
Appeal Decision

Site visit made on 19 December 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th February 2024

Appeal Ref: APP/H5390/W/23/3325121

Flat 4, Basement of 9-27 Fitzgeorge Avenue, London W14 0SY

- 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 Michael Wrennall of Orme Properties Ltd against London Borough of Hammersmith and Fulham.
 - The application Ref 2023/00928/FUL, is dated 11 April 2023.
 - The development proposed is described as "Creation of one self-contained two-bedroom flat at lower ground floor level through change of use of the existing basement storage area and excavating and enlarging the existing basement level and associated installation of new windows and doors, and erection of a bike store."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Separate planning appeals¹ have been submitted on basement areas of the main apartment building at this address. Each appeal is subject to a separate decision and are determined on their own merits.
3. Policies of the London Plan have been discussed in the submitted evidence, however, copies of these policies have not been submitted with the appeal. Copies of these particular policies have however been submitted with appeal ref: APP/H5390/W/23/3325124 and I am satisfied that there is no injustice caused with me referring to them in this appeal.
4. For the sake of clarity, I have taken the appeal site address from the appeal form.

Main Issues

5. The main issues are the effect of the proposal on the living conditions of future occupiers of the flat with regards to outlook and light; the effect of the proposal on flood risk, and the effect of the proposal on highway safety with regards to parking and traffic flow.

Reasons

Living conditions

6. The basement flat proposes a bedroom which would have windows overlooking a small amenity area with a kitchen/dining area and a study area having windows/doors looking out onto a separate amenity area. These amenity areas

¹ PINs refs: APP/H5390/W/23/3325474; 3325475; and 3325124

are basement level and the outlook from these rooms would be heavily restricted by the existing ground and upper floors of the existing building. There is a lightwell with windows serving the living room and views from this room would be onto an expanse of built development. Outlook from the proposed windows would be restricted given its basement level and the existing built development which would create an oppressive atmosphere in the flat, to the detriment of future occupants living conditions.

7. A daylight and sunlight assessment dated 2021 has been submitted which the Council have raised concerns indicating that this assessment does not reflect new BRE guidelines published in June 2022. Due to the position of the proposed windows, particularly those into the bedroom and the kitchen/dining area which would be adjacent to high walls of the existing building, there would be overshadowing and obstructions to the amount of light the flat would receive. There is no convincing evidence to satisfy me that the proposal would receive adequate levels of daylight and sunlight that would not have a detrimental effect on future occupants living conditions.
8. The proposed flat would be harmful to the living conditions of future occupiers in respect of light and outlook. The proposal would not be in accordance with Policies HO4 and HO11 of the Hammersmith & Fulham Local Plan 2018 (LP) which seeks development to provide a high-quality residential environment that will meet the needs of future occupants.

Flood risk

9. The Flood Risk Assessment (FRA) dated July 2019 submitted by the appellant states the appeal site is located within a Flood Zone 3. This is contradicted by the Council's statement of case which indicates that the site is within a Flood Zone 2.
10. Annex 3 of the National Planning Policy Framework (the Framework) classifies basement dwellings as highly vulnerable in terms of flood risk. The Planning Practice Guidance (PPG) states that Sequential and Exception Tests should be applied to 'non major' development. Table 2 of the PPG 'Flood Risk and Coastal Change' states that Exception Tests are required for proposals classified as Highly Vulnerable and located within Flood Zone 2, whereas table 2 states that development classed as Highly Vulnerable located in a Flood Zone 3 should not be permitted.
11. The Framework requires two tests to be demonstrated in order for the Exception Test to be passed. The FRA provides evidence with regards to the second test in paragraph 170 b) of the Framework however, there is no convincing evidence that demonstrates that the first test in paragraph 170 a) of the Framework is met. The FRA also does not include a Sequential Test.
12. Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. There is some uncertainty as to whether the site lies in a Flood Zone 2 or 3. Nevertheless, there is no compelling evidence that demonstrates that the two tests of the Exception Test have been passed. Given the type of development proposed, I am not satisfied that the proposal would be safe throughout the lifetime of the development.
13. From the evidence before me, I am not satisfied that the proposal would not have a harmful effect in terms of flooding. The proposal would be contrary to Policies

DC11 and CC3 of the LP and the Framework which seeks developments to reduce the use of water and minimise current and future flood risk.

14. I note that the Council have suggested a planning condition which would require the submission of a further FRA however, I do not consider this appropriate as it gives no certainty that a basement flat can be provided without risk from flooding.

Highway safety

15. The appeal site is within a Controlled Parking Zone (CPZ) with the site also benefiting from a Public Transport Accessibility of 6a, which is an excellent rating. There are a number of bus stops as well as overground and underground stations within close walking distance to the site. The proposed development does not include any parking provision but given the location of the site, there would be justification for the proposal to be a car-free scheme.
16. To deliver a car-free development a mechanism is required to ensure that anyone living there, other than a Blue Badge holder, would not be eligible to apply for a residents parking permit. However, access to parking permits is not something that can be directly controlled through planning legislation. The issue of permits is the responsibility of highway authorities and subject to Traffic Management Orders (TMOs). It will be the TMO within a CPZ will specify which properties/streets/ areas are eligible to apply for permits.
17. An Unilateral Undertaking detailing how a car-free scheme would be secured has not been submitted. Nor is there any convincing evidence that a planning condition could adequately secure the required mechanism to establish a car-free scheme. A car-free development could be acceptable in planning terms however, from the evidence before me I am not satisfied that a mechanism could be put in place which would prevent future occupiers of the flat from obtaining a parking permit. This could result in an increase in the parking of vehicles in the area which could have a detrimental effect on highway safety.
18. Accordingly, the proposal would have a harmful effect on highway safety with regards to parking and traffic flow. The proposal would not accord with Policy T4 of the LP and Policies T2 and T6 of the London Plan which seeks car parking permit free measures on new development and deliver healthy streets.

Other Matters

19. I have had regard to the appellants statement of case and final comments statement including reference to other planning permissions and appeal decisions related to the site. There is no compelling information before me which convinces me that these other schemes are directly comparable with the appeal scheme, particularly with regards to layouts, window and doors positioning, main issues and relevant guidance.
20. The Council have raised concerns with regards to the effect the proposal would have on air quality. I do note that conditions suggested by the Council relate to air quality including the submission and installation of ventilation strategies which would provide mitigation in this respect.
21. The proposal would be the development of previously-developed land in a suitable location close to shops and public services, that would contribute to the local housing market. The scheme would not have an adverse effect on the character or appearance of the conservation area. The development would also not

compromise the living conditions of neighbouring occupiers and there would be no detrimental effects in terms of contamination, waste and recycling. I attribute minimal weight to these matters, and they would not outweigh the harm I have identified in the main issues.

Conclusion

22. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding.
23. For the reasons given above, I conclude that the appeal should be dismissed.

Chris Baxter

INSPECTOR