
Appeal Decision

Site visit made on 15 October 2024

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2024

Appeal Ref: APP/G5750/C/23/3325977

Land at 14 Buxton Road, Stratford, London E15 1QU in the London Borough of Newham

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr B Ludi of Ludi Properties Limited against an enforcement notice issued by the Council of the London Borough of Newham ("the LPA").
- The notice was issued on 15 June 2023.
- The breach of planning control as alleged in the notice is without planning permission the material change of use to a Use Class C4 house in multiple occupation (HMO).
- The requirements of the notice are:
 1. Cease the use as a Use Class C4 house in multiple occupation.
 2. Remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds.
 3. Remove from the site all debris arising from compliance with steps 1 and 2.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act ("the DPA").

Summary of decision: The appeal is dismissed, and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

The appeal on ground (a)/the DPA

1. Appeals on ground (a) are made on the basis that planning permission ought to be granted for the matters stated in the Notice as constituting the breach of planning control.

Main Issues

2. The main issues are the effect of the development on:
 - The supply of family housing in the London Borough of Newham;
 - The living conditions of occupiers of the development; and
 - The living conditions of neighbouring residents.

Reasons

Family housing

3. The National Planning Policy Framework ("the Framework") states the size, type and tenure of housing needed for different community groups in the community should be assessed and reflected in planning policies. In 2010 the LPA undertook a Strategic Housing Market Assessment (SHMA). It found that

between 2001 and 2009, dwellings with 3 or more bedrooms had declined from 59.6% of the housing stock to 52.4%. It concluded that, in addition to the overall need for a net increase in the supply of housing (all types and tenures), if the proportional loss of family units continued at the same rate, then Newham would fail to provide enough family homes.

4. In 2013 the LPA issued a Borough-wide Article 4 Direction to require an application for planning permission for the material change of use of a building from Class C3 (dwellinghouses) to Class C4 (houses in multiple occupation) of the Town and Country Planning (Use Classes) Order 1987.
5. There is a significant emphasis in the Newham Local Plan (2018) ("LP") on stabilising the population in suitable housing for all residents, particularly families. The Mayor of London's Housing SPG (2016) ("the SPG") acknowledges that HMOs are a strategically important housing resource in London, reducing pressure on publicly provided affordable housing, and that those of a reasonable standard should generally be protected. HMOs form part of the mix of housing in the Borough, and are supported in specific areas and circumstances. But LP policy is equally clear that HMOs must not be provided at the cost of family housing.
6. The Land is an end-of-terrace dwellinghouse with three upstairs bedrooms, and a kitchen, utility/dining room, bathroom and two further bedrooms downstairs. It has an open front paved area, which appears to be used for parking and bin storage, and a rear garden.
7. I have not been advised whether it is located within a town or local centre, or along a section of quality Movement Corridors or Linear Gateways within 400m of town or local centres. Nevertheless, it is not located above a commercial unit, does have access to external private amenity, and does not have poorly defined entrances. It is therefore suitable for family housing, and does not meet the LP requirements for conversion to an HMO, which are described below.
8. The development therefore adversely affects the supply of family housing in the Borough, for which there is a significant identified need. It conflicts with LP Policies S1, S6, H3 and H4 and The London Plan (2021) Policy GG4. Together these policies seek mixed and inclusive communities, to increase family housing and restrict HMO and flat conversions, require HMOs to be purpose-built or converted from premises other than family-sized dwellings, and specifically protect family housing of 3 bedrooms or more except in the circumstances described in the paragraph above.

Living conditions of occupiers

9. As the SPG points out, not all HMOs in London provide poor quality accommodation. In this case, the absence of locks on bedroom doors indicates living arrangements have been relatively successful, at least between occupiers of the building.
10. Nevertheless, the layout of the property, with two bedrooms on the ground floor, means there is no communal living-room space for residents. The kitchen opens onto a yard/garden and there is a small dining area, but the internal communal areas are relatively small.
11. The front ground floor bedroom is located adjacent to the entrance door and adjoins the entrance hallway. This arrangement is common in relation to

purpose-built flats, but the wall dividing the living room and the hallway may not provide the same noise reduction properties as one built for that purpose. The other ground floor bedroom would be less affected by users of the communal kitchen and utility/dining room.

12. LP Policy SP8 requires appropriate provision to be made for communal spaces and private amenity spaces in multiple-user buildings (including HMOs). At the same time, the term 'appropriate' is not defined, and must be a matter of judgement.
13. The property has been licensed as an HMO for up to five persons, and has a kitchen and utility/dining area, albeit not large enough for five persons to eat together. It also has a garden which contains a small patio area. Communal spaces are therefore provided, but do not provide for internal communal space for all occupiers at the same time. Some of the bedrooms are also relatively small, and a shared communal space would be appropriate.
14. The appellant advises that, if necessary, a planning condition could require the former living room (the front ground floor bedroom) to be made available as a communal living room. That would be necessary to ensure appropriate provision was made for communal spaces, and would also address any adverse effects of noise from the entrance hallway. Such a condition would meet the requirements for conditions set out in paragraph 56 of the Framework.
15. In conclusion on this issue, subject to a suitable planning condition requiring the ground floor front room to be available as communal space for all occupiers of the building, suitable living conditions would be provided for occupiers of the development. The development would accord with LP Policies SP1 and SP2, which seek high quality developments which improve housing quality, and safe, sociable and inclusive mixed and balanced communities and places that people feel proud of.

Living conditions of neighbouring residents

16. Buxton Road is a predominantly residential street of terraced and semi-detached houses, a school, and flats fronting Leytonstone Road. A number of houses made use of their frontages for parking and bin storage, and at my site visit there was no indication that the Land was in use as an HMO from the street.
17. The appellant advises that the use has operated from the Land for over nine years, and that many of the occupants have lived there for many years. I noted above that I saw no locks on the doors internally, which suggests relatively amicable living arrangements. Although the internal layout could result in greater use of the bedrooms than in a family dwelling, the LPA have provided no record of noise and disturbance, or any other complaints from local residents.
18. Use of the Land as an HMO is likely to give rise to more independent movements than a similar sized family on a daily basis. However, I have seen no evidence that this HMO undermines social cohesion, or harms the health, environment or general amenities of the area.
19. I note the LPA's concerns that use of the Land as an HMO *could* give rise to noise and disturbance in future, but having not done so for a significant period of time, it would be unreasonable to withhold planning permission for that reason.

20. In conclusion, there is no evidence that the use is harmful to the living conditions of neighbouring occupiers. It accords with the relevant provisions of LP Policy SP8, which expects all development to achieve good neighbourliness, TLP Policy D14, which expects development to mitigate and minimise existing and potential adverse impacts of noise on, from, within, as a result of, or in the vicinity of new development.

Other Matters

21. The Land is home to five individuals resident at the property. Although I have been provided with no particular information specific to those concerned, dismissing the appeal on ground (a) and refusing to grant planning permission would result in them losing their homes.
22. The appellant advises that the accommodation provides small homes in London at a modest rent in a Borough showing a steady increase in the number of homeless households, and the highest rate, and the longest affordable housing waiting list in London.
23. This matter is weighed in the planning balance below.

The planning balance

24. I have not found harm to the living conditions of occupiers of the development or to neighbouring residents, and these matters are neutral in the balance of considerations.
25. The development would adversely affect the supply of family housing in the London Borough of Newham, and for the reasons given above, I attribute substantial weight against the development to that harm and the associated conflict with development plan policies.
26. Dismissing the appeal and refusing to grant planning permission would result in five individuals losing their homes. It would therefore interfere with their rights for respect for their private and family lives and homes under Article 8 of the Human Rights Act 1998, and I attribute significant weight in favour of the development accordingly.
27. However, Article 8 is a qualified right and interference in this case would accord with the law and be in pursuance of a well-established and legitimate aim: the protection of family homes. It is proportionate and necessary to refuse to grant planning permission, and the protection of the public interest cannot be achieved by means that are less interfering with their rights.
28. For the reasons given above the development therefore conflicts with development plan policies, and there are no other material considerations that require a decision to be made other than in accordance with the development plan.
29. The appeal on ground (a) therefore fails, and the DPA is refused.

The appeal on ground (f)

30. Appeals on ground (f) are made on the basis that the steps required by the Notice exceed what is necessary to remedy the breach of planning control, or as the case may be, remedy the injury to amenity.

31. In this case the purpose of the Notice is to remedy the breach of planning control.
32. The second requirement of the Notice is the removal of all fixtures and fittings that solely facilitate the use as a HMO, including but not limited to all internal locks on bedroom doors and any additional mattresses and beds.
33. There are no locks on the bedroom doors. Neither has the LPA advised what fixtures and fittings facilitated the use, and I saw none at my site visit that would not be a part of normal use as a Class C3 dwellinghouse.
34. The appellant advises there are five occupants, and I saw five beds, each with a mattress. It would not be particularly unusual for a Class C3 dwellinghouse to contain five beds, each with a mattress.
35. The second requirement is therefore not necessary to remedy the breach of planning control.
36. The third requirement is the removal of all debris from the site arising from the first two requirements. Having found there are no fixtures and fittings facilitating the use, and having seen no evidence that debris is likely to arise simply by ceasing the HMO use, this requirement is not necessary to remedy the breach of planning control.
37. No injustice would be caused to either party were I to delete the second and third requirements, and I shall do so accordingly.
38. The appeal on ground (f) therefore succeeds.

Conclusion

39. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Decision

40. It is directed that the enforcement notice is varied by the deletion of the following words from Section 5:

"2. Remove all fixtures and fittings that solely facilitate the use as a house in multiple occupation, including (but not limited to) all internal locks on bedroom doors and any additional mattresses and beds.

3. Remove from the site all debris arising from compliance with steps 1 and 2."
41. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Peter White

INSPECTOR