



Appeal Decision

Site visit made on 5 August 2024

by A Parkin BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2024

Appeal Ref: APP/C5690/W/24/3336841

330 Downham Way, Lewisham, Bromley BR1 5NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Emmanuel Forji against the decision of the Council of the London Borough of Lewisham.
 - The application Ref is DC/23/132041.
 - The development proposed is a ground floor rear single storey side return extension with skylights; a loft extension with a rear facing dormer and with front facing skylights; a change of use from a C3 Dwelling to a 6 person C4 HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposal on the application form is unclear. Consequently, I have removed superfluous details and made minor amendments to it, in the banner heading above.

Main Issues

3. The main issues are the effect of the proposal on:
 - The living conditions of future occupiers, with particular regard to accessibility;
 - Housing provision; and,
 - The character and appearance of the area.

Reasons

Living conditions

4. The appeal building is located in a residential area, which Transport for London has given a public transport accessibility level (PTAL) of 2. This means that it is considered that residents of the area would have poor access to public transport, such as for travelling to work, for recreation or to meet their day-to-day needs.
5. Amongst other things, Policy DM6 (houses in multiple occupation (HMO)) of the Development Management Local Plan 2014 (DMLP) states the Council will not consider new HMOs in areas with a PTAL of less than 3. However, no compelling evidence to support this approach has been provided. In particular, given that this is a well-established residential area, it is unclear why a PTAL of 2 is considered unacceptable for the future occupiers of an HMO.

6. There are bus stops with regular services very close to the appeal building and a railway station only around 1km away. Furthermore, there is a reasonable range of shops, services and a park within easy walking distance of the site. It is likely that future occupiers would be able to meet many of their day to day needs without the need to use public transport which, in any event, seems reasonably accessible.
7. For these reasons, and notwithstanding the conflict with Policy DM6 of the DMLP, the proposed development would not cause unacceptable harm to the living conditions of future occupiers, with particular regard to accessibility.

Housing provision

8. The proposed development would result in the loss of an end-of-terrace dwelling with a rear garden and hardstanding to the front and which is suitable for a family, and its replacement with a six-person HMO.
9. Policy DM3 (conversion of a single family house to two or more dwellings) does not concern the conversion of a dwellinghouse to an HMO, only the conversion to self-contained flats. Consequently, I find no conflict with Policy DM3.
10. The supporting text to Policy DM6 notes that 'HMOs that are of a good standard provide an important part of the provision of affordable housing in Lewisham, particularly for young people and those with low incomes'. However, Policy DM6 states that new HMOs will not be considered where they would result in the loss of larger housing suitable for family occupation. Whilst the appeal building is clearly suitable to be occupied by a family, it is not clear from the evidence whether it would be an example of 'larger housing'.
11. The internal floorspace is some 81.3 sqm and I consider this to be a modestly sized dwelling, even with a small front porch and a rear ground floor extension. In the absence of any substantive evidence from the Council to the contrary, I do not consider this to be an example of 'larger housing' and so I find no conflict with Policy DM6.
12. For these reasons, the proposed development would have an acceptable effect on housing provision in the area. It would not, therefore, conflict with Policies DM3 or DM6, in this regard.

Character and appearance

13. The appeal building is a traditional, 2-storey plus loft dwelling, with a pebble-dashed render and terracotta rooftiles on a hipped roof. The building has been extended with a small porch to the front and a ground floor extension to the rear. A gated passageway to the side leads from an area of hardstanding by Downham Way to a rear garden.
14. The building is located at the northeastern end of a short terrace of six dwellings, sub divided into two distinct sections to address the sloping terrain of the area. Whilst there have been unsympathetic alterations to several dwellings in the terrace, including the appeal building, it is still possible to appreciate its visual integrity, which is characteristic of the other short terraces to be found in the area.
15. Whilst there have been some hip-to-gable roof conversions nearby, the predominant roof design in the area remains hipped, including on the appeal terrace and the terrace to the northeast.

16. The proposed development would entail various works to the building, including a large ground floor extension at the rear and part of the side, two Juliet balconies at first floor level at the rear, and a large dormer extension on the rear roof slope, following a hip-to-gable roof conversion.
17. The proposed dormer would have a flat roof that would be higher than the height of the roof ridgeline. It would be clad in grey tiles, in stark contrast to the traditional terracotta tiles on the remainder of the roof and as the Council notes, the position of the windows is quite low within the dormer structure. The design, materials, scale and massing of the proposed dormer would be visible from Downham Way and would be visually incongruous and obtrusive on the building, on the terrace and in the streetscene.
18. In their final comments, the appellant has proposed that the height of the dormer could be reduced and that this matter could be controlled by way of a condition. However, section 16 of the Procedural Guide¹ is clear that the appeal process should not be used to evolve a scheme and I am not certain that it would be procedurally fair to accept such an amendment at this stage in the process. In any event, this would not fully address the adverse effects of the proposal I have identified.
19. The appellant has also provided evidence they consider sets a precedent, concerning a similarly described proposal (LPA Ref. DC/22/127067). I am not familiar with this proposal but I note from the evidence that it is different in several regards to the appeal proposal. In any event, each proposal should be considered on its individual merits, which is what I have done in this case.
20. I note the comments of the Council regarding the acceptability of the rear ground floor extension, which I do not share. Whilst there would be some alignment between the rear fenestration at first floor and roof level, the windows and doorways at ground level would not follow this alignment, would be asymmetric and visually awkward. In my view the design, scale and massing of the proposed ground floor extension would be out of keeping with the host building and would detract from the character and appearance of the area.
21. I also note the comments of the Council regarding the acceptability of the hip-to-gable roof conversion, which I also do not share. Given the height of the proposed Dormer, the proposal would not be permitted development under Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Furthermore, it is not clear that the proposal would accord with other requirements / conditions of Class B.
22. Notwithstanding the presence of other hip-to-gable roofs nearby, the design of the proposed roof would be visually awkward and obtrusive, and out of keeping with the prevailing roof design of the area. It would detract from the visual integrity of the terrace containing the appeal building and the wider streetscene, including with reference to the terrace to the northeast.
23. Had the proposal been otherwise acceptable, I would have sought the views of the appellant on these matters. However, as I have found the proposed rear dormer extension would cause unacceptable harm on its own, there is no need for me to do so in this case.

¹ [Procedural Guide: Planning appeals – England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/planning-appeals)

24. For these reasons, the proposed dormer roof extension would adversely affect the character and appearance of the area. It would, therefore, conflict with Policy 15 (high quality design for Lewisham) of the Core Strategy 2011 and with Policies DM30 (urban design and local character) and DM31 (alterations and extensions to existing buildings including residential extensions) of the DMLP and with guidance contained in the Alterations and Extensions supplementary planning document 2019.

Other Matters

25. In their statement of case, the appellant makes a number of comments regarding the behaviour of the Council. With reference to Planning Practice Guidance for Appeals², costs may be applied for by parties to an appeal, or an Inspector may initiate an award of costs, if unreasonable behaviour has occurred and has caused unnecessary or wasted expense in the appeal process. However, it is not clear to me that the appellant is making an application for costs and I have not treated their comments as such.
26. The appellant claims that the Council has provided ambiguous information concerning whether an Article 4 Direction (removing permitted development rights under Article 3 (1) and Schedule 2, Part 3, Class L (change of use from a class C3 dwellinghouse to a class C4 HMO) of the GPDO is in place for the ward containing the appeal site.
27. The Council has provided a plan showing that an Article 4 Direction was made for four wards, including the ward containing the appeal site, on 5 March 2019. I note the appellant's evidence concerning an Article 4 Direction for the remaining wards in the London Borough of Lewisham dated May 2022. The annotations on this plan are somewhat confusing when seen in isolation. However, without a clear understanding of how all information regarding Article 4 Directions is provided, I cannot conclude that the Council has behaved unreasonably in this regard.
28. Were the appellant to be in doubt as to whether an Article 4 Direction applied, it would have been sensible to ask the Council to clarify the situation. In any event, the appellant has applied for planning permission for a change of use, which would have been unnecessary if there was no Article 4 Direction in place. It is not, therefore, clear what point the appellant is seeking to make here.
29. Under Article 34 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) (the DMPO) the Council is required to give the applicant notice of their decision for an application such as this within eight weeks of receiving the application, beginning with the day immediately following that on which the application was received by the local planning authority. The appellant claims to have received notice of the Council's decision on 21 August 2023, which would be within the specified eight week period that began on 27 June 2023, but also claims to have received notice on 23 August 2023, two days after the specified period.
30. It is not clear from the evidence what the appellant's concern is and their position is confused and contradictory. Even if I were to accept the appellant's statement that they first received the decision notice on 23 August 2023, a delay of two days is very unlikely to have been significant as is claimed.

² <https://www.gov.uk/guidance/appeals#award-of-costs>

31. The appellant also makes reference to the lack of an acknowledgement letter for the planning application which the Council subsequently refused. This has no obvious bearing on this appeal and is a matter between the Council and the appellant.
32. Finally, the appellant submitted extensive comments at the Final Comments stage of the appeal process. As the Procedural Guide³ clearly states for Written Representations appeals such as this one, Final Comments should concern only a response to the Council's statement of case or the views of interested parties. It is not an opportunity to provide new evidence, which would be procedurally unfair to the Council or interested parties.
33. Planning Practice Guidance(PPG)⁴ notes that the presentation of such late evidence may be grounds for an award of costs. However, the new evidence does not cause me to reach a different conclusion regarding the proposal and so I have not sought the views of the Council. In this case I am satisfied no one has been disadvantaged by my consideration of the late evidence.

Conclusion

34. Whilst it has not been demonstrated that the proposed development would adversely affect the living conditions of future occupiers or housing provision in the area, the harm that would be caused to the character and appearance of the area would outweigh this.
35. For the reasons given above, I conclude the appeal is dismissed.

Andrew Parkin

INSPECTOR

³ [Procedural Guide: Planning appeals – England – GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260022/Procedural_Guide_Planning_appeals_-_England_-_GOV.UK_(www.gov.uk).pdf)

⁴ PPG – Appeals - Paragraph: 052 Reference ID: 16-052-20140306 Revision date: 06 03 2014