
Appeal Decision

Site visit made on 29 November 2016

by David Walker MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th February 2017

Appeal Ref: APP/H5390/W/16/3157196
765 Harrow Road, London NW10 5NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Max Kyte of Hamilton Court against the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2016/01163/FUL, is dated 9 March 2016.
 - The development proposed is demolition of existing building and erection of a 4 storey building incorporating a commercial use within Use Class A1, A2 and B1 on the ground floor and 9 residential units (2x1 bed, 5x2 bed and 2x3 bed) on the upper floors with associated cycle parking space, bin stores, plant room and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and erection of a 4 storey building incorporating a commercial use within Use Class A1, A2 and B1 on the ground floor and 9 residential units (2x1 bed, 5x2 bed and 2x3 bed) on the upper floors with associated cycle parking space, bin stores, plant room and landscaping at 765 Harrow Road, London NW10 5NY in accordance with the terms of the application, Ref 2016/01163/FUL, dated 9 March 2016, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by Mr Max Kyte of Hamilton Court against the London Borough of Hammersmith & Fulham. This application is the subject of a separate Decision.

Main Issues

The main issues in the appeal are:

- i) the effect of the proposal on the living conditions of future occupants having regard to privacy and the availability of daylight
 - ii) the effect of the proposal on the living conditions of existing occupants of properties at Trenmar Gardens having regard to noise and disturbance, and
 - iii) whether having regard to local and national policies the proposal would make adequate provision for affordable housing
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Reasons

Living conditions of future and existing occupants

3. As the appeal site is orientated with a frontage onto the Harrow Road most of the residential units would be north facing. With single aspect rooms included within individual apartment layouts there is potentially a shortage of natural light, particularly units 1, 2, 5 and 8 which have mostly north facing windows. Such an arrangement would not accord with the Council's Planning Guidance Supplementary Planning Document 2013 (SPD) for north facing windows¹ to be avoided wherever possible.
4. A daylight and sunlight assessment provided by the appellant shows that none of the apartments would have only north facing windows. Moreover, the majority of the residential units proposed have rooms that are dual aspect. It is conceivable that an alternative design could achieve more dual aspect units. However, I have no other scheme before me to show this would be possible in practice. Therefore, given the constraints of a site with a road frontage orientated to the north the scheme would achieve reasonable levels of natural light overall for future occupants.
5. Only unit 2 would be at risk of overlooking from people accessing unit 3. With only limited numbers passing by the kitchen window to access a single unit the opportunities for a significant loss of privacy would be low. The kitchen to unit 2 would also be part of a larger open plan living space with two additional windows facing out over Harrow Road. In the event that window dressings were required to further reduce overlooking this would not be to the significant detriment of the natural light levels available to the apartment. I am satisfied therefore that a harmful loss of privacy for future occupants is unlikely to arise.
6. A shared roof garden would clearly provide outdoor living space of the type advocated at paragraph 4.10 of the Hammersmith and Fulham Development Management Local Plan 2013 (the DMLP) for quality of life including providing playspace for children. I acknowledge that the relatively close proximity of the shared garden to existing neighbours could give rise to harmful noise and disturbance if it was used in an antisocial manner. However, such a scenario could arise in any domestic garden and I have nothing before me to indicate that the occupation of the flats proposed would necessarily give rise to any higher risk of antisocial behaviour.
7. Any restrictions on the garden's use by the imposition of planning conditions are unlikely to be enforceable in practice. However, amended plans provided at the time of the application have reduced the size of the shared roof garden by the installation of a balustrade 1.5m away from the parapet wall. It would draw the limits of the garden away from the building's edge and the nearest neighbours. With these modifications as I intend to secure by a condition I am satisfied that noise and disturbance could be reduced to acceptable levels.
8. Overall on these issues I conclude that the proposal would have a satisfactory effect on the living conditions of future and existing occupants. As a result it would accord with Policies DM A2, DM A9 and DM H9 of the DMLP that seek

¹ where the orientation is less than 50 degrees either side of north (Housing Policy 8(iv) of the SPD)

high quality design and acceptable living conditions for existing and future occupants, and Housing Policy 8 of the SPD in relation to avoiding north facing windows.

Affordable housing

9. I acknowledge that saved Policy H2 of the Hammersmith and Fulham Core Strategy 2011 (the CS) seeks an element of affordable housing on sites that are capable of accommodating 10 or more units. In this regard affordable housing provided by smaller developments makes a significant contribution towards the overall provision of affordable housing in the Council's area. However, while the Council considers that an optimum yield for the site has not been demonstrated the appellant is entitled to apply for his preferred scheme of 9 units.
10. Additionally, it is the Government's policy that affordable housing contributions should not be sought from developments of 10 units or less as expressed in the Written Ministerial Statement of 28 November 2014 (the WMS) as incorporated into the Planning Practice Guidance. As a statement of national policy it is a consideration of significant weight. I conclude therefore that no contribution toward affordable housing is justifiable and in this regard the proposal is in accord with Policy H2 of the CS and the policy of the WMS.

Other Matters

11. The lack of any car parking for either the commercial or residential elements of the development has given rise to objections from interested parties. Additionally, concerns have been raised by the operators of the adjoining builder's yard that commercial vehicles servicing the commercial units might hinder access to the yard. I note there is no objection from the Council on highway safety grounds and in the absence of any technical evidence of harm to the contrary I have no reason to disagree. The appeal site is also located in an area with public transport services and within easy reach of local shops and facilities to make car free living a viable option, and cycle parking would be provided.
12. Although a building of some character would be lost in the development it is not protected and demolition could not be prevented. The proximity of the existing builder's yard to the apartments could result in some noise and an unsightly outlook but is a pre-existing condition of the appeal site that would be fully apparent to any prospective occupants. With noise insulation as would be secured under the Building Regulations I am satisfied that satisfactory living conditions could be achieved.
13. I acknowledge the potential for disruption during the course of construction. It could be managed to acceptable levels through good management practices and the control of working hours as I intend to secure by conditions. Where access over third party land is required this would be a private matter between the parties involved.
14. I intend to attach a condition requiring commercial refuse storage to be provided to remedy this deficiency and the risk it could present to streetscene quality.

Conditions

15. Conditions are necessary to identify the time period for implementation and the plans approved in the interests of certainty. As details relating to materials and measures to manage the effects of demolition and construction have not been provided with the appeal it is necessary that they are agreed prior to any development commencing as they go to the heart of the development. For the same reason it is also necessary to agree a scheme for the provision of commercial waste storage as this is not shown on the approved plans.
16. As I have nothing before me surrounding the likely noise and vibration levels that would be emitted from the ground floor plant room it is necessary that further details are provided before first occupation of the development to avoid harmful effects on future occupants. In order to ensure that the development is fully implemented the cycle parking facilities and refuse stores should be provided before first use, together with a servicing and deliveries management plan to avoid conflict with adjoining occupiers.
17. Details of the revised shared garden on the third floor roof are required before first occupation of the residential development along with a restriction on the use of other parts of the roof to safeguard the living conditions of neighbours. Given the location of the commercial units in close proximity to residential properties a restriction on opening hours is necessary to protect existing living conditions. Doors along Trenmar Gardens shown opening outwards on the plans should only open inwards to prevent highway safety problems.
18. The Council has also requested that the occupiers of the development be prevented from applying for parking permits. I do not find this to be necessary as any harm arising from the limited number of additional residential units to be provided would not be significant. A ground contamination desk assessment provided with the application shows there to be limited risk of contamination affecting the site. In the absence of any evidence to the contrary I do not consider the need for further investigations to be justified.
19. I have not imposed additional suggested conditions relating to Secured by Design measures, sustainable urban drainage systems and green roofs, postal address, the removal of permitted rights for the erection of aerials and antennae, the movement of non-road mobile machinery, and submission of a travel plan as I have nothing before me to indicate these would be justified having regard to the tests set out at paragraph 204 of the National Planning Policy Framework.

Conclusion

20. For the reasons given above, and with regard to the development plan read as a whole, I conclude that the appeal should be allowed subject to conditions.

David Walker

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 460-PA.13 Rev B; 460-PA.14 Rev C; 460-PA.15 Rev A; 460-PA.16 Rev B; 460-PA.17 Rev B; 460-PA.18 Rev B; 460-PA.19 Rev C; 460-PA.20 Rev A; 460-PA.24 Rev B; and 460-PA.25 Rev B.
- 3) The development shall not commence until details of the storage of refuse and recyclables for the occupiers of the commercial units hereby approved have been submitted to, and approved in writing by, the Council. No part of the commercial units shall be occupied or used until the waste storage arrangements have been provided in accordance with the approved details. The waste storage arrangements shall thereafter be permanently retained. All refuse generated by the commercial development shall only be stored in the dedicated area.
- 4) Prior to the commencement of the development hereby permitted, a Demolition and Construction Logistics Plan shall be submitted to, and approved in writing by, the Council. The details shall include the numbers, size and routes of construction vehicles, provisions within the site to ensure that all vehicles associated with the construction works are properly washed and cleaned to prevent the passage of mud and dirt onto the highway, and other matters relating to traffic management to be agreed. Approved details shall be implemented throughout the project period.
- 5) Prior to the commencement of the development hereby permitted, a Construction Management Plan (including a Demolition Method Statement) shall be submitted to, and approved in writing by, the Council. Details shall include control measures for dust, emission, noise, vibration, lighting, delivery locations, restriction of hours of work and all associated activities audible beyond the site boundary to 0800-1800hrs Mondays to Fridays and 0800-1300hrs on Saturdays, advance notification to neighbours and other interested parties of proposed works and public display of contact details including accessible phone contact to persons responsible for the site works for the duration of the works. The approved details shall be implemented throughout the project period.
- 6) Prior to development above ground level details of the materials to be used in the external surfaces of the development shall be submitted to and approved by the Council. The development shall be completed in accordance with the approved details.
- 7) Prior to the first use of the development, details shall be submitted to and approved in writing by the Council, of the noise and vibrations levels emitted from the ground floor plant room together with mitigation measures as appropriate. The approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 8) The residential cycle parking spaces shall be implemented prior to the first occupation of the flats and permanently retained for such use thereafter.

- 9) The commercial unit/s hereby permitted shall not be occupied until full details of a servicing and deliveries management plan has been submitted to, and approved in writing by, the Council. Upon the commencement of the use the servicing and deliveries management plan shall be implemented in full compliance with the approved details, and thereafter continue to be fully implemented whilst the commercial use remains in operation.
- 10) No part of the residential development shall be occupied until the refuse and recyclables storage as detailed on the approved plans has been provided. The waste storage arrangements shall thereafter be permanently retained. All refuse generated by the residential development shall only be stored in the dedicated area.
- 11) No part of the residential development shall be occupied until details of the roof garden balustrade have been submitted to and approved in writing by the Council and installed as approved. The balustrade shall thereafter be permanently retained. No alterations shall otherwise be made to the roof of the building to use as a roof terrace or other form of open amenity space. No railings or other means of enclosure shall be erected on the roof, and no alterations shall be carried out to form access onto the roof.
- 12) The commercial unit/s on the ground floor shall be restricted to opening times of 0600-2300 Monday to Saturday and 0800-2200 on Sundays and Bank Holidays.
- 13) Notwithstanding the details on the approved drawings the gas and electricity meter entrances fronting Trenmar Gardens shall not open outwards onto the street.

End of Schedule