within the 3-6.2km Zone of Influence of the Epping Forest Special Area of Conservation (SAC). The SAC is protected under the Conservation of Habitats and Species Regulations 2017. Therefore, had I concluded that the development would be acceptable in terms of the main issues set out above, it would have been necessary to investigate the effect of the proposal on the integrity of the SAC as part of Habitats Regulation Assessment and Appropriate Assessment. However, given the harm identified above and that I am dismissing the appeal for other reasons, I have not considered this matter further.

Conclusion

26. For the above reasons, I conclude that while the development would encourage sustainable transport methods, the harm I have identified in respect of the supply of family sized housing and the living conditions of existing occupiers, with regard to noise and disturbance, is determinative. Therefore, the appeal scheme conflicts with the development plan as a whole. There are no material

considerations, including the Framework, that indicate I should conclude other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

S Pearce

INSPECTOR