



Appeal Decisions

Site visit made on 17 December 2020

by Simon Hand MA

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

Decision date: 08/01/2021

Appeal A: APP/A5840/X/20/3255104

11 Dylways, London, SE5 8HN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Sue Sardiwal against the decision of the Council of the London Borough of Southwark.
 - The application Ref 20/AP/0967, dated 31 March 2020, was refused by notice dated 27 May 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is an outbuilding.
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Appeal B: APP/A5840/W/20/320094

11 Dylways, London, SE5 8HN

- 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 Sue Sardiwal against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/6703, dated 19 November 2019, was refused by notice dated 7 February 2020.
 - The development proposed is construction of new outbuilding to replace the existing.
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Decisions on Appeals A and B

1. Both appeals are dismissed.

Preliminary Matters

2. Currently No11 is being used as a C4 HMO, for 6 or fewer persons. There is no doubt that such a use retains the same permitted development rights as if it were a single dwellinghouse in C3 use. The back garden has been cleared and a paved courtyard created. At the back of the courtyard taking up the full width of the plot was a large flat roofed structure with three doors facing the back of the house. I noted on my site visit that it had been demolished and only the concrete pad remained. This was confirmed in the appellant's final comments. The Council refused the LDC on the grounds it was not incidental to the use of the property, so there is no dispute that in all other respects it would have met the criteria for a Class E¹ garden building.

¹ Class E of part 1 of schedule 2 to the General Permitted Development (England) Order 2015

3. The application for planning permission is to demolish the existing structure and replace it with a similar building that is slightly narrower, so access can be gained down both sides and also slightly shallower, so there is a space behind it. This too has been designed to fit in with the limitations of Class E and, the appellant argues would be permitted development. The reasons for refusal were that there was no linkage to the HMO and so the building would actually be a separate storage unit, the use of which would harm the amenity of the occupiers of the HMO and that secondly that because of its design it would be harmful to the character and appearance of the area. Essentially the Council do not believe the appellant would bother to build a large storage unit purely for the benefit of the occupants of the HMO and the unit will inevitably be used for commercial storage.

Appeal A - LDC

4. The LDC appeal seeks to establish that if rebuilt now, the demolished building would be permitted development. As noted above it meets the criteria for Class E other than incidental usage. In my view the Council were right to be sceptical as to its incidental use. The building was very large to serve as a simple overflow storage building. It would also appear to have been divided into three separate units but there is no explanation why this would be the case if it was intended to be for the 6 occupants of the HMO. I have never come across an HMO that has such a large dedicated storage unit and there is no evidence that it would be necessary in order to successfully rent out the rooms. What evidence there is suggests the appellant has used it for personal storage.
5. For something to be incidental, there has to be a reasonable relationship between the building and the use and given the Council's concerns in this case it would be expected that some evidence of necessity would have been provided by the appellant, but there is nothing other than a general statement that it would be useful. Consequently, I do not consider the appellant has demonstrated that on the balance of probability the building would be permitted development and the LDC appeal fails.

Appeal B – s78

6. The s78 appeal is for a slightly smaller building. The wider area is pleasantly residential with a cycle track to the rear of the gardens of the houses in Dylways, and flats beyond that. From the cycle track it is possible to see that there are a couple of large, wooden structures in the back gardens, but no more than that. Otherwise the gardens have a range of typical garden sheds or no buildings at all. One of the large sheds has an ad hoc wooden cladding appearance. The proposal by way of contrast would be a purpose built blockwork structure with 3 doors to the front facing into the garden and small windows to the rear, overlooking the cycle track. It would look very similar to the one that has recently been demolished.
7. It is possible to see into many of the gardens from the cycle track, and those that are well screened are largely screened by hedges and other vegetation. The large and dominant building would look out of place in this domestic situation and would be prominent in views from the cycle track. I note the previous building was considered at appeal² in July 2018 and refused for similar

² APP/A5840/C/17/3181844

reasons. The slightly reduced size makes no material difference to the impact of the proposal which would harm the character and appearance of the area and not represent good design. It would thus be contrary to policy 7.4 of the 2016 London Plan which seeks to support development that improves the character of an area and 3.12 and 3.13 of the saved policies from the 2013 Southwark Plan which seek to support good urban design and are in accord with the thrust of similar policies in the NPPF.

8. I note the Council's reservations as to the future use of the building, a concern that I share, but that could be overcome by conditions. However, that does not change my view on the impact of the proposal on the character and appearance of the area. The fallback position is that the building would be permitted development, but I have explained above why I do not consider that to be the case for the previous building and that has not changed for the appeal structure. I shall dismiss the appeal.

Simon Hand

Inspector