



Appeal Decision

Site visit made on 11 September 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2023

Appeal Ref: APP/C5690/W/22/3313386

79 Catford Hill, London SE6 4PW

- 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 Graeme Skipper of Whitecastle Developments Ltd against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/22/126536, dated 27 April 2022, was refused by notice dated 1 July 2022.
 - The development proposed is the conversion of the ground floor/basement flat into 2x 1-bedroom flats, and the construction of an external staircase to the front elevation to facilitate access to the basement flat.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the appeal form; I have used it in preference to the wording from the planning application form as it provides a slightly clearer description of the scheme. I have however omitted the phrase "retrospective application" and the site address, as these are not descriptions of development.
3. At the time of my site visit, the ground and basement floors had been converted into two self-contained flats, and various internal and external works carried out. However, I saw that there were significant differences between the scheme as shown on the submitted drawings and "as built". The living, dining and kitchen area of the basement flat was at the front of the building rather than the rear, and there were two bedrooms rather than one towards the rear. There were also some notable differences in respect of the front elevation; the ground floor flat's living room window appeared smaller than suggested by the drawings, while the basement flat had an additional small front window not shown on the drawings at all. I have determined the appeal on the basis of the submitted drawings, which the Council considered in refusing planning permission.
4. The Government published a revised National Planning Policy Framework ("the Framework") on 5 September 2023, replacing the previous version dating from July 2021. The amendments made did not have any bearing on the issues in this appeal, and it was therefore not necessary to seek comments from the main parties on the updated Framework. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the September 2023 version.

Main Issues

5. The decision notice issued by the Council gave three reasons for which planning permission had been refused. The third reason addressed a range of living conditions matters; although it was not stated which part of the scheme this reason referred to, it was clear from the other evidence that it related specifically to the basement flat.
6. The main issues are therefore:
 - The effect of the development on the character and appearance of the area;
 - Whether the development provides acceptable living conditions for occupiers of the ground floor flat, with particular regard to overlooking and loss of privacy resulting from the siting of the external staircase; and
 - Whether the development provides acceptable living conditions for occupiers of the basement flat, with particular regard to outlook, private amenity space, overlooking and privacy, daylight and sunlight, ventilation, and internal storage space.

Reasons

Character and appearance

7. The appeal relates to the ground floor and basement of No 79 Catford Hill, the end building of a three storey (plus basement) 19th century terrace on the south side of that street. The surrounding area is predominantly residential, with two- or three-storey buildings; the nearby buildings on Catford Hill appear to be of a broadly similar age to the appeal property, though there is greater variety in the wider area. The ground floor of the appeal property was previously a shop unit; the shopfront was removed following a grant of planning permission in 2019¹ for the change of use and conversion of the ground floor to a flat.
8. The development for which permission is now sought includes various works to facilitate the conversion of the ground floor and basement into two separate flats. The front elevation of the ground floor flat has been set back behind the line of the former shopfront, a lightwell has been excavated at the front of the building, and an external staircase installed within the lightwell, leading down from the forecourt to the front door of the basement flat. The lightwell is protected by powder coated metal railings, with a gate at the top of the staircase.
9. Along Catford Hill south-west of the site, including within the same terrace, it is apparent that at one time there would have been many shops (or other commercial premises), although very few remain today. From the 2008 Google Street View imagery submitted by the appellant, as well as from the form of the street frontage which I was able to see for myself, it was evident that the eight units at the appeal site's end of the same terrace once had shopfronts. No more than two of them appear now to still be in shop or other commercial use, and I saw that there have been a variety of approaches taken to the conversions and related works such as boundary treatments.

¹ LPA Ref: DC/19/113061

10. The development at the appeal property adds yet more variety to the mix. The lightwell and new access stairway to the basement have been set behind the building line of the original shopfront. This has given the front of the appeal property an unusual recessed appearance which is incongruous and insensitive to the form of the terrace. I acknowledge that very few of the other conversions of former shop units within the same block or the wider arrear appear to have been done particularly sympathetically, but this is not in itself a justification for further harm. Although No 79 is not prominent in long views, the frontage is readily seen close-up from the street, from where it further diminishes the remaining integrity of the terrace as a whole.
11. I conclude that the development is harmful to the character and appearance of the area. It therefore conflicts with Policy 15 of the 2011 Lewisham Core Strategy ("the LCS"), DM Policies 30 and 31 of the 2014 Lewisham Development Management Local Plan ("the DMLP"), and Policy D3 of the London Plan 2021. Together, and among other things, these policies seek to ensure that development (including alterations and extensions) is attractive and achieves a high standard of design, and creates a positive relationship with the existing townscape. The development also conflicts with the provisions of Chapter 12 of the Framework which aim to achieve well-designed places, in particular paragraph 130 which seeks to ensure that development adds to the overall quality of the area for the long term, is visually attractive, and sympathetic to local character, and paragraph 134 which states that development that is not well designed should be refused.
12. I find no specific conflict with Policy D1 of the London Plan 2021, which addresses matters relating to understanding areas' capacity for growth when preparing development plans. This policy was referred to in the Council's decision notice but does not appear to be directly relevant to this proposal. A lack of conflict with this policy does not, of course, negate the other conflict with the development plan which I have found.

Living conditions – ground floor flat

13. The external stair giving access to the basement flat is in front of the living room window of the ground floor flat. Anyone entering or leaving the basement flat therefore passes right by, and would be able to see into, the ground floor flat. I note the appellant's argument that "users of the stairs will be looking away both when opening and shutting the gate and focusing on their footing as they go down the turn of the steps". I saw on my site visit, however, that it is difficult to enter the top of the stair without one's eye being drawn, however briefly and inadvertently, towards the window of the ground floor flat from a very short range.
14. I accept that the building has a shallow and open forecourt, and that there is therefore "nothing stopping anyone standing in close proximity to the ground floor window and looking in, irrespective of the proposed development", as the appellant put it. However, that is not a positive argument for a development which makes such intrusions a necessary part of everyday life. The suggestion that there is a degree of defensible space which was not there previously and so has improved on the previous position is not therefore persuasive.
15. Within the ground floor flat, I saw that there are net curtains which help to prevent views in from outside. I also saw that the current occupier has positioned a large television screen in front of the window, although of course I

do not know if this is intended as a way of limiting opportunities for people outside to look into the flat. However, while these measures appear to provide some additional privacy within the flat, they make it a duller and more oppressive place than it might otherwise be; they also of course are not mitigations which could be required as part of a planning permission. While, as the appellant suggested, a condition *could* be imposed which required part of the front window to have obscure glazing, this would have the effect of harmfully diminishing the outlook from the flat.

16. I conclude that the siting of the external staircase to the basement flat has led to a harmful degree of overlooking and loss of privacy for the occupier of the ground floor flat. The development therefore conflicts with Policy 15 of the LCS, and with DM Policies 31 and 32 of the DMLP. Among other things, these policies seek to protect living conditions by requiring new residential development, including alterations and extensions, to provide a satisfactory level of privacy for future residents and neighbours. The development also conflicts with the provisions of Chapter 12 of the Framework which aim to achieve well-designed places, in particular paragraph 126 which seeks to create better places in which to live, and paragraph 130 which seeks a high standard of amenity for existing and future users.
17. I find no specific conflict with DM Policy 30 of the DMLP which was referred to in the decision notice; notwithstanding that it seeks good design, it largely addresses matters relating to local character and the detailed appearance of developments. Again, this does not negate the other conflict with the development plan which I have found.

Living conditions – basement flat

18. The basement flat has a small external terrace at its very rear; the submitted drawings show it to be approximately triangular, although as constructed it tends more towards a rectangular shape. The rear room within the flat looks out onto a concrete retaining wall at the back of the terrace, which has a timber fence above. Although I have not been provided with precise measurements I saw on my visit that the wall is not much more than a metre or so from the patio door of the rear room (shown as a living/dining area on the submitted drawings, but in use as a rather smaller bedroom when I visited). The close proximity of the concrete wall and the timber fence give the room a dismal, limited and oppressive outlook, unsuited to its use as a habitable room.
19. There is also a small internal lightwell, approximately square in plan, which rises through the lower ground and ground floors. The kitchen area (as shown on the submitted drawings, although it was a separate bedroom at the time I visited) and front room within the flat (shown on the drawings as the flat's bedroom, but the combined kitchen/dining/living area "as built") have windows on opposite sides of the lightwell. The very small size of the lightwell (around 2.35m², by the Council's measurement) means that the windows face each other from very close range and, again, this gives them a limited and claustrophobic outlook.
20. As I have already described in paragraph 3 above, there is an additional small window on the front elevation not shown on the drawings. It is at a high level and, from within the flat, mostly obscured by the external metal stairway. The submitted drawings show this part of the flat to be a bathroom, for which

outlook is of course not a significant requirement, but as built it serves the combined kitchen/dining/living area, to which it adds very little by way of outlook.

21. There is some lack of clarity over the measurements of the private external amenity space for the occupiers of the ground floor flat. The original Planning Statement which accompanied the planning application stated that “the combined amenity space for the lower ground floor unit complies with the requirements of the London Plan for 5m² of space for 1–2 person dwellings”, and the Council’s officer report refers to there being 3.4m² of outdoor space. The most recent figure, in the appellant’s statement, refers to there being “a 2.1 square metre light well to the front of the property and a 2.2 square metre lightwell to the rear of the property (on-site measurements)”.
22. On my reading of the evidence, it appears that this discrepancy has probably arisen because the Planning Statement has taken the small rear terrace and the internal lightwell (to which there is a door from the basement flat) together while the Council has not considered the internal lightwell. These two figures would also have been based on the submitted drawings.
23. The appellant’s latest figures amount to there being 4.3m² of space “as built”, divided into two nearly equal parts between the rear terrace and the internal lightwell (notwithstanding that both are, confusingly, referred to in the statement as lightwells). This figure falls some way short of the amount of private amenity space required by Policy D6 of the London Plan 2022. The supporting text to that policy advises that “private outside space should be practical in terms of its shape and utility, and care should be taken to ensure that the space offers good amenity”. As I have described above, the small size of the rear terrace and internal lightwell makes them constrained and oppressive places. This means that they are not “fit for purpose” as amenity spaces.
24. The basement flat’s rear terrace is also overlooked at very close range from the rear roof terrace of the ground floor flat above. I saw on my site visit that it was easy to see the basement terrace through the open timber railings at the rear of the ground floor terrace; this allows overlooking of the basement terrace from very close range, further reducing its usefulness. The appellant suggested that the ground floor roof terrace could be enclosed by opaque screening. However, that measure would be likely to have the side-effect of constraining outlook from the bedroom of the ground floor flat; it would not therefore be a suitable mitigation for the lack of privacy.
25. The layout of the development also allows overlooking from the window in the kitchen area of the ground floor flat to the window across the internal light well on the floor below. Based on the submitted drawings this means that the kitchen and dining area of the basement flat would be overlooked from above, though “as built” it is the second (inward-facing) bedroom which is overlooked. Either way, with the very small separation distance involved the result is, or would be, an unacceptable lack or loss of privacy.
26. There is less of a problem in respect of privacy arising from the other two windows within the ground floor flat which open onto the internal lightwell. These serve a hallway and bathroom and so are (or could be conditioned to be) obscure glazed. However, this would not mitigate the other harmful lack or loss

of privacy in respect of the basement flat's rear terrace, inner rear room, and internal lightwell.

27. An Internal Daylight Assessment ("the IDA") was submitted with the appeal documentation² though it does not, as the appellant asserts, confirm that "all habitable rooms within the flat receive ample levels of daylight and sunlight". It *does* confirm that the habitable rooms of both flats within the development would receive adequate daylight with reference to the Target Daylight Factor method³ *based on the submitted drawings*. However, other than in passing in its introduction, the IDA does not deal with sunlight in the development. Based on the layout of the development as shown on the submitted drawings, in my view there must be considerable doubt that all of the habitable rooms would receive adequate amounts of sunlight. The IDA also, of course, does not assess daylight or sunlight in the scheme "as built".
28. The basement flat is described by the appellant as being "largely open plan and triple aspect with openable windows to the front, side and rear". In fact, the submitted drawings do not appear to show an openable window on the front elevation, and "as built" the flat is rather less open-plan than shown on the submitted drawings. There is the small additional window in the kitchen area, not shown on the drawings, though I saw on my visit that the amount it can be opened appears to be constrained by the stairway outside, such that the amount of "natural" through ventilation which the flat might receive seems to be limited.
29. The submitted drawings do not show built-in storage space within the flat. However, its gross internal area of around 57m² appears to leave sufficient leeway that the 1.5m² sought by Policy D6 of the London Plan 2022 (which applies the Nationally Described Space Standard⁴ in this respect) could be provided while still meeting the minimum internal space standard for a new dwelling. Were the development acceptable in all other respects, this is a matter which could be addressed by means of a suitably-worded condition requiring the provision of dedicated storage space. However, this would not address the other shortcomings of the scheme. It would also not address the fact that the development "as built" has two bedrooms rather than one, and so would have higher living space and storage space requirements.
30. For the reasons I have set out in the preceding paragraphs, I conclude that the basement flat has serious and significant shortcomings in terms of outlook, private amenity space, overlooking and privacy, daylight and sunlight, and ventilation. As a result, it does not provide acceptable living conditions for its occupiers. The development therefore conflicts with DM Policy 32 of the DMLP, which requires new residential development to meet the functional requirements of future residents, including by providing a satisfactory level of privacy, outlook and natural lighting, and Policy D6 of the London Plan 2021 which sets out standards for high quality housing (and the principal relevant provisions of which I have summarised in paragraphs 23 and 29 above). The development also conflicts with the provisions of Chapter 12 of the Framework which aim to achieve well-designed places, in particular paragraph 130 which

² T16 Design, October 2022 (Issue 3)

³ Set out in the BRE Report 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' (3rd edition, 2022) and BS EN 17037: 2018+A1:2021 (with UK Annex): 'Daylight in Buildings'

⁴ *Technical housing standards – nationally described space standard*, Department for Communities and Local Government 2015

seeks development which functions well, and which provides a high standard of amenity for existing and future users.

31. I find no conflict with Policy 1 of the LCS; although this was referred to in the decision notice it is essentially a strategic policy addressing the provision, mix and affordability of housing in the borough. This does not alter my overall conclusion on this matter.

Conclusion

32. The development provides an additional dwelling by bringing an underused storage space within an existing building into use, in a location which is reasonably close to a range of shops and services including public transport connections. I acknowledge that there would be some social and economic benefits attributable to the development, including those which have arisen during the construction period as well as those from future maintenance, and occupiers of the flats would be likely to support local businesses. Given the very small scale of the scheme, these are benefits which carry only moderate weight in its favour.
33. However, the development has caused harm to the character and appearance of the area. The siting of the access to the basement flat has harmed the privacy of the occupier of the ground floor flat, while the basement flat itself has a wide variety of failings in respect of outlook, private amenity space, overlooking and privacy, daylight and sunlight, and ventilation. Neither flat therefore provides its occupiers with acceptable living conditions. These are matters which carry considerable weight, and in my view the harm arising significantly outweighs the benefits associated with the scheme. As a result, the development conflicts with the development plan taken as a whole, and there are no other considerations, including those of the Framework, that outweigh this conflict.
34. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

M Cryan

Inspector