



Appeal Decision

Site visit made on 22 January 2024

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2024

Appeal Ref: APP/C5690/W/23/3324564

120 Hither Green Lane, Hither Green, Lewisham, London SE13 6QA

- 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 Ashfaq Saleemi against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/23/130079, dated 3 February 2023, was refused by notice dated 31 March 2023.
 - The development proposed is conversion of storage at ground level to 1 no x self-contained studio flat.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was amended in December 2023. I am satisfied that the amendments made have not had a material bearing on how the appeal proposal is considered. References in the decision are to the December 2023 Framework.
3. The Council's second reason for refusal refers to an undersized floor area, but its officer report identifies that the development would meet the required internal area for a one bedroom one person unit. The officer report does refer to the absence of any outdoor amenity space for future occupiers as a cause of concern. Although this was not referred to in the decision notice, the appellant has had an opportunity to provide comments on this matter during the appeal process. Accordingly, I do not consider that their interests would be prejudiced if I take the Council's concern about outdoor amenity space into account in my consideration of the appeal.
4. The Council believes that the change of use has occurred. At the time of my site visit, which I appreciate is just a snapshot in time, the area that is the subject of the appeal did not appear to be in use as a self-contained studio flat.

Main Issues

5. The main issues are:
 - whether the proposal would provide acceptable living conditions for future occupiers; and
 - the effect of the proposal on the provision of retail and employment opportunities in the locality.

Reasons

Living Conditions

6. The appellant proposes that the rear alley could be used as an outdoor amenity area for the occupiers of the studio flat and a condition could require the provision of landscaping to make it more amenable. Nonetheless, there is nothing in the evidence before me to clarify whether the appellant owns or has control over the rear alley. Furthermore, from what I observed during my site visit, the alley seems to provide access to other properties, and so it would not be a private space. In my view therefore, it would not provide an appropriate outdoor amenity space for future occupiers.
7. Policy D6 of the 2021 London Plan requires that a minimum of five square metres of private outdoor space is provided for 1-2 person dwellings. Given that no suitable private outdoor space would be provided, the proposal would not meet this requirement. There is no compelling evidence before me to justify a departure from this standard, such as equivalent floor space internally.
8. The plans show that the source of light for the flat would be provided by a window in its broadly west facing elevation and three skylights that would be located mainly over the sleeping/living space. In addition, the appellant states that the door in this elevation would be glazed. Although these openings would allow some daylight and sunlight penetration, it is unlikely that natural light would reach all the living accommodation. This is especially the case for the kitchen area given its location within the flat, which the floorplan shows as to the rear and set behind a wall. In my judgement, this area would likely be a gloomy space where artificial light would be required for much of the day.
9. The appellant anticipates that the average daylight factor would be between 1.5% and 2%. However, this is not supported by a daylight and sunlight assessment to demonstrate what light levels would be achievable. It has not therefore been demonstrated that the development would provide sufficient natural light for future occupiers.
10. The appellant's evidence suggests that there is weekly/fortnightly collections of waste and recyclables. However, any waste generated would have to be stored within the flat, as there does not appear to be a suitable location for the external storage of waste and recycling material in between the collections, given that the application boundary is drawn tightly around the footprint of the building. A lack of waste storage may therefore lead to insanitary conditions for future occupiers.
11. The alley seems to provide access to a relatively limited number of properties and so would be unlikely to be heavily trafficked. However, the rear elevation of the flat would abut the rear alley which would allow pedestrians and vehicles to come past the window and door in very close proximity. In my judgement, this would likely result in future occupiers having at least a perception of being overlooked.
12. The window and door in the rear elevation would provide the only source of outlook for occupiers. This would be across the rear alley but also towards the rear gardens of the dwellings on Harvard Road, the nearest of which is enclosed by a relatively low fence. The outlook would not therefore be unduly enclosed. I note the Council's concern that a high sided vehicle could park right

outside the flat, thus reducing outlook. While this cannot be completely ruled out, in my judgement, the relatively narrow width of the rear alley would limit the likelihood of this occurring, at least for prolonged periods of time.

13. A bicycle store is proposed inside the building, just outside the front entrance to the flat. Its location would mean taking the bicycle through the living accommodation, which is far from ideal, or through the corridor which provides access to the front of the building. Although this corridor is not particularly wide for part of its length, and there is a change of direction that would have to be manoeuvred, access to the street would not be unduly inconvenient for future occupiers. Therefore, while acknowledging the Council's concerns in this regard, in my view it would not be so unduly harmful as to warrant dismissal of the appeal.
14. I have not found a harmful effect arising from the proposed bicycle storage, and therefore no conflict with Policy T5 and Table 10.2 of the London Plan or Policy 14 of the 2011 adopted Lewisham Local Development Framework Core Strategy Development Plan Document (the CS). Nor have I found harm regarding outlook.
15. However, taking all the other factors into account, I conclude that their cumulative effects would add up to the proposal failing to provide adequate living conditions for future occupiers, in conflict with the requirements of Policy D6 of the London Plan and DM Policy 32 of the 2014 adopted Lewisham Local Development Framework Development Management Local Plan (the DMLP). Amongst other matters, these policies expect development to offer high quality housing and satisfactory living conditions that meet minimum standards for internal living space and external amenity space. There would also be conflict with the waste management requirements of Policy 13 of the CS and section 6.4 of the 2019 Alterations and Extensions Supplementary Planning Document.
16. The Council's reason for refusal relating to waste storage provision references Policy T7 of the London Plan and DM Policy 30 of the DMLP. These policies seem to be focussed towards facilitating freight movement and addressing urban design and local character respectively. I am not convinced that these policies are relevant to this main issue, although this does not alter my conclusions above.

Retail and Employment Opportunities

17. Policy 6 of the CS and DM Policies 11 and 16 of the DMLP seek to protect local shopping facilities from change of use or redevelopment where there is economic demand for such services and avoid the loss of retail uses within shopping parades and employment uses in general, unless evidence is provided that such uses are no longer viable.
18. The ground floor of the building is in commercial use. Only the rear part of the ground floor would be used for the studio flat. The proposal would not affect the commercial area to the front. Nevertheless, it would result in a large reduction in the amount of available commercial floorspace.
19. The appellant identifies that the remaining commercial area would have a gross internal area of around 33 square metres. The appellant has submitted some limited information on the size of other commercial units across London, although no detail is provided on the nature of these to understand whether

they would be comparable to the situation here. Nonetheless, the commercial space that would remain would retain its street frontage and its own access from the street. In addition, from the submitted evidence and what I observed during my site visit, the customer area of the barber shop that currently occupies the ground floor only uses the part that would be retained.

20. While some storage and staff space would be lost, I am not persuaded that the development would result in material harm to the provision of retail and employment opportunities in the locality. Consequently, I find no conflict with Policy 6 of the CS and DM Policies 11 and 16 of the DMLP, as set out above.

Other Considerations

21. The appellant contends that the Local Planning Authority is not meeting its housing targets and so the presumption in favour of sustainable development at paragraph 11d) of the Framework is engaged. No evidence is provided by the Council on this matter.
22. I have found that the proposal would not provide acceptable living conditions for future occupiers. The appellant highlights that there would be no harm to neighbouring occupiers and no objections were received from the local community. While this may be the case, a lack of harm is effectively neutral in the planning balance. The proposal would make a limited contribution to housing supply through the provision of a studio flat that would meet the required internal space standards in a relatively sustainable location, although I note that DM Policy 32 (4.e.) of the DMLP states that single person dwellings will not be supported other than in exceptional circumstances. Even if I were to accept the appellant's position, the adverse impacts of granting a planning permission for the proposal, including the identified conflict with development plan policy, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
23. The appellant disputes the Council's view that it is unlikely that the property would benefit from permitted development rights that allow a change of use from Class E to Class C3¹. Based on the evidence that is before me, I cannot conclude that such permitted development rights could be exercised given the Council's contention that the change of use has already occurred and my conclusion on the lack of provision of natural light. Consequently, I give this matter very limited weight and it would not alter or outweigh my conclusions on the harm that would be caused.

Conclusion

24. I have found that the proposal would not materially harm the provision of retail and employment opportunities in the locality. However, I am unable to conclude that acceptable living conditions for future occupiers would be provided. This is a matter of overriding concern and to this extent there would be conflict with the development plan when considered as a whole. Therefore, the appeal should be dismissed.

F Wilkinson

INSPECTOR

¹ Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)