



Appeal Decision

Site visit made on 11 May 2021

by Chris Couper BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2021

Appeal Ref: APP/C5690/W/20/3261162

27 Malpas Road, London SE4 1BP

- 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 Pedro Duarte against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/116593, dated 30 April 2020, was refused by notice dated 28 July 2020.
 - The development proposed is described thus; 'planning permission is sought for an HMO licence and the excavation of a basement under the rear single storey approved extension with associated lightwells to the side and rear of the property and internal rearrangement at ground floor level to provide kitchen and bedrooms accommodation with part of the basement going under the rear garden'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the application was determined, the London Plan 2021 has been adopted ('LP'), and the policies from the London Plan 2016, which were referred to in the Council's decision, are now superceded. The principal parties were given an opportunity to comment on the LP during the appeal, and I have considered the scheme against its policies.

Background

3. In the description above, which is taken from the application form, it is stated that the basement would be located under an approved rear extension. However, I observed on my visit that building works at the rear of 27 Malpas Road ('No 27') were incomplete; and this extension would be taller than the approved one (Ref: DC/17/100978). Amongst other things, I have therefore considered the impact of the proposed rear extension as depicted on the submitted drawings.
4. The description in the banner sets out, amongst other things, that 'planning permission is sought for an HMO licence'. Although seeking a licence is not an act of development, I have considered in my decision the proposed enlargement of the current Class C4 House in Multiple Occupation ('HMO') to a sui generis HMO with twelve bedrooms.

Main Issues

5. The main issues are:

- Whether the proposal would provide satisfactory living conditions for the future occupants;
- Whether the proposal suitably promotes sustainable transport modes, and its effect on the convenience of highway users;
- The effect of the proposal on housing choice and the availability of family accommodation;
- The effect of the proposal on the living conditions at 29 Malpas Road, with particular regard to outlook;
- The effect of the proposal on biodiversity and drainage; and
- The effect of the proposal on the character and appearance of the host property.

Reasons

Living conditions of future occupants

6. The proposed basement would extend under most of No 27's rear garden. Each of its four bedrooms would have tall areas of glazing facing a courtyard, and would be positioned such as to avoid any direct line of sight between them.
7. However, the outlook from basement bedrooms 2 and 3 would be across the very narrow, sunken courtyard to an opposing wall. Additionally, residents using that courtyard would be able to look straight into bedrooms 2, 3 and 4 at very close quarters. Consequently, the occupants would suffer from a poor outlook and insufficient privacy; and, whilst I do not have a light survey, on the basis of the available information, limited amounts of natural light.
8. Basement bedroom 1 would have a door leading onto a small private courtyard, but it would have a partially glazed roof, which the occupant of the bedroom above would have access to. Consequently, the occupant of basement bedroom 1 would not be provided with a suitable private outlook, or a naturally well-ventilated and well-lit living space.
9. Whilst the Council has concerns about the floorspace in first floor bedroom 1, on the basis of the submitted drawings its size and dimensions would be unchanged compared to the current arrangement which, as a single room, complies with the Council's relevant HMO licencing requirements.
10. Refuse bins would be stored in the very small, narrow space in front of ground floor bedroom 1, as at present. However, whilst many nearby properties also keep their bins to the front, this HMO would have at least 12 occupants, and on the basis of the limited available evidence I am not satisfied that the space would be sufficient for the refuse storage requirements of the residents.
11. As the refuse storage arrangements would be inadequate, this supports my conclusion that the proposal would provide poor living conditions for the scheme's occupants.

12. Amongst other things, Policy 15 of the Lewisham Core Strategy 2011 ('LCS'), DM Policy 32 of the Lewisham Development Management Local Plan 2014 ('LDMLP'), and LP Policy D6 require housing to provide satisfactory living conditions, having regard to matters including light, privacy and outlook, with comfortable and functional layouts, including well-located waste storage space.
13. Section 4.8 of the Lewisham Alterations and Extensions Supplementary Planning Document 2019 ('SPD') states that basement habitable rooms should provide a good standard of accommodation in terms of matters including outlook and ventilation.
14. For the above reasons, the scheme would conflict with those policies and that guidance, along with the stance at paragraph 127 of the National Planning Policy Framework ('Framework') that development should create places that are accessible with a high standard of amenity. LCS Policy 13 which addresses strategic waste management matters and requirements for major developments is of limited relevance on this issue.

Sustainable transport modes and the convenience of highways users

15. The Framework requires development to ensure that appropriate sustainable transport modes can be taken up, with safe and suitable access achieved for all users. LCS Policy 14, LDMLP Policy 29 and LP Policy T6 reflect this stance, with a generally restrained approach to car parking provision. LP Policy 6.1 and Table 10.3 continue that in accessible areas, parking provision should be 'car free'.
16. The Council maintains that a survey using the Lambeth Methodology is required to demonstrate that the parking demand arising from the doubling of the bedrooms within the property could be accommodated in the surrounding area without unacceptable impacts on parking stress.
17. The existing HMO has no off-road parking, and none would be provided as a result of this scheme. However, this is a highly accessible location with a PTAL rating of 6a, and it is close to a range of services, including retail and commercial premises on Lewisham Way. This is not therefore a location where the occupants would need to be reliant on the private car to meet their day-to-day needs. Moreover, the appellant states that none of the current residents of No 27 own a car; and whilst I have no detailed evidence on the matter, I accept that occupants of an HMO may generally be less likely to do so compared to family housing.
18. That said, LP Policy T5 sets out that fit for purpose, well-located cycle parking should be provided at least to the minimum standards in Table 10.2. Given that no car parking would be provided, that requirement appears to me to be particularly critical here.
19. According to the submitted drawings, 8 spaces would be provided in a secure bicycle shed towards the end of the rear garden. However, that would fall short of the most relevant requirement of 1 space per bedroom for C4 uses in the LP; and to reach it the residents would need to wheel or carry their bicycles a significant distance down the long, narrow hallway, around the staircase, passed communal areas, and then across the rear garden.
20. Consequently, whilst I accept that no car parking provision would be required, the proposed cycle parking would be inconveniently located and inadequate.

The scheme would therefore fail to suitably promote sustainable transport modes contrary to LP Policy T5, LCS Policy 14, and the Framework.

Family accommodation

21. LCS Policy 1 sets out an overwhelming need for housing, and an appropriate mix of it, within the borough. LP Policy H9, together with the London Mayor's Housing Supplementary Planning Document 2016 note the importance of HMOs as part of London's housing offer.
22. However, in order to promote and retain housing choice in Lewisham, LDMLP Policies 3 and 6 seek, in broad terms, to prevent the conversion of single family homes into flats or the provision of new sui generis HMOs, unless, amongst other things, they do not result in the loss of larger housing suitable for family accommodation.
23. No 27 has been in use as a Class C4 HMO for about twelve years. However, it could be changed back to a C3 dwelling without the need for planning permission. That flexibility would be restricted as a result of this proposal to convert it to a sui generis HMO. Additionally, given the scale of the proposed extensions and the layout of the resultant property I consider that its future conversion back to a family house would be highly unlikely.
24. The site is on a fairly busy road with no off-road parking and it is close to commercial areas. However, it has a much quieter rear aspect, and traffic noise and other disturbance is not so significant as to make this property's use as family accommodation incompatible with the area. Indeed, there is existing family housing nearby, as confirmed in representations by interested parties. I have no evidence that the removal of the property's fire safety mechanisms would be prohibitively expensive; and having regard to its current size, its rear garden and its context, I see no cogent reason why the existing property would be unsuitable for use as a family dwelling.
25. The appellant states that the Lewisham HMO Review and Evidence Paper (2018) did not identify a significant increase in shared households in recent years in this ward, but that there is a demand for HMOs particularly due to the proximity to Goldsmiths University.
26. However, whilst this area is not subject to the Article 4 Direction covering other parts of the borough which controls the change of use from a Class C3 dwelling to a Class C4 HMO, the Council's Strategic Housing Market Assessment is clear that there is a particular need for family housing throughout Lewisham.
27. I have few details of the examples cited by the appellant elsewhere in the borough where a change of use from Class C4 to a sui generis HMO has been granted planning permission, including their size, context and layout. However, according to the Council, unlike here, none of them included extensions to facilitate the change of use.
28. Consequently, notwithstanding the site's highly accessible location, the proposal would result in the harmful loss of a property suitable for family accommodation. It would therefore conflict with LDMLP Policy DM6, and with the general thrust of LCS Policy 1.

Adjacent living conditions

29. The SPD advises that rear extensions longer than 3 metres should not usually exceed a height of 2.5 metres on the boundary. As this extension would be about 6.1 metres long and 3 metres high, the Council maintains that it would conflict with that advice and that it would result in an overbearing impact and a sense of enclosure at 29 Malpas Road ('No 29').
30. I observed that No 29 has a single storey rear extension of a broadly similar depth to that proposed here but, unlike this one, it is set in from the common boundary. However, although it has side windows which would face the proposed extension, they are set in from the boundary, and it also has rear openings, which address the rest of its reasonably long garden.
31. Given the particular circumstances here, and in the context of the approved rear extension, whilst the scheme would not fully accord with the advice in the SPD, it would not impact the living conditions at No 29 to a harmful degree. The scheme would not therefore conflict with the stance in LCS Policy 15, or LDMLP Policy 31 that extensions should protect neighbouring amenities.

Biodiversity and drainage

32. Proposed sections A and B indicate that there would be a significant depth of topsoil above the basement, and on the basis of the limited available information, I have no cogent reason to conclude that, following its completion, biodiversity in the property's garden would be significantly changed compared to the previous situation.
33. Whilst the Council has also raised concerns regarding the scheme's impact on natural drainage, I also have very limited evidence on this matter. Nevertheless, I have no good reason to conclude that an appropriate means of drainage could not be provided.
34. Consequently, on these particular issues, the scheme would not conflict with the drainage, environmental, and biodiversity requirements of LP Policy D3, LCS Policy 15, and LDMLP Policy DM30; nor with the broadly similar stance at section 4.8 of the SPD.

Character and appearance

35. The Council states that the proposed basement extension, and its associated lightwell, balustrades and walk on rooflights would result in the loss of a significant length of rear garden, contrary to the property's character.
36. However, whilst the basement would extend way more than a quarter of the length of the original garden contrary to paragraph 4.8.9 of the SPD, little of it would be apparent at and above ground level, and much of the existing garden area would be retained. As a result, its visual impact would be modest.
37. Consequently, on this issue, the proposal would not conflict with the development plan, including LDMLP Policy 31, nor with paragraph 124 of the Framework.

Other matters

38. In its favour, the scheme would make an efficient use of the property and it would deliver additional accommodation, which I have no doubt could be

swiftly delivered. In those general regards it finds support from the development plan and the Framework.

Conclusion

39. The scheme would fail to provide appropriate living conditions, or sufficient, convenient and accessible bicycle storage facilities, for its future occupants. The property is also unsuitable for the proposed development given the borough's need for family accommodation.
40. The scheme's limited benefits would not outweigh the significant harm that it would cause, and it would conflict with the development plan when considered as a whole. Consequently, and having regard to all other matters raised, including representations by interested parties, the appeal is dismissed.

Chris Couper

INSPECTOR