



Appeal Decision

Site visit made on 21 November 2023

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/H5390/W/23/3320553

49B New Kings Road, Hammersmith and Fulham, London SW6 4SE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Buosi against the Council of the London Borough of Hammersmith and Fulham.
 - The application Ref 2023/00065/FUL, is dated 11 January 2023.
 - The development proposed is the erection of a rear extension at second-floor level, over part of the existing back addition, in connection with the conversion of the existing three-bedroom maisonette at first and second-floor level into 2no. self-contained flats, consisting of 1no. two-bedroom flat at first-floor level and 1no. one bedroom flat at second-floor level.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
3. I have determined this appeal on the basis of the Council's failure to determine the planning application within the statutory timescale. There is no decision notice associated with the application nor a statement of case from the Council setting out any concerns. The main issues below are therefore taken from the information contained within the appellant's statement of case, as well as having regard to third party representations and my site visit. I have had regard to the referred to policies within the appellant's statement of case which have been provided by the Council and thus concluded against below.
4. The appellant makes reference to an existing roof terrace. However, there is some dispute, and I have limited evidence to demonstrate, as to whether or not the terrace is lawful. In any event, it is not for me, under a section 78 appeal, to determine whether or not the roof terrace is lawful. It is open to the appellant to apply to the Council for a separate determination under section 191 of the Act regardless of the outcome of the appeal.

Main Issues

5. The main issues of the appeal are:

- the effect of the proposed extension on the living conditions of the neighbouring occupiers with particular reference to privacy, outlook, sunlight/daylight and the potential for noise and disturbance;
- whether the proposal would make appropriate provisions to encourage car-free development; and
- the effect of the proposed development

Reasons

6. The appeal site comprises a mid-terrace, 3-storey building. It contains a commercial unit on the ground floor and an existing maisonette on the first and second floors which is accessed from the rear of the property.
7. Planning permission is being sought for the conversion and extension of the existing maisonette to provide a two-bedroomed flat and a one-bedroomed flat. The proposal would also involve the erection of a balustrade to enclose a rear, second floor roof terrace.

Living Conditions of Neighbouring Occupiers

8. Policy DC4 of the Hammersmith and Fulham Local Plan 2018 (HFLP) states that in considering applications for alterations and extensions the council will take into account good neighbourliness in particular the amenities of the neighbouring properties, and other properties most directly affected by the proposal.
9. Policy HO11 of the HFLP states that proposals for extensions will be considered acceptable where it can be demonstrated that there is no detrimental impact on privacy enjoyed by neighbours in adjoining properties, daylight, and sunlight to rooms in adjoining properties, outlook from windows in adjoining properties and openness between properties.
10. I accept that the context of the appeal site is that of a relatively tight arrangement of residential properties. Whilst I don't have full details of their planning status, I observed a number of roof terraces at the rear of New Kings Road, which directly overlook the rear elevations of Peterborough Villas. The gap between the rear boundary of the appeal site and the rear boundary of the properties directly opposite, is just the width of a pedestrian access lane. Therefore, whilst mutual overlooking between properties in this context is inevitable, it is currently largely limited to more transient views from rear upper floor windows which currently serve a bedroom and a bathroom.
11. The proposed extension, which would be located above an existing, first floor, flat roof extension, would extend approximately 2.3 metres from the rear wall of the existing building. In terms of its overall depth and width, it would cover approximately half of this flat roofed area, thereby decreasing the amount of open space between the properties, at second floor level. The proposed extension would also include the provision of a dining area, with the insertion of a larger window opening and double doors within the rear wall of the extension.

12. The openings within the proposed extension, would by virtue of their location be in closer proximity to the windows in the rear elevation of Peterborough Villas, than the existing arrangement. Additionally, the window-to-window distance would be significantly less than the 18-metre distance recommended by the Planning Guidance Supplementary Planning Document 2018 (SPD). Whilst I recognise the need to apply this flexibly, given the arrangement of the properties and the existing levels of mutual overlooking, any further extensions and alterations to the appeal property would be likely to increase opportunities for direct overlooking to occur between the windows of these properties and between areas of external amenity spaces. This would result in an unacceptable level of harm to the occupiers of these properties.
13. Key Principle HS8 of the SPD states that planning permission will not be granted for roof terraces or balconies if the use of the terraces or balcony is likely to cause harm to the existing amenities of neighbouring occupiers by reason of noise and disturbance; or, if it would result in an additional opportunity for overlooking or result in a significantly greater degree of overlooking and consequent loss of privacy than from the access point onto the proposed roof terrace/balcony. Key Principle HS8 also states that if this standard cannot be met, sensitively designed screening may be acceptable, following an assessment of its impact upon neighbouring amenity.
14. The roof terrace by virtue of its size, elevated position, and proximity to neighbouring properties, would have the potential to be a source of noise and disturbance which would be detrimental to the living conditions of the neighbouring residents. Whilst I acknowledge that the activities that may take place on the terrace would be likely to be similar to those which may have taken place on the existing roof terrace, the proposed extension would limit the available space on the roof space and move those activities closer to the rear elevations of Peterborough Villas.
15. Additionally, located to the rear of 2b Peterborough Villas, is a large, glazed conservatory, which is highly visible from the roof terrace and notably the area which would be retained for use as a roof terrace. Therefore, by virtue of this close proximity, there is likely to be increased overlooking, resulting in loss of privacy for the occupiers of No.2b from the roof terrace.
16. I have therefore had regard to the proposed introduction of a 1.7m high obscure glazed balustrade around the perimeter of the roof terrace. However, whilst this would overcome some of my concerns it would result in the introduction of a built feature that, by virtue of its height and position, would be prominent in the outlook of the neighbouring properties directly opposite, including Nos. 2a and 2b Peterborough Villas.
17. In respect of loss of daylight and sunlight, the appeal is not supported by any detailed assessment of the likely effect of the proposed development on neighbouring occupiers. However, I note that the closest window in the adjoining property, No.47 New Kings Road is currently obscure glazed and there are also no side facing windows in the elevation of No.49. Furthermore, the scale of the proposed extension would be limited in the context of surrounding development. Therefore, whilst I acknowledge the concerns of neighbouring occupiers, I have not been presented with any compelling evidence to suggest that an extension of this scale and position would give rise to an unacceptable degree of loss of daylight or sunlight.

18. Consequently, for the reasons given, the proposed development would result in unacceptable harm to the living conditions of the neighbouring occupiers with particular reference to privacy, outlook, and the potential for noise and disturbance. It would therefore be contrary to Policies DC4 and HO11 of the HFLP and Key Principle HS8 of the SPD, which seek amongst other things to ensure that there is no detrimental impact on privacy enjoyed by neighbours in adjoining properties.

Car-Free Development

19. The appeal site is located close to a busy road and has no on-site parking provision. The site is located within a Controlled Parking Zone (CPZ) with on-street parking reserved for permit-holders only from Monday to Saturday, between 09:00 and 17:00 hours. The evidence before me indicates that the area where the appeal site is located has a Public Transport Accessibility (PTAL) rating of 6a, with excellent public transport options available.
20. Policy T4 of the HFLP states that the council will require any proposed development (new build, conversion or change of use) to conform to its car parking standards. The council will also 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.
21. The proposed development does not include any off-street parking, with cycle parking to be provided within the building. I have had regard to the comments of the appellant that they would be agreeable to either a planning obligation or condition to ensure the proposed development is car-free.
22. The Planning Practice Guidance (PPG) sets out that a positively worded condition which requires the applicant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 or an agreement under other powers, is unlikely to pass the test of enforceability. It also goes on to say that a negatively worded condition limiting the development that can take place until a planning obligation, or other agreement, has been entered into is unlikely to be appropriate in the majority of cases.
23. The PPG does recognise that in exceptional circumstances a negatively worded condition requiring a planning obligation, or other agreement, to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk. It also states that this may apply in the case of particularly complex development schemes.
24. I have had regard to whether exceptional circumstances exist for me to impose a planning condition. However, no such circumstances have been put to me. The legal certainty provided by a planning obligation makes it the best means of ensuring that these arrangements are effective. In the interests of certainty this would need to be in place before planning permission is granted. However, despite the appellants agreement to provide the necessary obligation, no such document has been submitted.
25. Therefore, in the absence of a suitable planning obligation or exceptional circumstances to justify the use of a negatively worded planning condition, the proposed development would not make appropriate provisions to encourage car-free development. In that regard it would conflict with Policy T4 of the

HFLP, which requires all new development to be car-free unless evidence is provided to show that there is a significant lack of public transport available.

Character and Appearance

26. The site is located within Studdridge Street Conservation Area (SSCA). The significance of the CA is derived uniformity, better than average Late Victorian and Edwardian architecture, size, and relatively unspoilt character. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a requirement that special attention should be paid to the desirability that the character or appearance of the conservation area should be preserved or enhanced.
27. The proposed extension would be constructed of zinc cladding to provide a visual contrast to the original building, ensuring that the proposed extension would be viewed as such and not as an attempt to appear part of the original building. The proposed extension would not project above the existing roof height of the building and by virtue of its modest scale, would not appear as a dominant addition to the host property. Furthermore, due to the position of the extension in relation to adjoining three storey building, it would not be prominent from the surrounding area, including from Bagley's Lane.
28. As the character, appearance, and significance of the SSCA is mainly drawn from the quality of the architecture presented in the front elevations where there is clear uniformity in scale, design and materials, the modest changes proposed to the rear would not affect the character or appearance of the wider conservation area. Therefore, the proposed development would preserve the character and appearance of the area and would comply with Policies DC1, DC4 and DC8 of the HFLP.

Other Matters

Principle of Development

29. Policy H2 of the London Plan 2021 supports the delivery of housing on small sites, including incremental densification of existing residential areas with a PTAL rating of between 3 and 6, or within 800m of a station or town centre boundary. The appeal site is located approximately 300 metres from the town centre boundary and has a PTAL rating of 6a. Therefore, the site is within a highly sustainable location.
30. Policy HO2 of the HFLP states that the conversion of existing dwellings will be permitted where, the net floor area of the original dwelling is more than 120m², at least 50% of the proposed units contain two or more bedrooms, housing appropriate for families has access to a garden or amenity space, and there are no adverse impacts on on-street parking stress.
31. Based on the evidence before me, the proposed development would accord with the principles of Policy H2 the London Plan and Policy HO2 of the HFLP.

Living Conditions of Future Occupiers

32. The proposal would create two flats, both of which would meet the minimum floorspace standards outlined under Policy D6 of the London Plan and the Nationally Described Space Standards. Although, the plans indicate that the

shower rooms would have a small shortfall of approximately 0.4m² this would not affect usability to such a degree that it would cause unacceptable harm.

33. Both flats would be dual aspect and although the internal ceiling heights would fall below 2.5 metres in some parts of the accommodation, overall, more than 75% of the accommodation would have a ceiling height of 2.5 metres, in accordance with Policy D6 of the London Plan.
34. Therefore, I find that the proposed development would be likely to provide satisfactory living conditions for the future occupiers of the flats, in accordance with Policy D6 of the London Plan and Key Principle HS3 of SPD.

Flood Risk

35. The appeal site is located within Flood Zone 3a and was supported by a Flood Risk Assessment prepared by Ambiantal Environmental Assessment. The report assessed the proposal only in so far as it relates to the change of use of a small area of the ground floor to provide secure cycle storage.
36. The assessment did not assess the proposed increase in the number of residential units on site. However, although the proposal involves an increase in the number of residential units, it does not increase the overall number of occupants. Furthermore, the appeal site is located in an area which benefits from flood defences, designed to protect the property from tidal flooding until at least 2100.
37. Therefore, had I been minded to allow the appeal I am satisfied that an appropriately worded planning condition could have been considered to ensure an appropriate warning system and evacuation procedure could be put in place for the benefit of the future occupiers.

Planning Balance and Conclusion

38. The proposed development would involve the creation of an additional residential unit, which would make a small contribution to the overall housing supply within the Borough. However, in this particular case, and taking into account all the above matters, the benefits associated with the small contribution to housing supply would be limited and not sufficient to outweigh the harm I have identified to the living conditions of neighbouring occupiers.
39. Consequently, for the above reasons, the proposed development conflicts with the development plan taken as a whole. There are no material considerations of sufficient weight to indicate that a decision should be taken otherwise in accordance with the development plan. Therefore, the appeal is dismissed and planning permission refused.

K Lancaster

INSPECTOR