
Appeal Decision

Site visit made on 7 February 2017

by Brendan Lyons BArch MA MRTPI IHBC

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

Decision date: 21 March 2017

Appeal Ref: APP/L5810/W/16/3163293

Limes House, 123 Mortlake High Street, Mortlake, London SW14 8SN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Kamal Pankhania, Hollyhedge Ltd against the decision of the Council of the London Borough of Richmond-upon-Thames.
- The application Ref 16/0625/VRC, dated 18 February 2016, was refused by notice dated 11 November 2016.
- The application sought planning permission for: Reversion of The Limes to 6 residential units (2 x 1 bedroom; 4 x 2 bedroom); associated internal and external alterations; 6 associated car parking spaces; without complying with a condition attached to planning permission Ref 12/0973/FUL, dated 5 February 2014.
- The condition in dispute is No.U60272 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans and documents, where applicable: Ordnance Survey Plan 699-1.002 ; 699 1.101, 1.002, 1.201, 1.203, 1.301, 1.302, 1.303, 1.401 received 21st March 2012; 699-SK 130313 received 19th March 2013; 699 1.402 received 21st March 2012; 699-1.102 P1, 1.403 P1; 699-SK-120501-1 received 22nd May 2012; ; 699 1.304 P1 received 30th October 2012; 699 1.003 P6 received 21st May 2013; and 699 1.103 P4 and 699 1.204 P1 received 29th May 2013; 699-1.004 received 5th June 2013; and 699-1.202A received 10th June 2013; 699-1.401 P1 received 12th June 2013.
- The reason given for the condition is: To accord with the terms of the application, for the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is dismissed.

Procedural matter

2. The appeal was accompanied by a more recent revision of the proposed basement layout¹ than that referred to in the Council's decision notice and in the appellant's statement. A copy of the earlier plan was subsequently provided². The Council has not confirmed the appellant's view that the later plan was submitted before the application was refused. As the only change to the plan was a minor annotation that helps to clarify the proposal, I consider that no party's interests would be prejudiced by my taking the later revision into account in the determination of the appeal.

¹ Approved and Proposed Lower Ground Floor Plan no. 485-PL107 C

² Approved and Proposed Lower Ground Floor Plan no. 485-PL107 B

Appeal proposal

3. Limes House (also referred to as The Limes) is a large detached house that backs onto the towpath of the River Thames. The house dates from the early eighteenth century and is listed Grade II*. It comprises a central block of two main storeys above a basement, with attic-level accommodation lit by dormer windows in the hipped roof. Later wings to each side have a flat roof, without the attic floor. The building is set back from the street, and stands within the Mortlake Conservation Area.
4. Planning permission and listed building consent were granted in 2014 for the conversion of the building, previously in office use, to six apartments. The approved layout allowed for three of these to be grouped around the central hallway at ground floor level and for each to have a bedroom or bedrooms and some ancillary rooms at basement level reached by an internal staircase.
5. The application now subject of this appeal sought approval of an amended condition to allow a revised set of plans showing a different layout, which would involve two flats at ground floor level and a larger three-bedroom flat at basement level, with its own direct external access. At the time of my visit, the two ground floor flats had been formed, apparently in accordance with the revised proposal, and were occupied. The basement flat had been partly converted more or less as shown on the new layout, but no external works had been carried out. I have assessed the appeal on the basis of the submitted plans.
6. These works would involve the formation of a lightwell and external staircase to the largely hidden end elevation of the west wing. This wing was added in the early twentieth century, and the proposal would open up an existing escape window access opening as well as forming three new window openings to align with those above. I agree with both main parties that, subject to detail, the proposed alteration would not adversely affect the special interest of the listed building or the character and appearance of the conservation area.
7. The submitted Heritage Statement explains that virtually all interior detail of the original building has been lost over time due to ill-considered alteration and war damage, so that even the well-detailed elements of the main hallway and stairs are probably relatively modern recreations. The proposal would retain these elements, with some doors fixed shut as in the approved scheme, but with the hallway now carried through from front to back, which would improve appreciation of the form of the building. The insertion of an escape hatch into the floor of the rear hallway could be detailed to avoid harmful effects, while its precise location could be adjusted to avoid conflict with the main doorway next to it. The subdivision of ground floor rooms in the modern wings to form bedrooms would not affect heritage value. At basement level, the revised proposal would retain the pattern of spaces slightly better than the approved layout, but would involve the removal of some more original fabric. In this more open context, the proposed spiral escape stair would appear as a clearly functional element. The revised proposal would be neutral in effect, without detriment to the character of this level of the building.
8. Overall, I accept that subject to final detail the revised proposal would not cause harm to the significance of the designated heritage assets, and in some respects would provide a slightly better response to the form of the original building than the approved layout. The proposal would comply in this respect

with national policy and, as outlined by the Council, with Policies DM HD1, DM HD2 and DM DC1 of the Richmond upon Thames Development Management Plan 2011 ('DMP').

Main Issue

9. The main issue in the appeal, arising from the Council's sole reason for refusal, is whether the proposed accommodation would provide an acceptable form of development, having regard to the risk of flooding.

Reasons

10. Government policy set out in the National Planning Policy Framework ('NPPF') seeks to reduce adverse consequences of flooding by directing development away from areas of highest risk. Both local plans and decision making should adopt a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property³. The Planning Practice Guidance ('PPG') outlines the application of policy by reference to Flood Zones identified on consistently drawn maps and by defining the vulnerability to flooding of different classes of development⁴.
11. Development plan policy on flood risk is stated by DMP Policy DM SD6. Although its adoption pre-dates the NPPF, the policy adopts a very similar approach, in line with previous national guidance. As the policy is strongly consistent with the NPPF it can be afforded full weight in the determination of the appeal.
12. The appeal site is located in Flood Zone 3a, and is therefore at high risk of flooding. The DMP states that permission will not be given for highly vulnerable development in this zone, and emphasises that self-contained basement dwellings will not be permitted. The appeal proposal would involve the formation of a self-contained flat entirely at basement level. The proposal is therefore contrary to Policy DM SD6.
13. The Council explains that since the DMP was adopted, it has recently revised its Strategic Flood Risk Assessment ('SFRA') in accordance with NPPF and PPG advice, to review risks and the implications for the location of development, and that the SFRA also confirms that self-contained residential basements and bedrooms at basement level are not to be permitted within Flood Zones 2 and 3. Claimed mitigating factors, such as flood resistant design techniques, are not seen as capable of overcoming the general restriction.
14. The original planning application for the formation of the apartments was accompanied by a site-specific flood risk assessment ('FRA') and an updated assessment has been provided in support of the current proposal. This is consistent with the NPPF and with DMP Policy DM SD6. The Council's officer report, which forms the basis of its case for the appeal, notes that the policy requires proposals in Flood Zone 3a to be supported by a Sequential Test and an Exception Test. However, the NPPF advises that applications for minor development and changes of use are not required to address these tests, and Policy DM SD6 adopts a similar approach, allowing an exception to this requirement in Flood Zone 3a for small-scale residential development and

³ NPPF paragraphs 100-104

⁴ The PPG has superseded the Technical Guidance to the NPPF referred to in the Council's report.

conversions. As the appeal proposal involves variation of a proposed conversion, the DMP exception would apply.

15. However, the PPG advises that in the absence of these tests, the local planning authority should consider when formulating policy what changes of use will be acceptable⁵, having regard to the SFRA and to NPPF guidance on justification for the need to restrict development⁶. The restriction on basement dwellings set by DMP Policy DM SD6 would accord with this advice. The proposal would be contrary to the policy and to the conclusions of the SFRA.
16. In response to evidence on the levels of the building's entrances and main floors and of surrounding site levels, the Environment Agency ('EA') has accepted that the building is unlikely to be inundated in the event of a breach of the river defences, and has withdrawn its original formal objection to the revised layout. However, this does not amount to a conclusion, as interpreted by the appellant, that the revised proposal would represent a reduced risk to life compared with the approved layout. Instead, the EA has re-stated its strong advice that basement dwellings are not an appropriate form of development in this Flood Zone. The FRA acknowledges EA data showing a need for improved flood defences in this area over the next 50 years. In that context, the concern about promoting this form of development is understandable, and lends weight to the DMP restriction.
17. In the light of increased future risk, the fact that permission has been granted for the existing development is not a determinative factor. The NPPF advises that where flood risk is expected to increase so that some existing development might not be sustainable in the long term, opportunities should be sought to facilitate relocation of the development, including housing, to a more sustainable location⁷.
18. The appellant places considerable reliance on the FRA's conclusion that the proposal would represent a benefit over the approved layout, in that the number of bedrooms at basement level would reduce from four to three. It is common ground that bedrooms are the part of a dwelling at greatest risk, so that a net reduction in their number can be accepted as beneficial. However, consideration must also be given to the way in which the bedrooms would be disposed. As the Council points out, the approved layout would allow each of the three duplex apartments⁸ to access its own self-contained ground floor accommodation in the event of the need to leave the basement space. This could allow continued use of the three flats during a period of warning, without the need for evacuation, and even potentially if the basement were affected by flooding.
19. By contrast, residents of the basement flat would probably not be able to remain in occupation if risk was rising. Although the proposed layout would involve a new external access direct to the basement flat⁹, this would not lead them to a good refuge. Basement residents could also be dependent on the proposed escape route by means of the spiral stairs through the escape hatch to be formed in the floor of the main hallway. Clearly the availability of this

⁵ PPG paragraph 7-007-20140306

⁶ NPPF paragraph 157

⁷ NPPF paragraph 100

⁸ The FRA incorrectly refers to two flats rather than three.

⁹ The freeholders of the property have stated that a currently usable access on the river frontage is shortly to be sealed, as residents do not have rights over the land in question.

route would rely on good management of the common area of the building, which the occupiers of the basement flat would not control or probably normally have access to. But even assuming the route would always be usable, the escape would only deliver basement residents to a hallway, and leave them needing some alternative accommodation if the basement was not available. The Council also points out that elderly or vulnerable residents might require assisted evacuation and temporary accommodation, thereby imposing a potential further demand on public services at a time of likely great pressure.

20. Therefore, I do not agree with the appellant that the approved layout, owing to the single staircase in each flat, necessarily represents a greater risk to residents than the appeal proposal. I consider that any potential benefit from the reduced number of basement bedrooms and alternative escape options would be balanced by the countervailing disadvantages of the revised layout. This would not amount to a reason to overcome the DMP restriction on basement dwellings. The proposal would remain contrary to national and local policy.
21. The appellant suggests that the proposal's perceived heritage benefit should also count in its favour. However, the approved layout has received planning permission and listed building consent, so there is no dispute that its impact on heritage significance would be acceptable. The approved layout would achieve the key benefit of securing the future of the listed building, and there is no suggestion that the revised layout is necessary to achieve optimum viable use of the heritage asset. The modest improvement in heritage impact of the proposed layout would not provide sufficient weight to overcome the fundamental policy objection.

Conclusion

22. For the reasons set out above, and having taken all representations into account, I conclude that the appeal should be dismissed.

Brendan Lyons

INSPECTOR