



Appeal Decision

Site visit made on 15 August 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 15th September 2023

Appeal Ref: APP/B5480/C/21/3273166

10 Albany Road, Hornchurch RM12 4AF (registered under Land Registry Title Number EX22189)

- 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 Richard Jose Vaz against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice, numbered ENF/729/18, was issued on 12 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a single dwellinghouse to a house in multiple occupation.
 - The requirement of the notice is to:
 - (i) Cease using the property as a house in multiple occupation.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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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.

Application for costs

2. An application for costs was made by the Council of the London Borough of Havering against Mr Richard Jose Vaz. This application is the subject of a separate Decision.

Procedural Matter

3. Since the appeal was made, the Council has adopted the Havering Local Plan 2016-2031 (2021) (HLP) which supersedes the Core Strategy and Development Control Policies Development Document (2008).
4. I have determined, as I must, the deemed planning application against the current development plan and not against the superseded policies cited in the enforcement notice. As both main parties commented on emerging policies of the HLP in their appeal submissions, I have taken those comments into account and it was not necessary to revert back to the parties before coming to my Decision.

Main Issues

5. The main issues in the appeal are the effect of the development upon:
- the living conditions of neighbouring occupiers, particularly as regards noise and disturbance;
 - the living conditions of current and future occupiers of the appeal property, particularly as regards internal layout; and
 - the provision of a family dwellinghouse.

Reasons

Noise and disturbance

6. I understand that the property has been a licensed house in multiple occupation (HMO) for 7 persons/6 households since at least 2018. I have seen very limited substantive evidence that the appeal development has caused any more noise and disturbance than use as a family dwellinghouse during this time. I also note the extra controls that the licence places upon the HMO and its management, as regards such matters as anti-social behaviour and refuse arrangements.
7. Accordingly, I do not find that the development causes/will cause harm to the living conditions of neighbouring occupiers. In this regard the development does not conflict with Policies 7 and 8 of the HLP and Policy D14 of the London Plan (2021) (LP) which together seek to ensure that HMOs do not adversely affect local amenity. There is also no conflict with the National Planning Policy Framework (the Framework) in this respect.

Internal layout

8. The 2-storey semi-detached property contains 6 bedrooms (one for each household), 2 shared kitchens, 2 shower rooms with toilet facilities and 1 bathroom with a toilet facility. This has created a dense mode of occupation, with one of the bedrooms having a floorspace of only 7.4m²¹. On my site visit, I found this room to be cramped with the bed and a desk largely filling the entire room. It represents a poor quality of living accommodation, particularly as this small space constitutes the only exclusively private area for an individual household.
9. While I accept that the HMO benefits from a licence under the Housing Act 2004, I give this limited weight as I note that the rooms have been identified as suitable for occupation on the basis that all provide at least 10m² floorspace. The appellant's own submissions indicate that this is not the case as regards 2 of the rooms². While the appellant refers in his statement to Havering's Private Rented Property Licensing Accommodation Standards (2018) I have not been provided with a copy of these. In any respect, Policy 8 of the HLP requires that the development meets the requirements of the East London HMO guidance. That guidance requires that a room for sleeping (where kitchen facilities are provided in a separate room) should be at least 8.5m². Clearly, the room I have described above does not meet that minimum standard.

¹ Bedroom 6; Appendix 1 of Appellant's Full Statement of Case

² Bedroom 6 and Bedroom 4.

10. For these reasons, the development causes significant harm to the living conditions of current and future occupiers of the appeal property, particularly as regard a cramped internal layout. Accordingly it is in conflict with Policies 7, 8 and 26 of the HLP and Policies GG4, D3 and D6 of the LP which together (amongst other aims) seek to ensure that residential settings – including HMOs – are of high-quality design. For the same reasons the development is in conflict with the design principles of the Framework.

Provision of a family dwellinghouse

11. Of course, it is not contentious that the change of use to an HMO has resulted in the loss of a family dwellinghouse.
12. The HLP explains that the Outer North East London Strategic Housing Market Assessment (SHMA) identified a need for three-bedroom properties in Havering, meaning the conversion of small family homes to HMOs would have a particularly negative impact on the supply of family housing. In order to protect family housing, therefore, Policy 8 of the HLP requires that properties must be at least 120m² in order for a conversion to an HMO to be considered acceptable.
13. The appellant has not demonstrated that the appeal property has a total floor space of at least 120m², and indeed the floor plans and measurements provided with his statement suggests that the property is caught by the policy restriction as the type of family-size dwelling that the SHMA identifies a need to protect in Havering.
14. Accordingly, the loss of a family dwellinghouse in these circumstances of identified need causes significant planning harm. As such, the development conflicts with Policy 8 of the HLP and Policies GG4 and D3 of the LP which together seek to protect good quality homes that meet high standards of design and provide for identified needs. For the same reasons, the development is in conflict with the housing supply principles of the Framework.

Other Matters

15. HMOs are an important part of London's housing offer, providing flexible and relatively affordable accommodation through the private market whilst reducing pressure on other elements of the housing stock. In the case of the appeal development, the HMO provides a home to 7 individuals/6 households and I fully take that fact into account in my weighing of planning merits. However, these factors do not outweigh the harm I have identified including the loss of family housing which is needed in Havering. Further, while the appellant points to Policy H9 of the LP as justification for protecting the HMO, I have not found (due to the cramped conditions) that is of the reasonable standard referred to in that Policy.
16. Article 8 of the First Protocol to the European Convention on Human Rights, as incorporated into the Human Rights Act 1998, is engaged due to potential loss of a home for the appeal property's occupiers due to conflict with planning policies. Therefore, I have undertaken a proportionality assessment and considered whether the objectives of the planning policies could be met by a less intrusive action. However, the policies seek to protect good quality homes that meet high standards of design and provide for identified needs - those objectives cannot otherwise be achieved other than ensuring that planning

permission is refused in this case. Further, there are no conditions that I could impose that could meet those objectives. The implementation of the policies in respect to the appeal site would not be excessive or disproportionate taking all into account.

Conclusion

17. The development does not accord with the development plan as a whole, and there are no other considerations that outweigh that finding.
18. 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 deemed application.

Andrew Walker

INSPECTOR