



Appeal Decision

Site visit made on 17 June 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2024

Appeal Ref: APP/U5930/W/23/3331936

47 Kitchener Road, Walthamstow E17 4LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant full planning permission.
 - The appeal is made by Mr Mayur Patel against the decision of Waltham Forest London Borough Council.
 - The application Ref is 230252.
 - The development proposed is change of use of property into a small House in Multiple Occupation (HMO) (Use Class C4) comprising 5 bedrooms for 6 persons; involving the proposed alterations to existing internal layouts and provision of refuse/recycling and bicycle storage facilities to front garden area.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council has confirmed in their statement of case that since the refusal of the application, the Waltham Forest Local Plan Part 1 2020-2035, 2024 (WFLP) has been adopted and thus it replaces the previously adopted development plan documents including the Core Strategy (2012) and Development Management Policies Document (2013). I have been provided with the relevant policies and determined the appeal accordingly.

Main Issues

3. The main issues of the appeal are:
 - Whether the proposed use as a HMO would be acceptable having regard to relevant development plan policies governing such uses;
 - Whether the proposed development would provide satisfactory living conditions for future occupiers with particular regard to internal space, daylight/sunlight, outlook and ventilation; and
 - The effect of the proposed development on parking.

Reasons

HMO

4. The appeal site relates to a two-storey end of terrace property situated on the western side of Kitchener Road. The property is currently in use as a HMO although there is no relevant planning history for its conversion and thus it is not considered the lawful use of the property. The pre - existing site is a 3-

- bedroom dwellinghouse which has been extended by way of a loft extension and large rear extension.
5. The proposed development seeks planning consent for the change of use of property into a small HMO comprising 5 bedrooms for 6 persons.
 6. Policy 20 of the WFLP relates to Housing in Multiple Occupation and Conversions and explains that the conversion of a larger home(s) to smaller self-contained homes (C3), Houses in Multiple Occupation (HMO) (C4) and Buildings in Multiple Residential Occupation (Sui Generis) will not be allowed where: i. the house has a gross original internal floor space of less than 124sqm; or ii. the proposal will result in the over concentration of HMO conversions in one street or in the wider local area.
 7. I understand the Council has measured the original floor area to be approximately 78 square metres although the appellant claims this to be 82 square metres. Nonetheless, the original floor area still falls significantly below the required amount as set out under the provisions of Policy 20 of the WFLP.
 8. The supporting text accompanying Policy 20 sets out that in assessing the extent of over-concentration of HMOs or whether conversion activity in a particular area or street has reached saturation levels, the Council will have regard to the number of HMOs and conversions that have already taken place or been granted planning permission and the cumulative impact of allowing additional HMOs or conversions. It goes on to explain that in assessing the likely impact of additional permissions, residents' concerns will be gathered through the planning application consultation process, along with information from the Councils' records on complaints and service delivery issues related to street cleaning/rubbish collection, parking, noise, and general nuisance.
 9. Although the appellant has put forward some information in regard to such uses including reference to the Housing Market Needs Assessment, 2012, details are very limited to firmly conclude that the proposed development would not result in the over concentration of HMO conversions in one street or in the wider local area. Further, the position may well have changed from previous figures that are dated some time ago. Up to date information would be required in order to do an accurate assessment in this regard. The appellant also refers to a search of the Waltham Forest website which is claimed to reveal applications relating to the appeal site only although again details are very limited to be confident of all such cases. The search terms used for this included the words 'HMO' and 'Kitchener Road' which may not reveal all relevant cases. I also have limited details regarding complaints despite the appellant's claims that there have not been any. A lack of complaints regarding the use as a HMO does not mean development would not be harmful or be sufficient enough to conclude that the proposed use would not result in the over concentration of HMO conversions in one street or in the wider local area.
 10. Based on the evidence before me, it has not been sufficiently demonstrated that the proposal would not result in the over concentration of HMO conversions in one street or in the wider local area. In any event, it would still not meet the requirements of Policy 20 of the WFLP whereby the original internal floor space would be less than 124sqm.
 11. I am aware of the appellants' claims regarding previous number of bedrooms being substandard as a family dwelling although this would not alter the policy

position relating to such uses. I also cannot agree that if the property reverted back to a single-family dwelling, then this would be a small family unit as the property has been extended and therefore now creates a larger home.

12. I do not dispute that HMOs' can form an important part of the housing stock, but this would not alter the need for the proposed development to comply with Policy 20 of the WFLP relating to such uses which this appeal does not.
13. For the above reasons, I conclude that the proposed use as a HMO would not be acceptable having regard to Policy 20 of the WFLP and thus its conversion would not be allowed.

Living conditions

14. Notwithstanding that the proposal is unacceptable because it does not meet the criteria as set out in Policy 20 of the WFLP, the proposed bedrooms fail to meet the minimum space standards for bedrooms in a shared house with a communal living room. The calculations exclude floorspace for bathrooms/shower rooms and I therefore have no reason to disagree with the Councils' figures as set out.
15. I am aware of the technical housing standards – nationally described space standards although the starting point for deciding any planning application is the development plan and therefore the standards set out at Policy 20 are applicable in this case which specifically relate to HMO uses.
16. For 1 occupier, bedrooms would be required to provide the minimum space standard of 10 square metres. 2 occupiers would be required to provide 16 square metres. The description of development relates to 5 bedrooms for 6 persons which would indicate 4 single occupancy rooms and one with 2 occupiers. Whilst details of which bedrooms would be for 2 occupiers has not been provided, none of the rooms would meet the minimum space for 2 occupiers and whilst 4 of the rooms would meet the minimum space standard for 1 occupier, the rear bedroom at second floor level falls short of this requirement and an occupancy condition restricting the number of occupiers would not be sufficient to overcome this as the accommodation would still be substandard.
17. A proportion of the front facing bedroom within the roof space would be affected by the reducing ceiling heights due to the roof slope and there is no evidence provided to indicate the roof height would be 2.5 metres within the loft area. This ultimately alters the amount of useable space and thus fails to provide sufficient space for future occupiers or what can be reasonably expected for acceptable living accommodation. This bedroom would also be served by roof lights where there would be a lack of outlook for occupiers of this room. Given the nature of the HMO use where unrelated people share a house with communal facilities, it is likely that occupiers spend more time in their bedrooms than might be the case in a house which is occupied by a single household. The Council explain that this is also why there is a different requirement for bedroom sizes than for new dwellings which I have no reason to disagree with. The reduced amount of useable space, coupled with the lack of outlook would therefore be harmful for future occupiers in the particular circumstances of this case.

18. I note the Councils' concerns in terms of ventilation and daylight/sunlight for this room although I have no compelling evidence that this would be so detrimental as to result in poor living conditions. At my site visit, I was also able to see the overall arrangement and I have no reason to raise any specific concern in relation to ventilation and daylight/sunlight.
19. The plans show a shower room within the landing area serving the second-floor rooms where occupiers would be able to share and thus would not be reliant on the ground floor WC and I have no particular concerns in this regard.
20. The bedroom located at ground floor level would be located within close proximity of the cycle store located within the forecourt area. However, the likely increase in activity and movement to and from this area by occupants would not have a significant harmful effect on the living conditions of occupiers of the front bedroom.
21. For the above reasons, I conclude that although I have found a lack of harm in relation to ventilation and daylight/sunlight, I have found harm in relation to internal space and outlook. The proposed development would therefore be contrary to Policies 20 and 57 of the WFLP which together, amongst other matters, sets out the minimum space standards for room sizes whilst requiring new development to respect the amenity of existing and future occupiers, neighbours, and the surrounding area.

Parking

22. The Officers' report explains that the proposed change to a HMO which houses 6 unrelated individuals could result in some additional demand for on-street parking, compared with a single occupancy dwelling. This means that the development should be classified as car-free, with future residents prevented from obtaining parking permits through a section 106 obligation. I have no compelling reason to disagree with this and as a legal agreement has not been provided then I cannot conclude with certainty that the proposed development would not lead to parking overspill within the area. Policy 66 of the WFLP relates to managing vehicle traffic and sets out that a car free agreement within legal agreements will be required, restricting new residents from accessing parking permits within existing Controlled Parking Zones (CPZ) or ensuring future CPZ's are in place before a development is occupied.
23. While occupiers may not own a motor vehicle, this cannot be assumed to always be the case and I am not convinced that the parking position would be unaltered by the HMO status as there would likely be additional demand from a HMO use. The appellant claims that the ability is retained for one occupier to have a parking permit, and given that the site lies within the CPZ, it is impossible for more than one parking permit to be applied for at this property. Details of this are however limited to enable me to provide further comment on and based on the evidence before me, I am not sufficiently persuaded that a legal agreement would not be required in line with the requirements of Policy 66 as set out.
24. I am aware of the appellants' agreement to enter into a legal agreement although this is still not before me, and I must therefore determine the appeal on the basis that there is no legal agreement in place.

25. For the above reasons, I conclude that the proposed development would be contrary with Policy 66 of the WFLP.

Other Matters

26. The site is not located within a Conservation Area, is not listed and is not subject to an Article 4 direction other than the Borough-wide change of use from Class C3 to C4 although this would not alter my findings on the above main issues.

27. The dwelling may provide a valuable housing resource for the local community, and I am aware of economic claims regarding employment/spending in the local area as well as affordability matters although the extent to which these would be beneficial is limited given the small-scale nature of the proposals. In any event, such matters would not be sufficient to outweigh the harm identified. The proposed changes to the layout may also result in compliance with statutory licensing requirements and I recognise the changes made from previous schemes. However, this would also not be sufficient to weigh in favour of the appeal and licensing is a different department to that of planning.

Conclusion

28. Although I have found a lack of harm in relation to ventilation and daylight/sunlight, I have found harm in relation to the proposed use as a HMO having regard to relevant development plan policies governing such uses, internal space and outlook as well as parking matters. It follows that the proposal conflicts with the development plan and there are no material considerations which would outweigh this conflict.

29. For the above reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

N Teasdale

INSPECTOR