The Planning Inspectorate

Appeal Decision

Site visit made on 13 January 2021

by P D Sedgwick BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2021

Appeal Ref: APP/H5390/W/20/3256222
113 - 135 Lillie Road, London, SW6 7SX

- 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 R U Linked against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2020/00366/FUL, dated 7 February 2020, was refused by notice dated 26 June 2020.
- The development proposed is full planning application comprising first floor rear extension and a second floor roof extension to create 10 no. residential units (9 x 1 bedroom and 1 x 2 bedroom) at first and second floor level, along with refurbishment of the ground floor retail units and alterations to the existing shopfronts.

Decision

1. The appeal is allowed and planning permission is granted for full planning application comprising first floor rear extension and a second floor roof extension to create 10 no. residential units (9 x 1 bedroom and 1 x 2 bedroom) at first and second floor level, along with refurbishment of the ground floor retail units and alterations to the existing shopfronts at 113 - 135 Lillie Road, London, SW6 7SX in accordance with the terms of the application, Ref 2020/00366/FUL, dated 7 February 2020, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by R U Linked against the Council of the London Borough of Hammersmith & Fulham. This application is the subject of a separate Decision.

Procedural Matter

3. The description of development in the planning application form included the words 'submission of'. I have removed these words from the description of development in the banner heading above as they do not describe the development and are therefore superfluous.

4. Subsequent to the refusal of permission for the proposed development the London Plan 2021 (LP) was published in March 2021. It replaces the London Plan (2016). I have therefore referred to the relevant policies in the recently published plan.

Main Issue

5. The main issue is the effect of the proposed development upon the living conditions of occupants of the development with particular regard to outlook, daylight and sunlight.

Reasons

6. The appeal site relates to a terrace of properties comprising mainly retail units on the ground floor and a mix of residential, ancillary storage and commercial uses on the first floor. The Clem Attlee redevelopment scheme (planning permission Ref 2017/03700/FUL) for the erection of a part three, part five storey building to the immediate rear of the appeal site was under construction at the time of my visit.

7. A similar planning application to the appeal proposal was refused and dismissed at appeal.[1] The appeal was dismissed on the grounds that the Clem Atlee redevelopment scheme would overshadow and adversely affect the outlook from the rear first floor bedroom windows of the proposed development.

8. The current appeal proposal is a redesign of the previous scheme replacing the rear bedrooms with a bathroom and utility room. The Council is concerned that these rooms, in particular the utility rooms, could be converted to a second bedroom which would then be adversely affected in terms of limited daylight and poor outlook as per the previously dismissed scheme. Whilst that is a possibility, I must deal with the scheme before me. As the appellant has suggested, the proposed scheme is not just a re-labelling of rooms, but a reconfiguring of the internal layout. This includes increasing the size of the front bedroom and removing an ensuite bathroom, in addition to relocating the bathroom and adding a utility room.

9. The Hammersmith and Fulham Planning Guidance Supplementary Planning Document (SPD) (2018) refers to impacts on habitable rooms. The supporting text to Key Principle HS2 of the (SPD) notes the importance of sunlight and states that the ability for at least one habitable room to receive sunlight should be a priority. Key Principle HS7 of the SPD refers to rear extensions not worsening the outlook from habitable rooms.

10. Bathrooms and utility rooms are not habitable rooms. As such outlook and access to daylight and sunlight from windows serving them is less important than for other rooms such as bedrooms and kitchen/dining rooms. The latter would have large windows on the front elevation of the building. Outlook would be unrestricted with views across Lillie Road. There would be no overshadowing affecting these windows thus ensuring there would sufficient daylight and sunlight to ensure decent living conditions for occupants of the proposed development. Furthermore, by placing the bathrooms at the rear of the first floor they would have access to a window allowing natural ventilation and some natural light in addition to that provided by skylights.

11. I also note the Appellant's comments that the existing accommodation does not meet nationally prescribed and London Plan minimum space standards and that the proposed development, including the proposed amenity space, would be an improvement in this regard.

[1] APP/H5390/W/19/3232696

12. In my view, the concerns that led to the previous scheme being dismissed have been addressed and the living conditions of future occupants would not be unacceptably harmed in terms of outlook and access to daylight.

13. The proposal would not therefore conflict with the most relevant policies of the development plan, which are LP Policies D3 and D6 which respectively deal with outlook, privacy and amenity and the provision of sunlight and daylight and policies DC1, DC4, HO4 and HO11 of the Hammersmith and Fulham Local Plan (2018) which seek to protect amenity. In this regard there would also be no conflict with the objectives of Key Principle HS2, HS6, and HS7 of the SPD. Key Principle HS8 of the SPD deals with balconies and terraces and is not directly relevant to this issue.

Other Matters

14. Local residents raised concerns regarding the structural integrity of the buildings, parking, the loss of commercial space affecting the viability of ground floor units and the need for a construction management plan. I have no evidence before me regarding the structural integrity of the building or the potential impact of the proposed development on the viability of commercial units. The appeal site is in a sustainable location with access to public transport and the proposed development incorporates secure bicycle storage thus enabling travel alternatives to private cars.

Conditions

15. I have considered the conditions suggested by the Council. The 3 year period in which the planning permission may be implemented is a statutory requirement. A condition specifying the approved plans is necessary in the interests of certainty. Conditions regarding materials and restricting structures on the flat roof and pipes and flues on the front elevation are necessary to safeguard the character and appearance of the area. A construction logistics plan and construction management plan are necessary to ensure highway safety is maintained and the living conditions of occupiers of nearby buildings are protected during construction, respectively. Conditions restricting car permits, requiring bin storage and in relation to a noise assessment and insulation are necessary to protect the living conditions of occupants of the proposed development and neighbouring buildings. Conditions in relation to ventilation and emissions are necessary to protect the health of occupants from poor air quality. Conditions relating to a flood risk assessment and green roof are necessary in the interests of preventing flooding and managing surface water runoff and a condition requiring cycle parking is necessary to promote alternatives to car use. Other conditions suggested by the Council in regard to window details and car free development duplicate the recommended conditions and are not therefore necessary.

Conclusion

16. For the reasons given above I conclude that the appeal should be allowed.

P D Sedgwick

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall not commence later than the expiration of 3 years beginning with the date of this planning permission.

2) The development shall be carried out and completed only in accordance with the details and drawings hereby approved.

3) Prior to commencement of the development hereby approved, a Construction Logistics Plan shall be submitted to, and approved in writing by, the Council. This must be in accordance with Transport for London (TfL) requirements and should seek to minimise the impact of construction traffic on nearby roads and restrict construction trips to off-peak hours only. Thereafter the approved details shall be implemented throughout the project period. The details shall also include the numbers, size and routes of demolition and 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.

4) Prior to commencement of the development hereby approved, details and samples of materials as appropriate shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details as approved and thereafter permanently retained in this form. Details and samples shall include the following:

    (A) Details and samples of brickwork (including details of colour, composition and texture of the brick, and the bond, pointing style and mortar mix; and colour to be used);

    (B) Details and samples of the materials for the additional floor;

    (C) Details and samples of all other external materials including roof, windows, and entrances.

5) Any alterations to the elevations of the existing building (including works of making good) shall be carried out in the same materials as the existing elevation to which the alterations relate, and any repairs to the existing brickwork shall be carried out using matching brick, mortar, and pointing.

6) No water tanks, water tank enclosures or other structures shall be erected upon the flat roof of the extension hereby permitted.

7) No plumbing, extract flues or pipes, other than rainwater pipes, may be fixed on the front elevation of the building.

8) Prior to the occupation of the development hereby permitted, details of 11 safe and secure cycle parking space for the occupiers of the units hereby approved shall have been submitted to and approved in writing by the Local Planning Authority, and no part of the property shall be occupied or used until the cycle storage arrangements have been provided in accordance with the approved details. The cycle storage arrangements shall thereafter be retained.

9) Prior to the occupation of the development hereby approved, details of adequate storage of refuse and recyclables for the occupiers of the new residential units shall have been submitted to and approved in writing by the Council. Details shall include siting and capacity of the refuse storage area. No

part of the residential units shall be occupied or used until the waste storage arrangements have been implemented in accordance with the approved details and shall thereafter be retained.

10) No occupier of the new units hereby permitted, with the exception of disabled persons who are blue badge holders, shall apply to the Council for a parking permit or retain such a permit, and if such a permit is issued it shall be surrendered to the Council within seven days of written demand.

11) The new units hereby permitted shall not be occupied until such time as a scheme has been submitted to and approved in writing by the Local Planning Authority to ensure that all occupiers, other than those with disabilities who are blue badge holders, have no entitlement to parking permits from the council and to ensure that occupiers are informed, prior to occupation, of such restriction. The new residential units shall not be occupied otherwise than in accordance with the approved scheme unless prior written agreement is issued by the Council.

12) Prior to occupation of the development hereby permitted, flood mitigation/proofing measures shall have been implemented in accordance with the details contained within the approved Flood Risk Assessment, and a non-return valve and pump device should be installed to prevent sewage 'back-surging' in times of heavy rain and to allow the property's sewage to continue to flow properly into the sewer network. The measures shall thereafter be retained in perpetuity.

13) Prior to commencement of above ground works in the development hereby permitted, (excluding site clearance, demolition and basement works) a Ventilation Strategy report in order to mitigate air pollution for C3 use shall be submitted to and approved in writing by the Council. The Ventilation Strategy report should include the following information:

1. Details and locations of the air intake locations at rear roof level

2. Details of non-openable windows (except for emergency purge ventilation) for Habitable rooms (bedrooms, living rooms) on front elevations with Lillie Road (A3218)

3. Details and locations of ventilation extracts, to demonstrate that they are located a minimum of 2 metres away from the fresh air ventilation intakes, openable windows, balconies, roof gardens, terraces;

4. Details of the independently tested mechanical ventilation system with Nitrogen Dioxide (NO2) and Particulate Matter (PM2.5, PM10) filtration to remove airborne pollutants. The filtration system shall have a minimum efficiency of 75% in the removal of Nitrogen Oxides/Dioxides, Particulate Matter (PM2.5, PM10) in accordance with BS EN ISO 10121-1:2014 and BS EN ISO 16890:2016;

The whole system shall be designed to prevent summer overheating and minimise energy usage. The maintenance and cleaning of the systems shall be undertaken regularly in accordance with manufacturer specifications and shall be the responsibility of the primary owner of the property. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

14) Prior to occupation of the development, details of a post installation report of the approved ventilation strategy shall be submitted to and approved in writing by the Local Planning Authority. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

15) Prior to occupation of the development hereby permitted, details of the installation of the Zero Emission Air Source Heat Pumps or Electric Boilers to be provided for space heating and hot water shall be submitted to and approved in writing by the Local Planning Authority. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

16) Prior to occupation of the development hereby permitted an Ultra Low Emission Strategy (ULES) for the operational phase of the development in order to mitigate the impact of air pollution shall be submitted to and approved in writing by the Local Planning Authority. The Ultra Low Emission Strategy must detail the remedial action and mitigation measures that will be implemented to protect receptors (e.g. design solutions). This Strategy must make a commitment to implement the mitigation measures that are required to reduce the exposure of poor air quality and to help mitigate the development's air pollution impacts, in particular the emissions of NOx and particulates from on-road vehicle transport by the use of Ultra Low Emission Zone (ULEZ) compliant Vehicles in accordance with the emissions hierarchy (1) Cargo bike (2) Electric Vehicle, (3) Alternative Fuel e.g. CNG, Hydrogen, LPG, (4) Hybrid (non-plug in) Electric Vehicle (HEV), (5) Plug-in Hybrid Electric Vehicle (PHEV), (6) Diesel/Petrol Euro 6 (AIR Index Urban NOx rating A) and Euro VI. A monitoring report of the implementation of the ULES shall be submitted on annual basis to the LPA. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

17) Prior to commencement of the development, a noise assessment shall be submitted to the Council for approval of external noise levels incl. reflected and re-radiated noise and details of the sound insulation of the building envelope, orientation of habitable rooms away from major noise sources and of acoustically attenuated mechanical ventilation as necessary to achieve internal room- and (if provided) external amenity noise standards in accordance with the criteria of BS8233:2014. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

18) Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of the sound insulation of the floor/ ceiling/ walls separating the commercial part(s) of the premises from dwellings. Details shall demonstrate that the sound insulation value DnT,w is enhanced by at least 10dB above the Building Regulations value and, where necessary, additional mitigation measures are implemented to contain commercial noise within the commercial premises and to achieve the criteria of BS8233:2014 within the dwellings/ noise sensitive premises. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

19) Prior to commencement of the development hereby approved, a construction management plan shall be submitted to and approved in writing by the Council. Details shall include control measures for dust, 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 -1300 hrs 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. Approved details shall be implemented throughout the project period.

20) Notwithstanding the information given in this application, the development hereby permitted shall not commence until details of the green roof to the development have been submitted to, and approved in writing by, the Council. The approved scheme shall be implemented in accordance with the approved details prior to first use of the development hereby permitted, and thereafter permanently retained.

*****End of Conditions*****