



Appeal Decision

Site visit made on 25 January 2023

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30th January 2023

Appeal Ref: APP/G5750/W/22/3300270

341 Prince Regent Lane, West Beckton, London E16 3JL

- 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 Dr Tommy Tun Lwin against the decision of London Borough of Newham.
 - The application Ref 21/03176/FUL, dated 22 December 2021, was refused by notice dated 16 February 2022.
 - The development proposed is loft conversion with rear dormers and front skylights.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would provide acceptable living conditions for future occupiers, with regard to cooking smells.

Reasons

3. The property is in use as a takeaway at ground floor level with residential accommodation at first floor level. The proposed rooms are described as loft rooms and a shower room, and there is no suggestion that they would be used other than as habitable accommodation.
4. The takeaway has an existing metal vertical flue on its side elevation. I understand that the flue does not benefit from planning permission but may have become immune from enforcement action through the passage of time. I have therefore assessed the proposal on the basis that the flue would remain in place if the proposal were implemented.
5. The proposed shower room would be served by a rear-facing window, which would face in the direction of the flue. Proposed Loft Room 2 would also be served by a window facing to the rear of the property but would face away from the flue. From the submitted plans, both proposed windows would be at a higher level than the flue and a short distance away from it.
6. The proposed windows to both rooms would need to be openable, to provide internal ventilation. This, together with the higher position and close proximity of the proposed windows in relation to the flue, and the direction of the window serving the shower room, means that the cooking smells emitted from the flue would enter into the proposed rooms, harmfully affecting the living conditions of occupiers.

7. The appellant refers to the distance of two metres between the flue and habitable windows. However, I have no substantive evidence that this distance would be sufficient to ensure that odour from the flue would dissipate sufficiently to avoid affecting the occupiers of the rooms. No specific measures that might overcome this issue, such as changing the position of the flue or increasing its height have been proposed. The flue is in a prominent location in Burley Road and changes to it as part of the proposal would require public consultation. As such, it would not be reasonable to require such measures by way of a planning condition.
8. The existing accommodation may already have some odour from the takeaway use, and I saw that existing first-floor windows face towards the flue. However, these windows are at a lower level than the outlets of the flue, and so occupiers of these rooms may not be affected to the same extent as the proposed accommodation. In any case, their existence does not justify creating further accommodation that would be affected by odour.
9. Although the proposal would meet the Nationally Described Space Standard and would be well lit, for the reasons given above, I conclude that it would not provide acceptable living conditions for future occupiers, with regard to cooking smells.
10. As such, the proposal would conflict with policies S1, S6, SP2 and SP3 of the London Borough of Newham Local Plan, adopted December 2018. These require good quality homes, with environmental impacts such as odour being addressed, and avoidance of the adverse effects of hot food takeaways. For similar reasons, the proposal would be contrary to policies D4 and D6 of the London Plan, adopted March 2021, which require high quality housing. It would also fail to comply with the National Planning Policy Framework that promotes health and well-being and requires a high standard of amenity for future users.

Other Matters

11. The appellant has referred to several decisions to grant planning permission¹ for proposals involving loft conversions in the same street or nearby. However, I have no evidence that odour was an issue in these cases. Similarly, applications for a Certificate of Lawfulness such as those cited² consider only whether each proposal is lawful, and do not assess their planning merits, such as the effect on the living conditions of occupiers. As such, little useful comparison can be drawn from these cases.
12. The proposal would help to promote the effective use of previously developed land that the appellant considers to be under-utilised. It would also provide some social and economic benefits. The proposal would have an acceptable visual impact and would not harm the living conditions of neighbouring properties. However, these matters do not overcome or change my findings on the main issue.

Conclusion

13. For the reasons given, there would be conflict with the Development Plan, read as a whole. No material considerations have been shown to have sufficient

¹ LPA references 21/02386/FUL and 21/01927/HH

² LPA references 21/03104/CLP and 21/02084/CLP

weight to warrant a decision other than in accordance with it. I therefore conclude that the appeal should be dismissed.

O Marigold

INSPECTOR