



Appeal Decision

Site visit made on 24 January 2023

by Emma Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal Ref: APP/H5390/W/22/3300960

50 Carnwath Road, London SW6 3DQ

- 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 50 Carnwath Road Ltd against the decision of the London Borough of Hammersmith and Fulham.
 - The application Ref 2022/00043/FUL, dated 7 January 2022, was refused by notice dated 6 May 2022.
 - The development proposed is the erection of an additional storey on the existing building to provide 9 x residential units.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an additional storey on the existing building to provide 9 x residential units at 50 Carnwath Road, London SW6 3DQ in accordance with the terms of the application, Ref 2022/00043/FUL, dated 7 January 2022, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues are whether the proposed development would i) optimise site capacity in relation to the provision of housing units; and ii) make adequate provision for affordable housing having regard to the requirements of the development plan.

Reasons

Site capacity

3. The host building is a flat roof 2 storey property of utilitarian design. It is currently in residential use after being converted from office space as permitted development with the benefit of prior approval. The surrounding area includes a range of buildings which vary in scale and appearance, including commercial, education and residential uses. The proposal seeks to add an additional storey to the roof of the building to provide 6 one bedroom flats and 3 two bedroom flats.
4. Policy D3 of the London Plan 2021 (the LP) requires all development to make the best use of land by following a design-led approach that optimises the site capacity in order for London to accommodate the identified required growth. Having regard to the appeal proposal this means ensuring that the proposed development is the most appropriate form and use for the site and that design options have been considered to determine the most appropriate development

that responds to the site's context and capacity for growth. The supporting text to Policy D3 indicates that the optimum capacity for a site does not necessarily mean the maximum capacity, as this will depend upon the specific type of development.

5. I note that the design of the proposal is informed by a Structural Report submitted as part of the planning application. This confirms that, due to the structural capacity of the building a 2 storey extension is not possible across the entirety of the building as this would require extensive strengthening works to the existing building. Nevertheless, it would be possible to insert lighter weight mezzanines in a small number of flats in specific parts of the building, giving them the appearance of a 2 storey property whilst the remainder of the proposed roof extension would be single storey.
6. The Council suggest that the proposal could include mezzanines on a greater number of units which would increase the capacity of the development. However, there is no substantive evidence before me to demonstrate that this would be achievable having regard to the structural integrity of the building.
7. The building lies a short distance from neighbouring residential properties at the Piper Building. An earlier planning application at the appeal site (2020/03467/FUL) for a similar proposal was withdrawn due to concerns regarding the design, scale and height of the scheme. It is evident from the representations from interested parties that concerns remain regarding the effect of the proposed development on the living conditions of the occupiers of neighbouring properties. Whilst the details of the previous scheme are not before me, I note the appellant's comment that the changes to the scheme included the lowering of the overall height, particularly where it lies closest to the Piper Building. Notwithstanding the structural capacity of the building to accommodate a further floor above that proposed, I have not been presented with any substantive evidence that a larger addition to the roof of the building could be achieved without harm to the living conditions of the nearby properties.
8. The proposed units would exceed the minimum floor space standards set out in the Technical housing standards – nationally described space standards March 2015 (NDSS), with the proposed 6 one bedroom units each exceeding the standard by 8m² and the three 2 bedroom units by 1m². Given the modest surplus in floor areas and that these figures are minimum standards which are intended to prevent substandard accommodation, the size of the units would not be wholly inappropriate in this instance.
9. The appellant highlights that the open area between units 5 and 6 would provide both the existing and future occupants of the building with an external communal amenity space. Whilst the proposed units would each benefit from an external terrace, which the Council indicate would be of a suitable size, the shared rooftop garden area would nevertheless benefit the existing residents in the lower floors who do not have such a facility.
10. The appeal submissions indicate that the proposal has been designed to maximise the amount of floor area that can be accommodated on the roof of the existing building, taking account of the structural integrity of the building, the floor space of the units, living conditions of the occupiers of neighbouring properties and the provision of outdoor space. Therefore, based on the

evidence before me, the proposal would achieve the maximum number of units possible, taking into account the relevant factors.

11. For the above reasons, the proposed development would optimise site capacity in relation to the provision of housing units and, as such, it would accord with LP Policy D3. As a small site, the proposal would also comply with LP Policy H2, which supports well-designed new homes on small sites to significantly increase the contribution such sites make to meeting London's housing needs. It would also accord with Chapter 11 of the Framework, which among other things supports opportunities to use the airspace above existing residential premises for new homes.

Affordable housing

12. Policy H4 of the LP requires the provision of affordable housing on schemes of 10 or more units in accordance with a threshold approach. Policy HO3 of the Hammersmith & Fulham Local Plan 2018 (HFLP) sets out a requirement for affordable housing provision for developments of 11 or more self-contained dwellings, and on sites with the capacity for 11 or more dwellings. With regards to capacity, the reasoned justification for Policy HO3 sets out that for schemes of 10 or less dwellings that have a maximum combined gross floorspace of more than 1,000 square metres (gia), the Council will also seek affordable housing where there is considered to be capacity for more units. The floor area of the proposal is significantly below this threshold.
13. As the proposed development would only be for 9 additional dwellings with a floor area of less than 1000sqm, the proposal would not trigger the need for affordable housing and as such would not conflict with Policy H4 of the LP or Policy HO3 of the HFLP.

Other Matters

14. The Piper Building was recently formally designated as a Grade II listed building. In accordance with s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I am required to have special regard to the desirability of preserving the setting of the building. Given the location of the relief panels to which the listing refers, in relation to the appeal site, I am satisfied that the proposal would preserve the setting of the listed building.
15. A number of concerns have been raised regarding the effect of the development upon the living conditions of the occupiers of the neighbouring property, the Piper Building, having regard to privacy, light and outlook. The rear elevation of the proposed residential units would be some distance from the elevation of the Piper Building which directly faces the appeal site, and the side elevation of the proposed flats would be at right angles to the nearest wing of the Piper Building. As such, whilst I note the windows in the Piper Building are large, due to the separation distance, design and orientation of the building and the proposed screening effect of the loggia, details of which could be secured with a condition, the proposal would not give rise to an unacceptable level of overlooking or loss of privacy to the occupiers of the adjoining residential properties at the Piper Building.
16. The Daylight and Sunlight Report (Neighbouring Properties) by Right of Light Consulting dated 14 December 2021 concludes that the closest windows in the Piper Building would all pass the vertical sky component and daylight

distribution tests and consequently the proposal would satisfy the BRE direct sunlight to windows requirements. It concludes that whilst the proposed development would have a low impact on the light received by nearby windows in the neighbouring properties, it would sufficiently safeguard the daylight and sunlight of the occupiers of the properties. I have no substantive basis on which to consider differently.

17. I note that the report is based on the advice in the second edition of the BRE guide 'Site Layout Planning for Daylight and Sunlight: a guide to good practice and that this has been superseded by a third edition published earlier this year. However, the appeal submissions indicate that the updated guidance does not alter the tests used to assess the impact of the development on existing neighbouring windows and amenity areas and these remain the same as those in the earlier edition. I have not been presented with any evidence to the contrary.
18. Whilst the proposed development would be seen from the adjoining properties, the outlook from the direct facing windows towards the wider townscape would not be meaningfully affected. Moreover, the Council has not objected to the proposal in relation to harm to living conditions of the occupiers of neighbouring properties and in light of the above considerations, I have no reason to disagree. My attention is drawn to the recent Supreme Court judgement *Fearn and others v Board of Trustees of the Tate Gallery* [2023] UKSC 4. However, given that this relates to the common law of nuisance, it is not determinative in this appeal.
19. I note concerns regarding noise from the development being amplified by the L-shape of the elevation of the Piper Building which faces the appeal site and the existing communal terrace between the buildings. However, given the domestic nature of the development, I have no reason to believe that activity associated with the development including any associated noise, light or cigar/cigarette smoke would harm the living conditions of the occupiers of the neighbouring residential properties. Moreover, there is no substantive evidence that the proposal would have any effect upon the air circulation around the building.
20. I note concerns regarding the living conditions of future occupiers of the proposed development, having regard to outlook. A number of the units would not be dual aspect, with others having openings behind the loggia screen and whilst these would provide ventilation the outlook would be restricted. Nevertheless, the proposed units would all be served with large south facing windows which would ensure an appropriate level of outlook and light to the properties overall.
21. Any disturbance during the construction period would be short-term and could be mitigated by careful construction management. A condition to secure details of vehicles and traffic management during the construction period would ensure the free flow of traffic and highway safety. In addition, noise and/or vibration from machinery and plant, including the air source heat pumps is capable of being controlled by condition.
22. I note the Council's suggestion that, as the proposal does not include the provision of off-street parking to serve the development and due to the high level of overnight parking stress in the area it would be appropriate to restrict

- parking permits for the future occupiers of the new units, in part, to ensure that the proposal would not exacerbate parking pressure in the area.
23. Policy T4 of the HFLP sets out a requirement for 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. The policy justification states that the Council will only consider the issuing of permits for on street parking in locations where the public transport accessibility level (PTAL) is considered 2 or lower. It also highlights that the levels of local parking stress are a consideration when assessing the impact of additional on street parking.
24. The appeal submissions indicate that the site has a PTAL of 2, with low-moderate accessibility to public transport. It is therefore in an area where car parking permits could be issued, in accordance with Policy T4, based on accessibility to public transport. In light of this and in the absence of any substantive evidence of parking stress in the area to indicate that the development should be car free, it would not be necessary in this instance to restrict future occupiers from having a car parking permit.
25. I note concerns regarding the proximity of the proposed development to the Piper Building, which the appeal submissions indicate has non-compliant cladding, and the potential fire transfer risk. However, the Council has confirmed that matters relating to fire safety would be controlled by separate legislation.
26. With regards to concerns in relation to the lack of disabled access to the proposed development, Policy D7 of the LP recognises that in exceptional circumstances the provision of a lift to dwelling entrances may not be achievable. Consequently, it allows some flexibility, specifically in relation to flatted developments of 4 storeys or less. The proposed accommodation would be above the existing 2 storey building, and the appellant indicates that, due to the constraints of the existing building, it is not feasible to adapt it to accommodate a lift. The proposed development, in this instance, would therefore be acceptable having regard to accessibility by wheelchair users.
27. The appeal submissions indicate that the proposal would include the necessary facilities required to meet the needs of the future occupiers of the development, including cycle and refuse storage, as well as foul water infrastructure. Whether or not the nearby Thames Tideway acoustic shed is a temporary structure is not a determining factor in the appeal, nor is the maintenance of the existing building. Access from the building onto the communal terrace and any potential associated security issues to the occupiers of the neighbouring property would be a private matter between the parties.
28. It is a long-established principle that the planning system does not exist to protect private interests such as the value of land and property. Moreover, any concerns regarding the alleged lack of engagement between the appellant and the local community fall outside of the remit of this appeal.

Conditions

29. I have considered the conditions put forward by the Council in light of the requirements of the Planning Practice Guidance (PPG) and the Framework in the event that I were to allow the appeal. I have amended those I find to be necessary in accordance with advice in the PPG. In addition to the standard

timescale condition, a condition specifying the relevant plans is necessary to provide certainty. A condition requiring details of the proposed materials is necessary to ensure the satisfactory appearance of the development and the area.

30. Conditions are necessary to secure details of a noise assessment and appropriate noise attenuation measures to be incorporated into the building envelope and also internal sound insulation between flats, in order to safeguard the living conditions of the future occupiers of the development. The external areas are excluded from this requirement given the fact that they mainly comprise of balconies as such a condition would therefore not be reasonable. Details of any necessary mitigation measures in relation to noise and vibration from any plant/machinery/equipment, including the air source heat pumps is necessary in the interests of both the future occupiers of the development and neighbouring properties. The trigger point is amended to require details to be submitted and approved prior to their installation.
31. To protect the privacy of neighbouring residents a condition to require details of the loggia screen to the external circulation space is necessary. To encourage sustainable modes of transport, a condition is necessary to require the submission and approval of a secure covered cycle store in accordance with relevant policies. A condition to ensure that appropriate facilities are provided for refuse storage to meet the needs of the development is also necessary.
32. A condition is necessary to agree a Construction Logistics Plan in the interest of highway safety during the construction period. The appeal site lies within an area at risk of flooding. Whilst the siting of the development on the roof of the existing building means the development itself is at low risk of flooding, a condition requiring the proposed development to adhere to the submitted Flood Risk Assessment is necessary having regard to the safety of future occupiers of the development.
33. The appeal site lies within an Air Quality Management Area and as such, conditions would be necessary to secure the provision of zero emission means of heating and hot water in order to minimise air pollution and a Ventilation Strategy Report to mitigate the effects of poor air quality for future occupiers. The Council's suggested list of requirements from the latter, which is overly prescriptive, is not included in order to allow the parties to agree details.
34. A condition to prevent the installation of water tanks, water tank enclosures or other structures, excluding the air source heat pumps and PV panels, on the roofs of the building is necessary to safeguard the character and appearance of the building and the area. In addition, a condition to agree details of the proposed means of surface water drainage is necessary to ensure the satisfactory drainage of the site. For the reasons set out above I find that a condition to restrict parking permits for future occupiers of the proposed development is not necessary.

Conclusion

35. For the foregoing reasons, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions set out in the attached schedule.

Emma Worley INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: D.109 P1; D110A P1; D111 P1; D111A P1; D112 P1; D113 P1; D.114 P1; D.115 P2; D.116 P2; D.119 P1; D.117 P1; D.118 P1; D.120 P1; D.121 P1; D.122 P1; D.123 P1; and FRA Ref:WTFR-FRA-2020/10/Q24.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter in perpetuity.
- 4) Prior to commencement of the development, a noise assessment shall be submitted to the local planning authority for approval of external noise levels including reflected and reradiated noise and details of the sound insulation of the building envelope and of acoustically attenuated mechanical ventilation as necessary to achieve internal room noise standards in accordance with the criteria of BS8233:2014. The approved details shall be fully implemented prior to the first occupation of the development and shall thereafter be permanently retained.
- 5) Prior to commencement of the development, details shall be submitted to and approved in writing by the local planning authority, of an enhanced sound insulation value $D_{nT,w} + C_{tr}$ [and $L'_{nT,w}$] of at least 5dB above the Building Regulations value, for the floor/ceiling/wall structures separating different types of rooms/uses in adjoining dwellings [eg. living room and kitchen above bedroom of separate dwelling]. The approved details shall be fully implemented prior to the first occupation of the development and shall thereafter be permanently retained.
- 6) Prior to their installation as part of the development, details shall be submitted to and approved in writing by the local planning authority, of the external sound level emitted from any plant/machinery/equipment to be installed, including the air source heat pumps, and mitigation measures as appropriate. The measures shall ensure that the external sound level emitted from these sources will be lower than the lowest existing background sound level by at least 10dBA in order to prevent any adverse impact. The assessment shall be made in accordance with BS4142:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity. A post installation noise assessment shall be carried out where required to confirm compliance with the sound criteria and additional steps to mitigate noise shall be taken, as necessary. The approved details shall be fully implemented prior to the first occupation of the development and shall thereafter be permanently retained.
- 7) Prior to the installation of any plant/equipment, extract/ventilation system, including air source heat pumps and ducting, details of anti-vibration

- measures shall be submitted to and approved in writing by the local planning authority. The measures shall ensure that those installations are mounted with proprietary anti-vibration isolators and that fan motors are vibration isolated from the casing and adequately silenced. The approved details shall be fully implemented prior to occupation of the development and thereafter be permanently retained as such.
- 8) Prior to the first occupation of the development hereby approved details of the loggia screen to the external circulation space shall be submitted to and approved in writing by the local planning authority. The loggia screen shall be installed in accordance with approved details prior to the first occupation of the development and shall thereafter be permanently retained as such.
 - 9) Prior to the first occupation of the development hereby approved details of a secure covered cycle store shall be submitted to and approved in writing by the local planning authority. The cycle store shall be installed in accordance with the approved details prior to the first occupation of the development and shall thereafter be permanently retained as such.
 - 10) Prior to the first occupation of the development hereby approved, the refuse and recycling storage shall be implemented in full accordance with the approved drawings. The refuse and recycling store shall thereafter be retained solely for its designated use in perpetuity thereafter.
 - 11) Prior to commencement of the development hereby approved, a Construction Logistics Plan shall be submitted to and approved in writing by the local planning authority. The details shall include the numbers, size and routes of construction vehicles and other matters relating to traffic management to be agreed. The approved details shall be fully implemented throughout the construction period.
 - 12) The development shall be implemented in accordance with the recommended flood mitigation measures as proposed in the approved Flood Risk Assessment (WTFR-FRA-2020/10/Q24). The recommended mitigation measures shall be permanently retained thereafter.
 - 13) Prior to commencement of the development hereby permitted, a Ventilation Strategy Report to mitigate the impact of existing poor air quality for residential use (Class C3) receptor locations where the World Health Organisation Air Quality Guideline Values (2005) for Nitrogen Dioxide (NO₂) and Particulate Matter (PM_{2.5}, PM₁₀) are already exceeded and where current and future predicted pollutant concentrations are within 5 % of these limits shall be submitted to and approved in writing by the local planning authority. The approved details shall be fully implemented prior to the first occupation/use of the development and thereafter permanently retained and maintained.
 - 14) Prior to the first occupation of the development hereby permitted, details of the installation of the Zero Emission MCS certified Air/ Water Source Heat Pumps or Electric Boilers to be provided for space heating and hot water for each of the nine self-contained residential units shall be submitted to and approved in writing by the local planning authority. The approved details shall

be fully implemented prior to the first occupation of the development and thereafter permanently retained and maintained.

- 15) No water tanks, water tank enclosures or other structures, excluding the air source heat pumps and PV panels as shown on the approved drawings, shall be erected upon the flat roofs of the development hereby permitted.
- 16) No development shall be occupied until confirmation has been provided that either:
 1. Surface water capacity exists off site to serve the development or;
 2. A development and infrastructure phasing plan has been agreed with the Local Authority in consultation with Thames Water. Where a development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan or;
 3. All Surface water network upgrades required to accommodate the additional flows from the development have been completed.

*******end of conditions*******