



Appeal Decision

Site visit made on 19 May 2021

by G D Jones BSc(Hons) DipTP DMS MRTPI

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

Decision date: 27 May 2021

Appeal Ref: APP/X5990/W/20/3264276

Units 8, 9, 10 and 11 Cervantes Court, Inverness Terrace, London W2 6JE

- 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 B Andersen of Wentworth Anderson against the decision of City of Westminster Council.
 - The application Ref 20/02647/FULL, dated 22 April 2020, was refused by notice dated 15 September 2020.
 - The development proposed is use of part of lower ground floor (garages 8, 9, 10 and 11) as two self-contained flats (Class C3) and associated external alterations including erection of lower ground floor rear extension and creation of lightwells to front elevation with staircase access and cycle and refuse stores.
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Decision

1. The appeal is allowed and planning permission is granted for use of part of lower ground floor (garages 8, 9, 10 and 11) as two self-contained flats (Class C3) and associated external alterations including erection of lower ground floor rear extension and creation of lightwells to front elevation with staircase access and cycle and refuse stores at Units 8, 9, 10 and 11 Cervantes Court, Inverness Terrace, London W2 6JE in accordance with the terms of the application, Ref 20/02647/FULL, dated 22 April 2020, subject to the conditions contained within the Schedule at the end of this decision.

Main Issue

2. The main issue is whether or not the proposed development would be acceptable in terms of its effect on parking.

Reasons

3. Applications for planning permission are required to be determined in accordance with the development plan, unless material considerations indicate otherwise. The refusal reason for the appeal scheme advises that the proposed development conflicts with Policy TRANS 23 (A) of the City of Westminster Unitary Development Plan, January 2007, (the UDP). This Policy states, amongst other things, that *the permanent loss of any existing off-street residential car parking space will not be permitted other than in exceptional circumstances*. In order to comply with the Policy, therefore, exceptional circumstances would need to exist to justify the development.
4. The reason for refusal also states that the development would conflict with UDP Policy STRA 25, which *aims to control on and off street parking within the requirements of the traffic reduction policy. Preference will be given to the*

special requirements of residents, people with disabilities and those essential Central London Activities for which the use of private vehicles is necessary.

5. Although I do not necessarily agree, for the purposes of making my decision, I have adopted the Council's position that the proposed development would conflict with both of these development plan policies as well as with equivalent policies of the *Intend to Adopt* version of the Council's City Plan 2019-2040, March 2021. I have done this purely as a benchmark against which to assess whether or not other material considerations indicate that planning permission should be granted in spite of such alleged development plan conflict. Having done so, I have concluded that, in the particular circumstances of the case, planning permission should be granted. I summarise the main reasons for this conclusion in the following paragraphs.
6. The planning history for the appeal property and its relationship with what is now proposed is somewhat complex. In essence, the appeal development would convert to two flats the lower ground floor of part of the greater building. This part of the host building includes what were originally intended to be four parking spaces in the form of garages. The evidence suggests that, notwithstanding a condition attached to the original planning permission for the site intended to restrict their use to parking, these four spaces have not been consistently in use for parking for many years.
7. There is also an extant planning permission at Units 9, 10 and 11, which amounts to roughly three-quarters of the current appeal site, for their conversion to form two flats (the approved scheme). Were the approved scheme to be implemented it would result in the loss of three of the four car parking spaces in question. I have no good reason to believe that the approved scheme would not be implemented were the appeal to be dismissed. Indeed, it seems likely that it would bearing in mind the likely value of the approved development and demand for such accommodation. Compared to the approved scheme, therefore, the appeal development would result in the net loss of only one parking space and no net increase in the number of residential units created.
8. There can also be no certainty that that parking space, within Unit 8, will be made available for parking again in the future. Indeed, given its apparent storage use over recent years, there is at least a prospect that it may not be used for car parking in the future. There is also no compelling evidence that any past unavailability of these four spaces for car parking has led directly to any appreciable harm.
9. I also note that the Council is concerned that if the appeal were to be allowed it might be seen as setting a precedent. However, as each application for planning permission must be determined on its individual merits and given that the specific circumstances and planning considerations at play in this appeal are unique to this case, this concern carries very limited weight. For similar reasons, I have also given very limited, non-determinative weight to the other development proposals referred to in the evidence.
10. For these reasons, in the particular and somewhat unusual circumstances of the case, notwithstanding the cited conflict with the development plan and with the emerging development plan, the appeal scheme would be acceptable in terms of its effect on parking.

Other Matters

11. I note that the site is located within Queensway Conservation Area and that the Council's submissions indicate that the appeal development would not harm the significance of this heritage asset. I have found no reason to disagree such that it would satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990 and accord with Section 16 of the National Planning Policy Framework.
12. In addition to the foregoing matters, concern has been expressed by several interested parties at the application and appeal stages. These cover a range of topics, including the appeal development's effect on the character and appearance of the area, on the development potential of other land and on the living conditions of neighbouring users and residents of the proposed development; the adequacy of cycle/waste storage facilities; the loss of communal amenity space; ground conditions; flood risk; safety; the conduct of the appellants; building control matters; and the effects of construction work and of the proposed development on the dental clinic at 1 Cervantes Court.
13. These matters are largely identified and considered within the Council officer's report on the appeal development. They were also before the Council when it prepared its evidence and when it submitted its case at appeal. The Council did not conclude that they would amount to reasons to justify withholding planning permission other than as set out in its reason for refusal. I have been provided with no substantiated evidence which would prompt me to disagree with the Council's conclusions in these respects subject to the imposition of planning conditions.

Conditions and Conclusion

14. In addition to the standard time limit condition the Council has suggested several conditions which I have considered in the light of government guidance. I have adjusted the wording of some of them in the interests of clarity. In order to provide certainty, a condition requiring that the development is carried out in accordance with the approved proposal plans would be necessary. To safeguard people's living conditions, conditions would be necessary to control the construction process, including working hours, and to limit noise and vibration.
15. Conditions to protect and replace trees would be necessary in the interests of biodiversity and to protect the character and appearance of the area. For this latter reason a condition to control the development's facing details and materials would also be necessary. To provide certainty, to protect the character and appearance of the area and to promote sustainable transport, conditions would be necessary to secure refuse/recycling and bicycle storage facilities. For this latter reason, a condition to secure car club membership for residents of the development would also be necessary.
16. I conclude, therefore, that the appeal should be allowed subject to the identified conditions.

G D Jones

INSPECTOR

SCHEDULE OF CONDITIONS FOR APPEAL REF APP/X5990/W/20/3264276:

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 1076.000 Rev D; 1076.101 Rev E; 1076.102 Rev C; 1076.103 Rev G; 1076.104 Rev H.
3. Except for piling, excavation and demolition work, any building work which can be heard at the boundary of the site shall be carried out only:
 - Between 08.00 and 18.00 Monday to Friday;
 - Between 08.00 and 13.00 on Saturday; and
 - Not at all on Sundays, bank holidays and public holidays.Piling, excavation and demolition work shall be carried out only:
 - Between 08.00 and 18.00 Monday to Friday; and
 - Not at all on Saturdays, Sundays, bank holidays and public holidays.
4. A method statement explaining the measures to be taken to protect trees on and close to the site shall be submitted to and approved in writing by the local planning authority before any demolition, site clearance or building work take place. No equipment, machinery or materials for the development shall be brought onto the site without having been approved in writing by the local planning authority. The works and operations shall be carried out only in accordance with the approved details.
5. A tree to replace the Cherry tree (T1), which is shown to be removed as part of the development, shall be planted within the first planting season after first occupation of the development in accordance with the following details. Within six months of the commencement of development details of the position, size and species of the replacement tree shall be submitted to and approved in writing by the local planning authority. If the replacement tree dies, is removed or becomes seriously damaged or diseased within five years of its approval by the local planning authority a replacement tree of the same size and species to the one originally planted shall be planted in the next planting season.
6. Each cycle parking space shown on the approved drawings shall be provided prior to occupation. Thereafter the cycle spaces shall be retained and used for no other purpose without the prior written approval of the local planning authority.
7. Details of waste storage and materials for recycling for the development shall be submitted to and approved in writing by the local planning authority. Prior to the first occupation of the flats, the approved details shall be fully implemented and retained thereafter for use by occupants of the two flats.
8. The design and structure of the development shall be of such a standard that it will protect residents within the same building or in adjoining buildings from noise and vibration from the development, so that they are not exposed to noise levels indoors of more than 35 dB LAeq 16 hrs daytime and of more than 30 dB LAeq 8 hrs in bedrooms at night.
9. All new work and improvements inside and outside the building shall match existing original adjacent work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the approved drawings or are required in other conditions to this permission.
10. Prior to the first use of the development, details of the provisions that shall be put in place to secure car club membership (25 years) for the two flats shall be submitted to and approved in writing by the local planning authority. The details shall include when the provisions will be made and how that timing will be guaranteed. The development shall be carried out in accordance with the approved details.