



Appeal Decisions

Site visit made on 11 March 2025

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Appeal A: APP/G5750/C/23/3319790

Land at 1A St Albans Avenue, East Ham, London E6 6HH

- 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 Maroof Fiaz against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 21/00310/ENFC, was issued on 8 March 2023.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use to a *Sui Generis* house in multiple occupation (HMO).
- The requirements of the notice are 1. Cease the use as a *Sui Generis* 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 six months.
- 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 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.

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

Appeal B: APP/G5750/W/23/3317567

Land at 1A St Albans Avenue, East Ham, Newham, London E6 6HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Maroof Fiaz against the decision of the Council of the London Borough of Newham.
- The application Ref 22/02567/COU, dated 28 October 2022, was refused by notice dated 26 January 2023.
- The development proposed is Retrospective planning application for change of use to large HMO.

Summary of Decision: The appeal is dismissed.

Appeal A on ground (a) and Appeal B

Main Issues

1. The appeals are that planning permission ought to be granted. The main issues are (i) the effect of the development on the supply of family housing; (ii) the effect of the development on the living conditions of the existing and future occupiers of the property, in terms of the quality of residential accommodation; (iii) the effect of the development on neighbouring residents, having particular regard to noise and disturbance from comings and goings and (iv) the effect of the development on parking stress in the locality, due to the lack of provision for cycle parking.

Reasons

Family Housing

2. The Council's housing strategy is set out within Policies H1, H3, H4, H8, H10, S1 and S6 of its Local Plan (NLP)¹. Collectively these policies seek to secure a mix and balance of housing types, including a significant increase in the quantity of 'family housing'. Policy H4 seeks to specifically protect existing three and four plus bedroomed family dwellings from being lost due to conversion. The justification for the policy refers to there being sufficient capacity for flats and Houses in Multiple Occupation (HMOs) through new build projects, together with conversion of non-residential units.
3. Whilst Policy H4 suggests that conversion of dwellings may still be appropriate in exceptional circumstances, such as where sites are within or close to town or local centres, above commercial units, and without access to external private amenity, the building does not meet all of the applicable criteria in this case. Policy H3 states that HMOs should be purpose-built or converted from premises other than family-sized dwellings, subject to policies H1 and H4. Policy S6 seeks to restrict HMOs and flat conversions and protect and increase family housing. It is clear that the provision of family housing is a policy priority for the Council.
4. It is apparent from the drawings submitted and my visit that the property provides two bedrooms at ground floor level and six bedrooms on the first floor. Prior to HMO use it therefore appears likely that the property would have provided at least four bedrooms.
5. The appellant suggests that the appeal dwelling would be too large to attract occupation by a single family². However, the supporting text to Policy H4 states *"...any existing large units (4 bed plus) should continue to be protected as part of ensuring a broad market offer, especially as units of this size are rarely proposed as part scheme mix within new developments."* I agree with the Council there is a lack of evidence to support the claim there is not the demand to rent the property as a single family dwelling. I conclude the conversion of the property to a HMO has resulted in the loss of a family dwelling, which is clearly at odds with the Council's housing strategy and aforementioned policies in this case.
6. Taking account of the foregoing, I am not persuaded the proposed development can be justified on the grounds of promoting greater choice of affordable accommodation and allowing for access to local facilities. Furthermore, the fact that this development may not lead to an over-concentration of HMOs, and that there is a predominance of family housing in the locality; also that the HMO use may achieve greater rental income than a single family dwelling, does not overcome the policy conflict.

Living Conditions of Occupiers

7. The appeal site comprises a large end of terrace dwelling. The internal accommodation includes a large communal kitchen and two communal bathrooms.
8. Policy D6 of the London Plan 2021(LP) sets out minimum standards of space that new self-contained dwellings are expected to provide. The Council's Policy H1

¹ Newham Local Plan 2018.

² See Planning Contravention Notice response.

states all new homes should meet the internal space standards of the London Plan, *or if specialist housing* [my emphasis], those standards set out in Policy H3. Policy H3 of the NLP is concerned with specialist accommodation needs, with HMO provision included within its remit. It is undisputed that the appeal property comprises an HMO. As such it should be assessed specifically in relation to Policy H3.

9. The policy states that HMO proposals should demonstrate the achievement of the quality standards established by private sector rental licensing benchmark criteria. It therefore seems to me, in the absence of evidence to the contrary, that the achievement of an HMO licence, and compliance with any conditions therein, would be sufficient to meet the requisite quality standard in terms of the Council's planning policy. It is undisputed that the property benefits from an extant, conditioned HMO licence issued by the Council³. From the evidence provided, the HMO licence limits occupation of the property to a maximum of four persons (based on the number of kitchen spaces).
10. The Use Classes Order⁴ defines smaller scale HMOs as those accommodating up to six residents (Use Class C4). Where a HMO accommodates more than six residents it falls outside any specified class of use within the Use Classes Order. In such circumstances it would be regarded as a '*sui generis*' use. The appellant has not challenged the description of the use, by use of the words '*sui generis*', in the notice allegation. It is undisputed that planning permission is sought for in excess of six occupants.
11. Therefore, notwithstanding the existence of the aforementioned licence, the restrictions therein do not allow for a larger, '*sui generis*', HMO, of the type the Council are enforcing against in this case. I therefore find that the appeal property, because of the intensity of use, falls short of the quality necessary to meet the requirements of planning policy. The appellant has set out that since the existing licence was granted, additional facilities have been added at the property which they anticipate meaning capacity can be extended to seven occupants. However, there is no indication this is a certain outcome, and I am mindful I must decide the appeal based on the information before me.
12. I conclude the development is in conflict with Policies H1, H3, SP1, SP2 and SP3 of the NLP, with Policy D4 of the LP and with the National Planning Policy Framework (the Framework) insofar as they seek to secure an acceptable quality of accommodation for occupiers and ensure safe and healthy living conditions.
13. The Council has set out it is specifically concerned about the quality of accommodation because of disturbance to occupiers of the ground floor bedrooms, due to their proximity to the main entrance to the dwelling, and to communal spaces leading to the kitchen and stairs. Whilst one of the bedrooms is offset from the main entrance, and benefits from a reasonably generous intervening thoroughfare, I agree with the Council that proximity to the main entrance means that occupiers of the second ground floor bedroom, denoted as 'Bed 1' on the ground floor plan, would be vulnerable to disturbance from comings and goings and potential loss of privacy. This adds to the harm I have identified above in terms of policy conflict.

³ Ref 21/01112/HOADLI – issued 16 September 2021.

⁴ the Town and Country Planning (Use Classes) Order 1987.

14. The Council is also concerned that the absence of a communal living room will force residents to spend excessive time within their individual rooms. However, I am not persuaded that this constraint, in itself, means that the quality of living accommodation is in conflict with Policy H3.

Living Conditions of Neighbours

15. The occupation of the property by residents independently of one another, is likely to give rise to a wider variation in movement patterns, compared with occupation as a single family dwelling, in relation to which it would be reasonable to expect more shared journeys. Furthermore, it is likely that there would be a greater number of visitors, associated with the unrelated identities of the occupiers. The pattern of occupation could therefore potentially give rise to a larger number of comings and goings to and from the property, when compared to use as a single family dwelling.
16. The appeal site is within a predominantly residential location. However, it was apparent from my visit that, as an end of terrace property, there is a reasonable degree of separation between it and the rear of adjacent dwellings on Vicarage Lane, to the north. Furthermore, the main entrance to the property is offset from the nearest living accommodation in the adjacent dwelling at No 1 St Albans Avenue.
17. The rear garden of the appeal property is relatively small and so would not be expected to be used by many residents, or their visitors, at once, which in turn would serve to moderate any potential disturbance to neighbouring properties. In addition, I have not been informed of any complaints in recent years, specifically with regard to noise and disturbance arising from general comings and goings at the property.
18. In support of its case the Council has referred me to a previous appeal decision relating to a HMO at a site elsewhere in the Borough⁵. The appeal in that case was dismissed on grounds that included disturbance to neighbours. However, in that case there was an objection from a neighbouring resident on record, specifically relating to noise and disturbance issues resulting from the unauthorised change of use. Different developments must be considered on their own individual planning merits, and the difference in circumstances means I am not duty bound to follow the reasoning in that case.
19. Drawing these considerations together, on balance, I do not find conflict with Policies SP2, SP3 and SP8 of the NLP, Policies D3 and D14 of the LP or with the Framework insofar as they collectively seek to avoid development having unacceptable impacts on neighbours in terms of noise and disturbance.

Cycle Parking

20. The Council states that two cycle parking spaces should be provided in order to facilitate sustainable travel in relation to the new development, in line with standards. Whilst the appellant would be willing to accept a condition requiring cycle spaces to be provided, the Council says provision would be impractical, in this case, because accessing storage space in the rear garden would not be possible without passing through the house. I concur, and from my visit am not

⁵ Appeal ref: APP/G5750/C/21/3269000.

persuaded there would be sufficient space to allow for secure and visually acceptable cycle storage within the front yard area.

21. The appellant states that the tenants are not car owners. However, I am mindful this may not always remain the case; furthermore because of the likelihood of greater variation in movement patterns as identified above, car ownership associated with the property could potentially exceed that of a single family.
22. I am also mindful that whilst bus stops will be within relatively easy walking distance for many, the appeal site is nevertheless classified as not having the highest levels of access to public transport; also that parking in the area is already restricted to resident permit holders, in view of the existing high level of car use and parking demand. Drawing the above factors together, I consider the lack of cycle parking provision in this case is an important material consideration, weighing against the development.
23. I conclude the development is in conflict with Policies T1, T2, T5 and T6 of the LP, with Policies INF2, SP2 and SP8 of the NLP and with the Framework insofar as they seek to promote the use of sustainable means of travel and constrain car use and parking demand.

Other Matter

24. It is undisputed that the appeal site lies within the Zone of Influence of the Epping Forest Special Area of Conservation. However, as I will be dismissing the appeal for other reasons, there is no need for me to undertake a Habitat Regulation Assessment of the development in this case.

Conclusion regarding Appeal A on ground (a) and Appeal B

25. I have found conflict with the Council's development plan in terms of the loss of family housing, the standard of accommodation provided and the absence of cycle parking provision. I have not found harm in terms of the living conditions of neighbouring residents, however, this lack of harm is neutral in the planning balance.
26. I am not aware of any material considerations sufficient to outweigh the policy conflict I have identified. I therefore conclude it would not be appropriate to grant planning permission for the HMO development targeted by the notice and subject to the retrospective planning application. The appeals therefore fail.
27. I recognise that the requirements of the notice would interfere with rights under Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998. However, these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies. In this case I have found the proposed development to be in conflict with planning policies and would not outweigh the wider public interest. Accordingly, the degree of interference that would be caused to existing occupiers of the HMO would be insufficient to give rise to a violation of rights under Article 8, and would not be disproportionate.

Appeal A on ground (g)

28. The appeal on ground (g) is that the time given to comply with the notice is too short. I am mindful of the importance of striking a balance between enforcement that is intended to be remedial rather than punitive, whilst maintaining public confidence in the planning system.
29. The appellant has requested that the compliance period be extended to 12 months, in order to allow sufficient time for tenants to be served with notice to vacate the property, and to seek and finance alternative accommodation, in order to avoid being made homeless. However, I have not been provided with any evidence, such as tenancy documents and financial information, to substantiate the claim that a period of six months would allow insufficient time to do so.
30. I conclude, taking into account the Council's reasons for issuing the notice and the aforementioned considerations, that the time available to tenants to seek alternative accommodation would be reasonable and would not result in a disproportionate burden. Accordingly, the ground (g) appeal fails.

Conclusion

Appeal A

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

Appeal B

32. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A

33. 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.

Appeal B

34. The appeal is dismissed.

R Merrett

INSPECTOR