
Appeal Decision

Site visit made on 28 March 2017

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 April 2017

Appeal Ref: APP/C5690/W/16/3161261
145 Perry Hill, London SE6 4LR

- 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 James Evans against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/16/097787, dated 4 August 2016, was refused by notice dated 3 October 2016.
 - The development proposed is for minor alterations to the existing single storey side (South) extension to allow the creation of a roof terrace above to provide additional external space for the children at the school.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the effect of the proposal on the living conditions of the neighbouring occupants of No 147 Perry Hill, with particular reference to overlooking, noise and general disturbance.

Reasons

3. The appeal relates to a detached two storey property with an existing single storey side extension projecting towards No 147. The property is currently in use as a day nursery. No 147 is a two storey semi-detached dwelling.
 4. The only solid aspect enclosing the proposed terrace area would be that of the raised parapet. Above this, railings are proposed which would not prevent overlooking from children taller than the parapet level. More significantly, given the age of the children, it is reasonable to assume that the use of the space would be supervised by an adult for at least part of the time. In this regard the level of screening proposed would not prevent significant and unobstructed elevated overlooking into the rear garden area of No 147, at close proximity. Whilst the appellant states that such views would be oblique in nature, the terrace would allow for a relatively wide field of vision and its use would conspicuously announce the possibility of overlooking. I therefore find that the use of the proposed first floor terrace would result in significant levels of actual and perceived overlooking and loss of privacy to the occupants of No 147.
 5. I accept that the terrace would not be used at weekends. Nevertheless a period of use between 0900 hours and 1700 hours during weekdays would still
-

- allow significant scope for use and existing or future occupants of No 147 could be retired or not work a conventional working week and may well therefore use the garden space at this time. Therefore a condition which further restricted the time of usage would not acceptably mitigate the harm which would arise.
6. Whilst it is stated that the number and age of children using the premises is less than that of the previous use, I have no evidence to this effect, thereby reducing the weight I am able to give any such assertion. In any case, the 73 children stated is not an insignificant number. Moreover, I am unconvinced that a condition restricting the number or age of the children using the terrace area could be satisfactorily enforced and as such it would not pass the tests for conditions set out in paragraph 206 of the National Planning Policy Framework (the Framework).
 7. As the site already provides an enclosed ground level play area to the rear of the building, the occupants of No 147 will already be affected by noise and disturbance from the use of this external space, which is immediately adjacent to their rear garden. Whilst, due to its elevation and lower level of solid enclosure, it is likely that use of the external terrace as additional play space would result in some increase in noise and disturbance, I am not convinced, assuming the overall number of children would not be increased, that the additional harm arising would be sufficient on its own to warrant refusal. Nevertheless, this does add to my above stated concerns.
 8. I note that the Council do not raise concern regarding the physical aspects of the development and I find no reason to take a contrary position. However, the lack of such harm does not weigh in favour of the proposal. I also acknowledge that the proposal would enhance the level of amenity space provided on site but I have no evidence to suggest that the existing play space is deficient in terms of the number of children using the site. I appreciate that Section 8 of the Framework states that planning policies and decisions should plan positively for the provision of community facilities and other services. However, in this regard, DM Policy 42 of the Development Management Local Plan (DMLP) requires applicants for day nurseries and facilities for the care, recreation and education of children to consider, amongst other things, the impact on local residential amenity.
 9. Moreover, whilst there may be a need for day care facilities of this nature across the Borough, I have no evidence to suggest that the existing use would be unacceptably compromised or would cease, if this appeal were to be dismissed. In any case, any benefits arising would not outweigh the material harm I have found to the living conditions of the occupants of No 147, contrary to DM Policies 31 and 42 of the DMLP. These policies state, amongst other matters and in addition to that set out above, that residential extensions, roof terraces and balconies and non-residential extensions adjacent to dwellings should result in no significant loss of privacy and amenity to adjoining houses and their back gardens.
 10. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Richard S Jones

Inspector