



Appeal Decision

Site visit made on 29 October 2019

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2019

Appeal Ref: APP/N5660/W/19/3233620
103 Downton Avenue, London SW2 3TU

- 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 Ms Merceica against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 19/01371/FUL, dated 9 April 2019, was refused by notice dated 7 June 2019.
 - The development proposed is enlargement of the roof of the property (consisting of a rear box dormer and a hip-to-gable conversion), a rear extension and the conversion of dwellinghouse into 3 flats (1 studio flat, 1 x 2 bed flat, 1 x 3 bed flat).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the description of development from the Council's decision notice as this is more precise and includes the proposed dormer which although, as the appellant refers, has been granted a certificate of lawful development, at the time of my visit it was not in place, and it forms part of the proposed plans. The dormer therefore forms part of the development subject to this appeal.

Main Issues

3. The main issues are the effect of the proposed development on 1) the supply of family housing, having regard to the provisions of the development plan 2) the living conditions of future occupiers, and 3) parking and promotion of sustainable methods of travel.

Reasons

The effect of the development on the supply of family housing

4. The appeal property is a two-storey detached dwelling house located in a prominent corner position on a roundabout junction with Normanhurst Road, Nuthurst Avenue, Faygate Road and Downton Avenue. The area around the appeal site mainly comprises residential properties.
5. Policy H6 of the Lambeth Local Plan (2015) (the Local Plan) seeks to ensure mixed and balanced communities with a choice of family-sized housing, and to

manage the cumulative effects of residential conversions on environmental quality and local amenity, by protecting dwellings suitable for occupation by families from conversion into flats or houses in multiple occupation.

6. Part (a)(i) of the policy protects dwellings suitable for occupation by families in parts of the borough under conversion stress. This does not apply to the appeal property as it is not within such an area. Part (a)(ii) of the policy protects dwellings suitable for occupation by families in other parts of the borough, not on the main road network, of less than 150m², as originally constructed. The supporting text of the policy defines 'dwellings suitable for occupation by families' as houses, purpose-built maisonettes and duplex dwellings with ground-floor access to a rear garden, with three or more bedrooms.
7. It is not disputed that the appeal property, as originally constructed, has a floor area of less than 150m² and is not on the main road network. Combined with the fact it is a house with five bedrooms and ground floor access to a rear garden it represents the type of dwelling that is protected by part (a)(ii) of Policy H6.
8. The appellant considers that the proposal is not contrary to Policy H6 as it includes the creation of a three-bedroom unit with ground floor access to a rear garden and as such it would be suitable for occupation by families. Policy H6(a)(ii) is however clear that properties such as the appeal property are to be protected from conversion. It does not make an exception for the scenario where a proposal includes an alternative unit that would be suitable for occupation by families.
9. The policy goes on to outline that the conversion of a property may be acceptable provided, amongst other things, the proposal includes the provision of a family sized home at ground floor level with direct access to a rear garden. It is, however, explicit that this may only be acceptable where the proposal is not contrary to the requirements of part (a)(i) and (ii) of the policy and this is not the case in the appeal proposal.
10. The supporting text of the policy identifies that attempts to circumvent the policy, including through reconfiguration of the internal layout of the property, will not be permitted. The proposed size and configuration of the proposed flats is possible only as a result of the extensions, including the proposed dormer, to the original building. By specifically referring to the 'original floor area', the policy aims to avoid the circumstances where a dwelling house could be first extended and then subsequently converted. The policy aims to retain the dwellings originally intended form as a family dwelling.
11. The proposed development would include the creation of a three-bedroom unit with ground floor access to a rear garden. Using the supporting text in Policy H6 it would appear to constitute a dwelling suitable for occupation by families. The proposal however has a marked change from the current use of the property. The proposed configuration, to have three households in one building, that was previously one household, is likely to be of greater appeal to young professionals, couples, or single persons, rather than a family, as with the current dwelling. And therefore, whilst some argument can be made that the proposed three bedroom flat may be occupied by a family, I find that the

practical effect of the proposal is that the original family-sized dwelling house, which is explicitly protected from conversion by Policy H6, would be lost.

12. The appellants interpretation of the policy would support the circumstances where a dwelling house could be first extended and then subsequently converted provided that a property suitable for occupation by families would remain or be created. I do not agree with this interpretation as this would lead to a cumulative, harmful impact on ensuring a choice of family housing contrary to the aims of the policy. It is this cumulative alteration that Policy H6 seeks to prevent by setting an original floor area threshold to which it applies.
13. The appellant has referred to a number of planning applications and appeals within the Borough in support of the appeal. The Council have commented on these cases in their statement. The appellant has invited me to interpret each of the examples and assess the appeal proposal in accordance with them.
14. In the case at 136 Weir Road, it appears that the dwelling did not have ground floor access to a rear garden and therefore would not have fallen under the definition of dwellings to be protected in Policy H6. In some of the examples put forward by the appellant (225 Brixton Hill and 70 Brayburne Avenue) it is suggested that the Council has failed to consider the proposal in correct accordance with Policy H6, and as such has made an error in granting planning permission. The Council have not disputed this and highlight that such misinterpretation does not invalidate their consideration of the appeal proposal that has taken account of recent appeal decisions. In the case at 96 Downton Avenue the decision pre-dates the local plan and in the subsequent appeal, following the adoption of the local plan, the main issue for consideration was the effect of the development on the living conditions of future occupants.
15. The appellant invites me to give little weight to the appeal examples put forward by the Council¹ as they are different property styles, locations and context and therefore not applicable to the appeal proposal. I find that there is similarity in the main issues of the appeal examples and this appeal, and whilst they are different properties at different locations, I have considered the findings of the Inspectors in those appeals in my decision.
16. As the appellant rightly points out, each appeal must be determined on its individual merits. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of planning applications and appeals must be made in accordance with the development plan unless material considerations indicate otherwise. I have considered the other examples provided by the appellant and whilst I appreciate these decisions are likely to cause some frustration to the appellant due to the Councils inconsistency, I do not find that they are reason to override the conflict with the development plan I have identified. I have also considered the appeal on its own individual planning merits.
17. The proposal would therefore result in the loss of the existing family sized dwelling. It would be contrary to Policy H6 of the Lambeth Local Plan (2015) which, amongst other things, protects housing, such as the appeal property, from conversion into flats.

¹ APP/N5660/W/15/3033327 and APP/N5660/W/17/3191098

Living conditions of future occupiers

18. The proposal would result in the creation of three residential units. Each unit would have an outlook onto the front and rear gardens in a manner that is prevalent in the surrounding area.
19. The Council consider that the proposal would result in unacceptable living conditions to Flat A due to it being harmfully overlooked by reason of the use of the rear communal garden, together with it being used as the place for cycle storage for all of the proposed flats.
20. The submitted plans show that only Flat A has direct ground floor access to the rear garden area. Occupiers of Flat B or C would be required to either access the rear garden from the side path or via the gate on the public footpath at the side of the property.
21. It is not uncommon in flats to have communal outdoor areas containing, for example in this case, cycle storage. Given that the development comprises only two additional flats above the ground floor unit, and the likely low number of occupiers that may use the outdoor area and cycle storage, I find that the effect on the living conditions of Flat A would not be unacceptable.
22. I therefore conclude that the proposal would not provide unreasonable living conditions for future occupiers. The proposal would therefore comply with Policies Q2 and H5 of the Lambeth Local Plan (2015) that seek to ensure, amongst other things, that acceptable standards of privacy are provided with adequate outlooks, avoiding unacceptable levels of overlooking (or perceived overlooking); and suitable communal amenity space.

Parking and promotion of sustainable methods of travel

23. The appeal site is identified as having a very good Public Transport Access Level (PTAL) rating. The Council identify that increased housing density is encouraged within areas of good public transport accessibility, as are car free developments; and the proposed increase of 3 occupants at the site would not result in a notable increase in transport issues on the site. No off-street parking is proposed as part of the development, and the site is not within a Controlled Parking Zone (CPZ).
24. Due to the accessibility of the site to good transport links, there is likely to be a reduced reliance on the use of a car by the residents of the proposed flats. At the time of my site visit, I observed that whilst there were vehicles parked on the street, these did not appear to create conditions that were detrimental to highway safety. At the time of my visit, I also observed that there was capacity to park on-street. No evidence has been submitted to demonstrate that the lack of parking to be provided by the development would cause demonstrable harm to highway safety.
25. As I have found that the lack of parking would not cause demonstrable harm, mitigation is therefore not required. Moreover, I find that the mitigation suggested, to secure a S106 agreement to prevent future occupants from being entitled to apply for permits *in the event* that a Controlled Parking Zone is introduced on the street to be unreasonable and unnecessary. The appeal is

determined on the basis of the situation that exists on site and in the surrounding area at the time of the decision.

26. There is no evidence before me to support the argument that the proposed development would fail to promote sustainable methods of travel. The site is within a highly accessible location and the appellant has outlined that cycle parking would be provided on site. Were the appeal to have been allowed this could be secured by condition.
27. I therefore conclude that the proposal would not cause a material and significant increase in the demand for on-street car parking to the extent that highway safety would be compromised, nor would it represent a failure to promote sustainable methods of travel. The proposal would therefore comply with Policies T1 and T6 of the Lambeth Local Plan (2015). These policies seek to ensure, amongst other things, that development; minimises the need to travel and reduces dependence on the private car; does not have unacceptable transport impacts, including cumulative impacts on highway safety and on-street parking. There would be minor conflict with Policy T7 in relation to the provision of a car-club membership, however I find that this is not necessary to make the development acceptable in planning terms. As I consider a S106 agreement is not necessary to secure mitigation, Policy D3 is not triggered in my assessment.
28. Policy 6.13 of the London Plan (2016) requires, amongst other things, that all developments in areas of good public transport accessibility (in all parts of London) should aim for significantly less than 1 space per unit. I therefore find that there is no conflict with this policy.

Conclusion

29. On the matter of the effect of the proposed development on the supply of family housing, having regard to the provisions of the development plan, I have found that the proposed development would cause unacceptable harm to the supply of family housing. On the matter of living conditions, I have found that the development would not have an unacceptable impact on the living conditions of future occupants. On the matter of parking and promotion of sustainable methods of travel, I have found that the lack of parking would not cause harm to highway safety and the proposal would not represent an unacceptable failure to promote sustainable methods of travel.
30. For the reasons given above, and having had regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR