



Appeal Decision

Site visit made on 8 November 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2022

Appeal Ref: APP/H5390/W/21/3278813
25-36 Fitzjames Avenue, London W14 0RR

- 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 Jonathan Milburn against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2021/00378/FUL, dated 5 February 2021, was refused by notice dated 31 March 2021.
 - The development proposed is change of use of the lower ground floor of 25-36 Fitzjames Avenue. This is from a basement used for storage lockers and plant equipment to a residential dwelling. The works will include; increasing current window openings to maximise light within the dwelling, creation of new window openings, treatment to external courtyard, demolition of some internal partition walls, complete re-fit out of internal space. Also the creation of a new cycle storage in the Lower Ground Floor of 11-24 Fitzjames Avenue to offset the space currently used for cycle storage within the lower ground floor of 25-36 Fitzjames Avenue.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address of the proposal has altered from the application form to the decision notice. The revised address appears to more accurately reflect the location of the appeal site and has been adopted within the description and on the appeal form and associated documentation. I have therefore incorporated this revised address.
3. The description of the proposal has been altered from the application form to the decision notice. That on the application form adequately describes the proposal. I have determined the appeal on this basis, although I have made some very minor changes relating to spelling.

Application for costs

4. An application for costs was made by Mr Jonathan Milburn against the Council of the London Borough of Hammersmith & Fulham. This application is the subject of a separate decision.

Main Issues

5. The first main issue is the effect of the proposal on the living conditions of future occupiers with particular regard to outlook and enclosure. The second main issue is the effect of the proposal on the availability of car parking within

the area and parking stress. This has not been identified as an area of concern by the Council but has been raised by interested parties and warrants consideration as a main issue.

Reasons

Living conditions

6. The proposal relates to existing basement storage space which would be converted to provide a two-bedroom flat. Existing window openings would be enlarged and high-level timber windows inserted. A Daylight and Sunlight Assessment¹ (DSA) is included which concludes that daylight provision year-round will be adequate. It is therefore unlikely that the flat would be especially gloomy.
7. The DSA does acknowledge that the flat would receive little direct sunlight given that it would be located on the northern side of the building. Although limited, the levels of sunlight are not likely to be unique to this site and any flat with a similar orientation within a densely developed urban area where tall buildings are present would be likely to suffer from similar issues.
8. The outlook from the flat would be somewhat constrained by the basement location and the height of the surrounding blocks. However, the flat would not be without outlook by reason of views out towards a modest courtyard and by reason of the large, glazed openings. There would be a limited but welcome view out towards trees and foliage and the sky beyond. Therefore, the available outlook would not result in any unacceptable sense of enclosure for future occupiers of the flat.
9. The proposal would therefore accord with Policy HO11 of the Hammersmith and Fulham Local Plan (2018) (HFLP) which amongst other things requires that all new housing is of a high standard that will meet the needs of future occupants.

Car parking

10. The evidence indicates that there is parking stress in the area and the site has excellent public transport accessibility. Policy T4 of the HFLP states that the Council will require car parking permit free measures on all new development unless evidence is provided to show that there is a significant lack of public transport available. Such evidence is not supplied and given the close availability of public transport the proposal should incorporate car parking permit free measures.
11. It is suggested that conditions could be used to ensure that the proposal complies with the requirements of the Policy. The Council has suggested conditions as follows:
 - 6) The new residential unit hereby permitted shall not be occupied until the Council has been notified in writing (and has acknowledged such notification) of the full postal address of the dwelling. Such notification shall be to the council's Head of Development Management and shall quote the planning application number specified in this decision letter.
 - 7) No occupiers of the new residential unit hereby permitted, with the exception of disabled persons who are blue badge holders, shall apply to the

¹ Daylight and Sunlight Assessment Herrington Consulting Ltd October 2020.

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 receipt.

8) The new residential unit 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 of three of the new flats, 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 relevant dwellings shall not be occupied otherwise than in accordance with the approved scheme unless prior written agreement is issued by the Council.

12. Condition 7 states that no occupiers of the newly created flat, except for disabled persons who are blue badge holders, may apply to the Council for a parking permit or retain such a permit. If they were to gain such a permit, the condition requires them to surrender it within seven days.
13. An approval that is granted, and by association any condition that it may be subject to, runs with the land or building and not with an individual. A planning condition may restrict what an individual can do with the land or building, or it can prevent certain things from taking place until specific details have been agreed between an individual and the Council.
14. However, condition 7 encumbers the actions of a group of individuals. The wording imposed seeks to restrict any of the occupiers from applying for an on-street parking permit and whilst it would have the effect of preventing an occupant from applying for a permit, it takes an unreasonable approach in doing so, as it impedes the actions of a person and is not a restriction on land or buildings. I therefore conclude that it is not relevant to planning and does not meet all the required tests and I could not reasonably impose it.
15. Condition 8 seeks the agreement of a scheme, prior to the occupation of the flat (corrected from a reference to flats), to ensure that all occupants, other than disabled persons who are blue badge holders, have no entitlement to parking permits from the Council and to ensure that occupants are informed, prior to occupation, of such restriction.
16. However, the condition would seek to restrict the rights of an individual or individuals to undertake an act rather than a restriction that would be associated with the building that is the subject of the planning permission granted. This condition would not therefore be relevant to planning. I therefore again conclude that it does not meet all the required tests and I could not reasonably impose it. Condition 6 would cease to have purpose on its own.
17. There are therefore no conditions or other mechanisms before me which would ensure that the proposal would not contribute to parking stress in the area. The proposal therefore fails to accord with Policy T4 of the HFLP which seeks to guard against this issue.
18. My attention has been drawn to the fact that similar conditions have been included within a previous appeal decision within the borough Ref: APP/H5390/W/18/3204698. However, given my considerations above that the conditions do not meet the required tests, this example does not justify the harm that could arise as a result of increased parking stress given that no

suitable mechanism is before me which would ensure that the proposal would be car free. I therefore afford this matter limited weight.

Other Matters

19. The appeal site is located within the Fitzgeorge & Fitzjames Conservation Area (the Conservation Area) and the building within which the flat would be located is a locally listed building of merit. The building is of attractive appearance, with rhythmic openings which are repeated along the elevations resulting in the form and detailing of the building contributing towards its significance.
20. The proposal includes replacement windows and new French door openings that are more modern in appearance and would not match the openings up the elevation. However, the site is located on the rear elevation of the building and sits in such a set down and secluded position that views towards the altered elevations would be extremely limited. The proposal would not therefore harm the significance of the building and would preserve the character and appearance of the Conservation Area.

Planning Balance and Conclusion

21. The proposal would provide additional housing within an existing building in a sustainable location. However, there are no conditions or other mechanism within the proposal to ensure that it would be car parking permit free and as such it would be likely to contribute towards parking stress in the area.
22. Material considerations do not indicate that the decision should be made otherwise than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

T J Burnham

INSPECTOR