



Appeal Decision

Site visit made on 7 June 2021 by Ben Phillips BSc MSc MRTPI

Decision by R C Kirby BA(Hons) DipTP MRTPI

An appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/C5690/W/21/3266508

111 Marsala Road, Ladywell, London SE13 7AE

- 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 Michael Cohen against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/118917, dated 23 October 2020, was refused by notice dated 23 December 2020.
 - The development proposed is described as a change of use of existing single 5 bedroom house to form two 2 bedroom 3 person dwellings.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. Since the Council's refusal of the scheme, a new London Plan has been adopted (March 2021). Both parties were provided with the opportunity to comment on this matter and I have taken the representations received into account in my consideration of this case. The requirements regarding amenity area provision set out below are unchanged.
4. The appellants have submitted additional plans for my consideration. These plans illustrate the addition of a Juliet balcony and/or a covered winter garden type space. No interested parties have had the opportunity to comment on the amended drawings and I consider that, having regard to the principles established under *Wheatcroft*¹, that to consider them would deprive those who should have been consulted of the change that opportunity. In the interest of fairness, I have assessed the appeal proposal on the basis of the drawings determined by the Council.

Main Issues

5. The main issues in this case are the effect of the proposed development on the provision of family housing in the area; and whether the proposed development would provide acceptable living conditions for its intended future occupiers, with particular regard to the provision of private garden/external living space.

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

Reasons for Recommendation

Family Housing

6. The appeal site is a large terrace property, occupied as a single dwelling within a road characterised by family homes, despite some examples of dwellings converted to a house in multiple occupation (HMO) or split into smaller units.
7. In order to maintain the supply of family housing in the Borough, Policy 3 of the Lewisham Development Management Local Plan (2014) (DM) seeks to prevent the conversion of single family houses to two or more dwellings unless certain circumstances apply, including that environmental conditions mean that the property is unsuitable for family accommodation either in terms of noise generating or other environmentally unfriendly uses adjacent, or the lack of external amenity space suitable for family use.
8. The property has a railway line immediately to the rear, which would cause intermittent noise disturbance as trains pass the rear of the property. However, the railway also runs past the rear gardens of a number of the neighbouring properties and is not uncommon in inner London. Furthermore, no evidence has been submitted to demonstrate that its presence causes unacceptable levels of noise to the degree that would make this dwelling unpleasant to live in.
9. It is noted that there is also a Council depot on the other side of the railway line, however it has not been demonstrated that this use has resulted in environmental conditions which are unsuitable for the property to be occupied by a family.
10. The policy does not define nor set out what size of external amenity space would not be suitable for family use, however Standard 26 of the London Plan Supplementary Planning Guidance document Housing (2016) (Housing SPG), sets out that *'A minimum of 5sqm of private outdoor space should be provided for 1-2 person dwellings and an extra 1sqm should be provided for each additional occupant.'* This requirement is repeated in Policy D6 of the recently adopted London Plan 2021.
11. The Council measure the garden space as 40sqm. Whilst this is limited in the context of the surrounding properties, it does provide sufficient space to accommodate an existing patio area with an area for seating upon it, in addition to space for domestic items associated with a family sized dwelling such as play equipment and clothes drying area. Whilst constrained, it not cramped nor an unpleasant area to spend time in and is suitable for family use, even for an extended 5 bed dwelling such as the appeal property.
12. It is open for the appellant to exercise the property's permitted development right to occupy the property as a small HMO, however this would not provide the accommodation sought under this appeal. Such a use could also revert the property to a single family dwelling without needing to obtain planning permission. Accordingly, this fall-back position would not undermine the aims of DM Policy 3 and this matter carries limited weight in my consideration of the case.
13. Given my findings above I consider that the host property is suitable for family housing and the proposed development would therefore harm the provision of

family housing within the borough, and as such, there would be conflict with DM Policy 3.

Living Conditions

14. The submitted plans indicate that the rear garden area would only be accessible to the ground floor unit. The 2-bed unit set over the two upper floors would not be provided access to the garden, nor any external amenity space. Such a unit could be occupied by a small family, with a probability that at some time young children would live within it. There would be no external space for an area to dry clothes nor play equipment which is likely to be expected by the occupiers in a home of this size.
15. I acknowledge that the Housing SPG allows in exceptional circumstances for dwellings to be supported where no private open space is provided. However, I do not consider a standard first floor conversion of a terraced dwelling to be exceptional in this context. Moreover, the additional floorspace provided internally over that required as a minimum would not compensate for the lack of external space, given that the unit could be occupied by a small family.
16. I note that there are public parks within walking distance of the appeal site, however again, this does not meet the 'exceptional' circumstances requirement of justifying the lack of private amenity space provision.
17. Consequently, the proposal would not provide acceptable living conditions for intended future occupiers of the upper floor flat with regard to the provision of private garden/external living space. There is therefore conflict with the requirements of DM Policy DM32, and London Plan 2021 Policy D6 which collectively require that all residential development meets the functional requirements of future residents. There is also conflict with Paragraph 127 of the National Planning Policy Framework which, along with other matters requires development to provide a high standard of amenity for existing and future users. Moreover, there is conflict with the advice set out in the Housing SPG.

Planning Balance, Conclusion and Recommendation

18. The appellant's reference to other Local Plan Policies as are noted but they relate to matters such as car parking and landscaping and trees for example, which are not in dispute between the parties. The Council has not objected to the proposal in respect of matters and I have no reason to disagree. These are therefore neutral factors which would be expected of any well-designed development and neither weigh in favour or against the proposal.
19. The benefits of the scheme include an additional residential unit which would make a contribution to the Council's supply of housing, which is located close to shops and services. However, given the quantum of development in this case, such benefits would be modest, and would be at the expense of the provision of a suitable family dwelling and would result in harm to the living conditions of the intended future occupiers of the upper floor flat, in conflict with the development plan; matters which carry substantial weight.

20. Accordingly, I find that there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

B Phillips

APPEAL PLANNING OFFICER

Inspector's Decision

21. I have considered all the submitted evidence and the Appeal Planning Officer's report and I agree that the appeal should not succeed. The appeal is therefore dismissed.

RC Kirby

INSPECTOR