



Appeal Decision

Site visit made on 7 January 2020

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 14 February 2020

Appeal Ref: APP/H5390/W/19/3235937

1 Gayford Road, London W12 9BY

- 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 Simon Wedgewood (EDM Developments Limited) against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref: 2019/00451/FUL, dated 30 January 2019, was refused by notice dated 3 June 2019.
 - The development proposed is demolition of existing buildings and erection of two replacement buildings; a three storey building facing onto Gayford Road, and a part two part three storey building at the rear; to create 8 self-contained flats (3 x 1 bed/1 person flats, 4 x 1 bed/2person flats, 1 x 2 bed flat); associated plant, landscaping and cycle parking.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and erection of two replacement buildings; a three storey building facing onto Gayford Road, and a part two part three storey building at the rear; to create 8 self-contained flats (3 x 1 bed/1 person flats, 4 x 1 bed/2person flats, 1 x 2 bed flat); associated plant, landscaping and cycle parking at 1 Gayford Road, London W12 9BY in accordance with the terms of the application, Ref: 2019/00451/FUL, dated 30 January 2019, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matters and Background

2. Planning permission was granted in 2016 for '*demolition of existing buildings and erection of two replacement buildings, a three storey high building with basement level facing onto Gayford Road and a two storey high building at the rear, to create six self-contained flats (3 x 1 bed and 3 x 2 beds).*'¹ In 2017, it came to light that the development under construction was not in accordance with that extant permission, as a three-storey building was being constructed to the rear.
3. A retrospective planning application² was submitted to regularise the position. It was refused by the Council but allowed on appeal on 2 October 2018.³ The Council advises that it subsequently learnt that 8 flats had been constructed, rather than the 6 flats approved on appeal. Instead of the approved 'family-sized' maisonette over the first and second floors of the rear building, three

¹ 2016/01233/FUL

² 2017/04786/FUL

³ APP/H5390/W/18/3199117

one bedroom flats have been constructed. I understand that the external form of the building is essentially unchanged, aside from a second floor rear window serving a bedroom, which the Council do not consider to be problematic in terms of overlooking issues.

4. A further planning application⁴ was submitted to regularise the position, which was refused by the Council and is the subject of this appeal. The development appeared to be essentially complete at the time of my site visit and the flats occupied.
5. I have based my decision on the submitted plans as although the development has been built, there appeared to be some minor differences between, for example, the courtyard layout and aspects of those plans.

Main Issues

6. The main issues are:

- whether the development provides an acceptable housing mix to meet the needs of prospective occupiers and the demand for housing; and,
- whether the development provides acceptable living conditions for occupiers in terms of internal living space, with particular reference to the flats, identified as R3.1 and R4.1, on the first floor of the rear building.

Reasons

Housing mix

7. The Council considers the as-built mix of 7 one-bedroom flats and 1 two-bedroom flat to be unacceptable and submits that it limits choice for prospective buyers or, presumably, renters. However, it seems to me that the mix is more varied than implied by the Council's characterisation, as the 7 one-bedroom flats include 4 flats suitable for occupation by 2 persons and 3 appropriate for single persons, in addition to the two-bedroom unit.
8. Notwithstanding, the Council's concern appears to be mainly focussed on the perceived lack of family accommodation (i.e. units of three or more bedrooms). It points to policy HO5 'Housing Mix' of the Hammersmith & Fulham Local Plan (LP),⁵ which indicates, at 'c', that for market housing the aim should be for '*a mix of unit sizes including larger family accommodation.*'
9. However, policy HO5 states: '*Developments should aim to meet the following mix subject to viability, locational characteristics and site constraints being considered on a site by site basis.*' That wording indicates a degree of flexibility in the application of the policy, taking account of the nature of the site. Furthermore, LP policy HO4 indicates that all housing development should provide a high-quality residential environment and '*(subject to the size of the scheme) provide a good range of housing types and sizes.*'
10. The previously approved schemes related to 6 units spread across two buildings, while the current appeal proposal amounts to 8 units. Therefore, the scale of the development is relatively limited, which the LP acknowledges is a relevant factor in assessing the housing mix. That appears to be a reasonable

⁴ 2019/00451/FUL

⁵ February 2018

approach as smaller developments may provide more limited opportunities for a range of housing types and sizes.

11. The Council says that the original 2016 permission, already referred to above, had a more varied mix than the appeal proposal. However, albeit that it was assessed against now superseded policies, the 3 two-bedroom flats and 3 one-bedroom flats approved under that scheme did not include any 'family-sized housing', as defined in the current LP. Therefore, I give that contention limited weight, especially as the appeal scheme offers a reasonable level of variety, with 3 of the one-bedroom flats suitable for 1 person and the other 4 of a size appropriate for 2 persons, with a 2-bedroom flat in addition.
12. It is also submitted by the Council that the subsequent application, which it refused but that was approved on appeal, improved the housing mix by proposing a 3-bedroom family sized unit. While I note that point, housing mix was not a main issue in the relevant appeal, and of the 6 units permitted, only one was family sized. In any event, while the planning history is of some relevance, my role is to assess the appeal scheme before me.
13. The supporting 'justification' text to LP policy HO5, which it is legitimate to consider as an aid to the interpretation of the policy, indicates that while there is a particular need for more family sized housing (i.e. of three or more bedrooms), *'some sites may be more appropriate for families with children, particularly sites with safe access to amenity and playspace.'*⁶ In this case, the scale of the site and the limited outdoor courtyard space between the buildings makes it less suitable for family use.
14. An extract from the Council's Strategic Housing Market Assessment (SHMA) Update 2018 has been supplied by the appellant.⁷ It indicates that over the period 2016-2036 the number and proportion of one-person and couple households are projected to increase, relative to family households. The supporting text of LP policy HO5, while recognising the need for larger house sizes, also refers to the Council's SHMA identifying a high need for 1 bedroom and 2 bedroom properties, albeit based on the Council's HomeBuy Register.⁸
15. The appellant has also supplied market evidence from a local estate agent which shows a high demand for 1 and 2 bed rental properties. While that data represents a snapshot from one firm of estate agents, as at 21 August 2019, their accompanying letter says that across the year the most consistent demand is for one and two bedroom properties.⁹ The Council has not provided a statement of case to respond to or dispute those aspects. Therefore, on the basis of the evidence before me, it appears that there is likely to be a continuing and increasing demand for accommodation for single persons and couples in both the property and rental markets in the area. The type of flats in the development would suit those needs.
16. The appellant advises that the flats are intended for the private rented sector and will be retained as a revenue-generating asset, rather than the individual units being sold off. Reference is made to support for the private rented sector within The London Plan¹⁰ and associated guidance. However, that aspect is

⁶ Paragraph 6.51

⁷ Appendix IV - appellant's Statement of Case

⁸ Paragraph 653

⁹ Appendix VII - appellant's Statement of Case

¹⁰ March 2016

not at the heart of the dispute, which centres on whether the mix is acceptable whether for rent or for market sale.

17. The appellant also refers to policy support for the Build to Rent (BTR) sector in The Draft London Plan – Consolidated Changes Version (2019). However, there is no specific or clear evidence that the appeal scheme is of the type referred to in the definition of 'Build to Rent' within the Glossary to the National Planning Policy Framework (the Framework)¹¹, or as detailed in relevant parts of the Planning Practice Guidance.¹²
18. Overall, balancing the above factors, I conclude that the development provides an acceptable housing mix to meet the needs of prospective occupiers and the demand for housing. As LP policies HO4 and HO5 both indicate a degree of flexibility in their application, taking into account site-specific factors and the size of the scheme, I do not consider that, in this particular instance, there would be any significant departure from those policies or the aims of the development plan to deliver a reasonable mix of housing types and sizes.

Living conditions

19. The Council refers to 2 one bedroom 2 person flats, situated on the first floor of the rear building and shown as R3.1 and R4.1 on the submitted plans.¹³ It contends that they fail to comply with the relevant space standards and provide cramped living conditions for occupiers.
20. LP policy HO4 says that all new housing must be designed in accordance with The London Plan internal space policies, unless it can be shown that a departure from those standards is justified by the circumstances of a particular site. The London Plan policy 3.5 incorporates the minimum space standards set out in the Government's 'Technical housing standards – nationally described space standard' (the space standard).¹⁴
21. The Council Officer's Report states: *'The size of the bedrooms of flats R.3.1 and R4.1...are 12m² and 12.1m² respectively. Exceeding 11.5m², these are classified as double rooms suitable for 2 persons, as advised by guidance. National described space standards stipulates [sic] that 1 bed 2 person units should have a minimum GIA of at least 50m². It is considered that these flats provides [sic] cramped living conditions for two people.'*
22. However, the description of development refers to '3 x 1 bed/1 person flats, 4 x 1 bed/2person flats, 1 x 2 bed flat.' The appellant says that units R3.1 and R4.1 have been designed as one bedroom 1 person units, with single rather than double bedrooms, as indicated on the submitted plans. According to the space standard, a 1 bedroom 1 person unit should have a minimum gross internal floor area (GIA) of 39m². With GIAs of 46m² and 41m², flats R3.1 and R4.1 exceed that minimum.
23. The appellant's description of those flats appears to be supported by layouts and floor areas sizes shown on the submitted plans, which in turn accords with the description of the development. Units R3.1, R4.1 and R5.1 appear to be

¹¹ February 2019

¹² Paragraphs: 001 Reference ID: 60-001-20180913, 007 Reference ID: 60-007-20180913, Paragraph: 010 Reference ID: 60-010-20180913

¹³ Drawing No; 0661-P-226 Revision A

¹⁴ March 2015

the one bedroom 1 person units, with units R1.1, R2.1, F1.1 and F2.1 being one bedroom 2 person units and unit F3.2 a 2 bedroom flat.

24. Yet, the Council view appears to be that because the bedrooms in the two relevant flats are 12m² and 12.1m², respectively, which is above the 11.5m² minimum for a double or twin bedroom referred to in paragraph 10.d of the space standard, the flats should be treated as one bedroom 2 person units and are, therefore, subject to an increased GIA minimum of 50m².
25. However, the space standard states, at paragraph 10 and part c, that the standard requires that *'in order to provide one bedspace, a single bedroom has a floor area of at least 7.5m² and is at least 2.15m wide'*. The use of the words 'at least' indicates that the 7.5m² figure is a minimum. Indeed, the supporting text to LP policy HO4 states: *'The London Plan (2016) has identified minimum space standards for new development outlined in Table 3.3, developers are encouraged to exceed these, to assist in providing a mix of sizes.'*¹⁵
26. Furthermore, the Council's Planning Guidance: Supplementary Planning Document (SPD)¹⁶ states within 'Key principle – HS2 Standards, Internal space standards for new development' that: *'All proposals which result in new living space should adhere to the London Plan internal space standards. Applicants are encouraged to view these as a minimum and exceed these standards where possible.'* It seems to me that the proposal has complied with that advice and the space standard in providing bedrooms and GIAs, in Flats R3.1 and R4.1, which exceed the relevant minimums for a 1 bed 1 person flats.
27. It is clear from its content, and relevant policy and guidance, that the space standard provides a set of 'minimum' basic standards, to be observed where possible, and is not intended to penalise developments which exceed the minimum applicable standard. Therefore, while I note the Council's interesting interpretation the space standard and its application to this scheme, it has not provided any persuasive evidence to justify its approach. In any event, as I observed on my site visit, both of the flats in question appear to be well-designed with good sized bedrooms and living spaces opening out onto balconies.
28. The above factors lead me to conclude that the development provides acceptable living conditions for occupiers in terms of internal living space, with particular reference to the flats identified as R3.1 and R4.1. Therefore, the development complies with LP policy HO4 and key principle HS2 of the SPD, which seek to ensure, amongst other things, that development is designed in accordance with The London Plan internal space policies, unless a departure is justified by the circumstances of a particular site.

Other Matters

29. In addition to the matters dealt with above, a neighbouring occupier refers to use of a roof accessed via a window in the rear building, affecting his privacy. A condition is attached to this decision, as it was to the previous permission, which does not permit the use of any other parts of the roof, aside from the balconies and terraces indicated, as a terrace, to safeguard neighbouring living conditions.

¹⁵ Paragraph 6.45

¹⁶ February 2018

30. A balcony to the rear of the front building is also referred to as affecting the privacy of a neighbouring occupier, but this was already permitted under the previous scheme where effects on neighbouring residents were considered to be acceptable. Some other third parties have also referred to loss of light, overshadowing and overlooking. Again, these matters were assessed as acceptable in relation to the previous permission and in the Council Officer's Report relating to the appeal proposal. Although I have turned my own mind to these matters, there is no compelling evidence before me which would lead me to take a different view from the Council or the Inspector who dealt with the previous appeal regarding those issues.
31. Further matters have been raised which mainly concern construction and related traffic, but the development is complete, so those issues are no longer relevant. Pressures on car parking in the area are referred to but the development is intended to be car-free with the ability of occupiers to apply for parking permits restricted by means of a suitable scheme, which can be secured by condition.
32. Therefore, although I have considered these and other issues raised by third parties, they do not lead me to alter my decision.

Conditions

33. The Council has suggested conditions which I have considered, making amendments, if necessary, to ensure compliance with the tests contained in the Framework¹⁷ and the Planning Practice Guidance (PPG). Although given opportunities to do so, the appellant has not commented on or objected to the Council's suggested conditions.
34. A condition relating to waste and recycling storage is necessary to ensure that appropriate waste management facilities are in place. The Council has suggested conditions in relation to landscaping, to reflect minor changes to the waste and recycling facilities from the previously approved landscaping scheme. Given the changes, albeit minor, I agree that such conditions are necessary to ensure that appropriate landscaping is in place and maintained.
35. Other conditions suggested by the Council, in relation to the east elevation, solar panels, external lighting and vertical timber screening, appear to flow from conditions attached to the previous permission granted on appeal.¹⁸ The Council has approved the relevant details of discharge of conditions application. Therefore, while the suggested conditions refer out to a separate approval, in these particular circumstances, I consider that they are acceptable. Moreover, as the appellant would have submitted the relevant details for approval there is no reason to consider there should be practical difficulty in complying with them.
36. The condition relating to the east elevation and timber screening is necessary for certainty and to protect neighbouring living conditions. The condition dealing with solar panels is necessary to safeguard the appearance of the site and the area, as is the condition relating to external lighting, which is also necessary to protect neighbouring living conditions. It is important that the development is retained in accordance with those approved details.

¹⁷ Paragraph 55

¹⁸ APP/H5390/W18/3199117

37. A condition to prevent the use of any other parts of the roof as a terrace, aside from the balconies and terraces indicated, is necessary to safeguard the living conditions of neighbouring occupiers.
38. LP Policy T4 requires car parking permit-free measures on all new development unless evidence is provided to show that there is a significant lack of public transport, with the intention of reducing commuting by car adding to existing congestion. The 'justification' text of policy T4 says that the Council will only consider issuing permits for on street parking in locations where the Public Transport Accessibility Level (PTAL) is 2 or lower. According to the appellant the PTAL in the area is 3 and no objection has been raised to car parking permit free measures.
39. However, the condition suggested by the Council, is not appropriate, albeit it is in the same form as that attached to the previous appeal decision, which appears to be derived from an earlier version. For example, it states that '*prior to any occupation of the residential development, hereby approved, written notification shall be submitted...*' Here, the development is already occupied. Moreover, the suggested condition intends to prevent the occupiers of the flats from applying for or retaining parking permits. Therefore, it is attempting to place a restriction on the actions of individual occupiers rather than regulating the development or use of land, as referred to in s.72 of the Town and Country Planning Act 1990 (TCPA). Furthermore, in terms of enforceability, it is not clear to me how an occupier could be prevented from applying for a parking permit or made to surrender it. Consequently, in the suggested form, the condition would be inappropriate and potentially unlawful.
40. Car parking permit-free measures are more usually achieved in London via schemes detailed within a planning obligation or agreement, which put the onus on the owner of the land not to allow occupants of the new development to apply for parking permits. The Planning Practice Guidance (PPG) says that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It indicates that the use of negatively worded conditions requiring such obligations to be entered into prior to development taking place, would only be appropriate in exceptional circumstances, such as where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes).¹⁹ The appeal proposal would not fall into that category. In any event the appeal scheme is already essentially complete and occupied.
41. Given the above, I have imposed an alternative condition, recognising the retrospective nature of the application, which requires an appropriate scheme relating to car parking permit-free measures to be submitted to the Council within 3 months of the date of this permission. The purpose of condition 9 is to require the appellant to comply with a strict timetable for dealing with a detailed scheme or agreement to secure the development as a car-free development, which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded

¹⁹ Paragraph: 010 Reference ID: 21a-010-20190723

condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is, therefore, to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

42. A condition suggested by the Council seeks to restrict rights contained in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Paragraph 53 of the Framework says that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so, which is not apparent here. In any event, the relevant parts of the Order relate to dwellinghouses. Residential flats do not fall within the definition of 'dwellinghouse' given within the GPDO. Therefore, as it is not necessary to take away 'rights' which do not exist, I have omitted that suggested condition.
43. The Council also suggested a condition concerning sound insulation standards relating to the flats R3.1, R4.1 and R5.1 (as shown on the submitted plans), as they were not previously approved or assessed against the current LP and associated guidance. While I note that concern the PPG advises that conditions requiring compliance with other regulatory regimes, including Building Regulations, will not meet the test of necessity.²⁰ In this case, I have no clear evidence before me to suggest that the requisite flats have not been built to a similar standard to the others, as previously approved. Moreover, there is a hallway dividing flats R3.1 and R4.1, while flat R5.1 is a one bed, one person flat which has only one flat below it. Overall therefore, in these particular circumstances, I do not consider such a condition to be reasonable or necessary.

Conclusion

44. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

JP Tudor

INSPECTOR

Schedule of Conditions

- 1) Within three months of the granting of this permission, the waste and recycling storage shall be provided in accordance with the details shown on approved drawings 0661-P-225. The storage areas shall be permanently retained for this use thereafter.
- 2) Within three months of the granting of this permission, details of landscaping of all the area external to the building, including planting, paving, fences, gates and other means of enclosure shall be submitted to and approved in writing by the local planning authority. The development shall be retained in accordance with the approved details.
- 3) Any additional planting or replanting, reseeding and re-turfing required as part of the agreed soft landscaping scheme (condition No 2) shall be carried out in the first planting or seeding seasons following the date of

²⁰ Paragraph: 005 Reference ID: 21a-005-20190723

this decision. Any trees or shrubs which die, are removed or become seriously damaged or diseased within 5 years of the date of the initial planting shall be replaced in the next planting season with others of similar size and species.

- 4) The details of the east elevation facing towards 7 Aspen Villas shall be built in accordance with the approved details of discharge of condition application ref. 2018/04095/DET. The development shall be retained in accordance with the approved details.
- 5) The solar panels shall be built in accordance with the approved details of discharge of conditions application, ref.2018/04095/DET. The development shall be retained in accordance with the approved details.
- 6) The external lighting shall be built in accordance with the approved details of discharge of conditions application, ref.2018/04095/DET. The development shall be retained in accordance with the approved details.
- 7) The details of vertical timber screening/obscure glazing to windows and terraces at ground, first and second floor levels shall be built in accordance with the approved details of the discharge of conditions application, ref.2018/04095/DET. The development shall be retained in accordance with the approved details.
- 8) Notwithstanding the balconies and terraces indicated on the approved drawings, no part of any other roof of the approved buildings shall be used as a terrace or other amenity space.
- 9) Unless within 3 months of the date of this decision a detailed scheme or agreement to secure the development as a car-free development, is submitted in writing to the local planning authority for approval, and unless the approved scheme or agreement is implemented within 3 months of the local planning authority's approval, the use or occupation of the site as residential flats shall cease until such time as a scheme or agreement is approved and implemented. If no scheme or agreement in accordance with this condition is approved within 9 months of the date of this decision, the use of the site or occupation as residential flats shall cease until such time as a scheme approved by the local planning authority is implemented. Upon implementation of the approved scheme or agreement specified in this condition, that scheme or agreement shall thereafter be retained and operated for so long as the use hereby permitted continues.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

End of Schedule