
Appeal Decision

Site visit made on 6 May 2021

by D J Barnes MBA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2021

Appeal Ref: APP/X5210/W/20/3264186
74 Fortune Green Road, London NW6 1DS

- 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 74 Fortune Green Road Limited against the decision of the Council of the London Borough of Camden.
 - The application Ref 2020/2121/P, dated 13 May 2020, was refused by notice dated 23 October 2020.
 - The development is a change of use of basement and rear part of ground floor to provide one dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of basement and rear part of ground floor to provide one dwelling at 74 Fortune Green Road, London NW6 1DS in accordance with the terms of the application, Ref 2020/2121/P, dated 13 May 2020, the conditions identified in the attached Schedule to this decision.

Procedural Matters

2. At the time of the site visit the development, subject of this appeal, had been undertaken. A Planning Obligation, signed and dated as a Deed and in the form of an agreement, has been submitted to secure a car free development.

Main Issues

3. It is considered that the main issues are (a) whether the occupiers of the development have satisfactory living standards and (b) whether a Planning Obligation is necessary for the development to be car free.

Reasons

Living Standards

4. The appeal property comprises the ground and basement floors of a building located within a mixed use area. As with other buildings fronting Fortune Green Road, the property has commercial use at ground floor level facing the street and residential use above. The front part of the ground floor is currently occupied as an office and the rear is a bedroom to the dwelling. The remainder of the dwelling's accommodation is at basement floor level. To the rear of the property at ground floor level is a courtyard which provides amenity space for the dwelling.

5. Prior approval has been granted by the Council (Ref 2020/0087/P) for the use of the rear ground floor of the property as a studio flat. Whether because of the changes made to the property, the prior approval is still capable of implementation is not a matter for me to determine as part of this appeal. However, the appellant has identified that the floorspace of this studio flat would have been circa 20sq m which is below the nationally described space standards.
6. To provide daylight to the dwelling's basement's habitable rooms there are lightwells to the front and rear of the property. The basement rooms have large windows. As part of this appeal the appellant has provided a specialist Daylight and Sunlight Report which concludes that the sunlight for the whole year within the dwelling is better than what is recommended by BRE's *Guide Site Layout Planning for Daylight and Sunlight: a guide to good practice*. It also identifies that the habitable rooms have adequate daylight factors as recommended in the BRE Guide.
7. Meeting the guidance in the BRE Guide is achieved by a demarcation between the kitchen (as a non-habitable room) and the living room. Although there are no reasons to reach a different technical conclusion to the report, it was observed during the morning site visit that artificial light was necessary in the kitchen area. However, although raised as a concern by the Council, this alone is not a sufficient reason for this appeal to fail.
8. The outlook from the basement windows is towards the enclosed lightwells with their rear walls being sited around 1.5 and 2 metres from the openings. However, the windows are large and so are the lightwells. The size of the windows and lightwells reduce the physical and visual sense of enclosure. Further, the dwelling does include a large bedroom window at ground floor level which has an outlook towards the amenity space. For these reasons, the occupiers have functional internal space and their quality of life is sufficiently protected. There is also an enhancement in the standard of the accommodation when compared to the studio flat subject of the prior approval and this is given moderate weight in the determination of this appeal.
9. Reference has been made by the appellant to 2 appeal decisions¹ which involve windows below ground level. However, the details and planning circumstances of these other schemes have not been provided and, as such, limited weight has been given to them in the determination of this appeal. Instead, the appeal scheme has been assessed on its own planning circumstances.
10. On this issue, it is concluded that the development provides satisfactory living conditions for the occupiers and, as such it does not conflict with Policy A1 and H6 of the Camden Local Plan (LP). Amongst other matters these policies require functional space for residential development and for the quality of life of occupiers to be protected, including by reason of outlook, sunlight and daylight.

Car Free Development

11. LP Policy T2 requires all new developments in the Borough to be car free. The streets around the property are subject of parking restrictions of varying types, including residents parking permits and time limited parking. There is public

¹ APP/N5090/W/19/3219827 & APP/N5660/W/16/3150987

transport available in the form of bus services and the occupiers have ready access to local facilities and services on foot.

12. In accordance with LP Policy T2 the Council seeks to use legal agreements to ensure that future occupiers are aware they are not entitled to on-street parking permits. The submitted Planning Obligation is necessary to ensure that occupiers of the dwelling, whether now or in the future, are made aware that they are not entitled to apply for a residents parking permit or buy a contract to park within any car park owned, controlled, or licensed by the Council. This Obligation should be effective in limiting private car ownership which is the most likely source of local parking stress, supports the aims of LP Policy T2 and also promotes more sustainable and efficient forms of transport, in accordance with LP Policy T1.
13. For the reasons given, the Planning Obligation is directly related to the development and reasonably related in scale and kind. As such, it is concluded that the Planning Obligation secures a development which is car free, passes the tests set out in the National Planning Policy Framework and satisfies the requirements of Article 122 of The Community Infrastructure Levy Regulations 2010.

Conditions

14. The Council has suggested several conditions in the event this appeal succeeds which have been assessed against the tests in the National Planning Policy Framework and the Planning Practice Guidance. However, the development has been undertaken and, in such circumstances, some of the suggested conditions are either no longer necessary or require amendment to reflect the current situation.
15. For the avoidance of doubt, it is necessary to identify the approved drawings. Conditions requiring appropriate cycle and waste storage facilities for the dwelling are necessary, particularly cycle parking for a car free development. To ensure the dwelling has been constructed in a sustainable manner, conditions relating to water and energy use are still necessary.
16. However, noise insulation is a matter for Building Regulations and, as such a condition is unnecessary. By reason of the development having been undertaken, a Construction Management Plan is also unnecessary.
17. For the reasons given, it is concluded that this appeal should be allowed.

D J Barnes

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: DWD.01; P-100 Rev 1; P-101 Rev 1 and P-102 Rev 1.
- 2) Within 1 month of the date of this decision details of enclosures and screened facilities for the storage of waste and recycling containers, together with a satisfactory point of collection, shall be submitted for approval in writing by the local planning authority. The development shall be carried out within 3 months of the approval in accordance with the approved details and shall be maintained thereafter.
- 3) Within 1 month of the date of this decision details of secure cycle parking shall be submitted for approval in writing by the local planning authority. The development shall be carried out within 3 months of the approval in accordance with the approved details and shall be maintained thereafter.
- 4) Within 1 month of the date of this decision details of water saving and efficiency measures to ensure that a maximum of 105 litres of water is consumed per person per day shall be submitted for approval in writing to the local planning authority. Where remedial work is required to accord with the approval of the local planning authority these work shall be carried out within 3 months of the date of the approval and shall be maintained thereafter.
- 5) Within 1 months of the date of this decision details of carbon dioxide emission reduction measures which achieve an improvement of not less than 6% in carbon dioxide emissions when compared to a building constructed to comply with the minimum target emissions rate requirements of the Building Regulations 2010 shall be submitted for approval in writing to the local planning authority. Where remedial work is required to accord with the approval of the local planning authority these work shall be carried out within 3 months of the date of the approval and shall be maintained thereafter.