



Appeal Decision

Site visit made on 25 June 2024

by Thomas Courtney BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2024

Appeal Ref: APP/C5690/W/23/3333037

907 Old Kent Road, Lewisham, London SE15 1NL

- 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 Mr F Shah (Coggan Investments Ltd) against the decision of the Council of the London Borough of Lewisham.
 - The application Ref is DC/23/130465.
 - The development proposed is the construction of extensions at first floor level to the rear and two additional storeys at 907 Old Kent Road SE15, to provide 4 self-contained residential units, together with associated refuse storage and cycle parking.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have used the description of development used in the Council's decision notice and the appeal form. This is a more accurate description of the proposed development and I have determined the appeal on this basis.

Procedural Matters

3. The appellant has submitted amended plans as part of their appeal. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage.
4. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a "substantial difference" or a "fundamental change" to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.
5. The amendments would substantially alter the layout and appearance of the development, when compared to those upon which the Council made its decision. These are material matters affecting the determination of this appeal. The changes have not been consulted upon. I find that neither part of the necessary test set out in the relevant case law has been satisfied and so I will not accept the amendments. Accordingly, I have determined the appeal having regard to the same proposal on which the Council made its decision.

Main Issues

6. The main issues are:

- Whether the proposal would provide adequate living conditions for the future occupiers of 907 Old Kent Road with regards to light, outlook and privacy;
- Whether the proposal would provide adequate cycle parking; and
- The effect of the proposed development on highway safety.

Reasons

Living Conditions

7. No. 907 Old Kent Road is a two-storey terraced dwelling which features a two-storey rear outrigger and a long single storey extension which occupies the full extent of the curtilage to the rear.
8. The separation distance between the windows of the flats facing into the courtyard area would be very small at approximately 5 metres. The living room windows of Flats 3 and 4 would face towards the rear elevation of the three-storey building fronting Old Kent Road. In the opposite direction, the rear bedroom windows of Flat 1 would face the two-storey building, toward White Post Street, incorporating Flats 3 and 4. The outlook from these windows and within those rooms would therefore be an uncomfortably close relationship to buildings that would appear dominant and oppressive.
9. The occupiers of Flats 1, 3 and 4 would experience uncomfortable levels of overlooking between the bedrooms and living rooms facing one another. Furthermore, the occupiers of Flat 3 would also not enjoy satisfactory levels of privacy when using the outside amenity space within the courtyard, the outlook from which would also be of the oppressive structures at either end of the site. Consequently, the outlook from these flats would be unsatisfactory and the occupiers would lack adequate privacy.
10. The appellant's Internal Daylight Assessment Report (Mach Group Energy, February 2023) states that only 50% of the habitable rooms within the development would achieve 2022 BRE guidelines for daylight distribution. While I accept that this may be comparable with other dense urban environments and that BRE daylight targets should only be used as guidance, the level of shortfall in light attainment would be significant and would severely affect the living standards of the future occupiers.
11. I note that the appellant has submitted an updated Internal Daylight Assessment. However, it corresponds to the amended layout submitted during the course of the appeal, I have not had regard to it here.
12. Given this, the proposal would not provide adequate living conditions for the future occupiers of 907 Old Kent Road with regards to light, outlook and privacy. It would conflict with Policy D6 of the London Plan (2021), Policy 15 of the Lewisham Council's Core Strategy (2011), Policy 32 of the Council's Development Management Local Plan (LP) (2014), and paragraph 135 of the National Planning Policy Framework (NPPF) (2023) which together seek to ensure that proposals are well-designed and provide a satisfactory level of privacy, outlook and natural lighting for future residents.

Cycle Parking

13. The proposed cycle parking area would be cramped and would not comply with the Transport for London (TfL) London Cycle Design Standards. Although there would be a sufficient number of spaces, the two-tier racks would not be suitable for children's cycles and other larger bicycles. TfL have also questioned whether the roller shutters would be adequately secure.
14. I am not satisfied that an alternative layout for the cycle parking be implemented by condition as the space available would not appear to enable an alternative. It is likely that the layout of the scheme would need to be altered to accommodate this. As I have decided not to accept the amended plans, the proposed cycle storage as shown on the original plans would not be acceptable.
15. The lack of acceptable cycle storage would mean that the future occupiers may be more dependent on motor vehicles. Consequently, this would erode efforts to reduce car dependency as well as health problems that result from failing to encourage cycling.
16. Given this, the proposal would not provide adequate cycle parking and would conflict with Policy T5 of the London Plan and Policy 14 of the Core Strategy which seek to ensure proposals provide appropriate levels of secure cycle parking which is designed and laid-out in accordance with the guidance contained in the London Cycle Design Standards (TfL).

Highway Safety

17. The appellant has submitted a parking survey at appeal stage. It determined that the proposal would have a negligible impact upon on-street parking conditions and indicated that parking stress on unrestricted bays was below the 85% threshold for which an area is considered to be under severe parking stress. It is therefore considered that the development would not unreasonably impact parking capacity on the surrounding streets.
18. The Council state that a condition restricting future occupiers' eligibility to a Controlled Parking Zone permit would not be appropriate. I agree that imposing a condition in this regard would be unlikely to pass the test of enforceability as described in the National Planning Policy Guidance (NPPG). However, there is insufficient evidence to suggest the development would lead to uncontrolled overspill. As the proposal would not harm parking capacity and as I am dismissing the appeal, it would not be necessary to impose a condition or seek a legal agreement regarding this matter.
19. The development would not harm highway safety and would therefore not conflict with Policy T6 and T6.1 of the London Plan, Policy 14 of the Core Strategy, Policy 29 of the LP and the NPPF insofar as they seek to ensure new development meets local residential parking standards and does not have a detrimental impact on on-street car parking in the vicinity.

Planning Balance

20. The proposal is not in accordance with the aforementioned policies of the Council's LP (2014), Core Strategy (2011) and the London Plan with the associated conflict reflecting harm to the living conditions of the future occupiers and cycle storage standards. Because of the effect the proposal

would have on the future occupiers, I have judged the magnitude of this harm as significant.

21. The Council concedes that there is currently a significant under-delivery of housing in the Borough. They state that the latest Housing Delivery Test results demonstrate that housing completions across the Borough are significantly under-performing, at 51% of the requirement delivery target. Paragraph 11(d) of the Framework explains that in these circumstances, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. The development would provide some economic benefits during the construction phase and as a result of the future residents' contributions to local businesses, events, and tax revenue. The provision of new dwellings in a sustainable location close to public transport and amenities is also a benefit and ties in with national policy on efficiently boosting the supply of housing. However, due to the small scale of the development, these benefits would be limited.
23. Furthermore, the appellant states that the flats would be appropriately sized, and the buildings would be well-designed and energy efficient as they would be constructed to enhanced insulation and heating standards. The Energy Efficiency Statement highlights positive measures relating to renewable energy, water use, materials, waste and pollution. The efficiency of the buildings would lead to reduced costs for the future occupants. These are positive aspects of the scheme which lend some limited weight in support of the appeal. However, these benefits must be weighed against the provision of inadequate living conditions for the future occupiers with regards to light, outlook and privacy.
24. An absence of harm with regards to flood risk, drainage, noise, air pollution, refuse storage and collection, and the living conditions of neighbouring occupiers is a neutral factor that would not lend any weight in support of the appeal.
25. The development conflicts with the development plan as a whole and should be refused unless other material considerations indicate otherwise. In the particular circumstances of this case, I have concluded that the adverse effect on the living conditions of the future occupiers and the provision of inadequate cycle storage conflicts with policies of the Framework. The adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

26. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

Thomas Courtney

INSPECTOR