
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/23/3325124

Flat 5, Basement of 9-27 Fitz-George 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 Wrennall of Orme Properties Ltd against London Borough of Hammersmith and Fulham.
 - The application Ref 2023/00927/FUL, is dated 11 April 2023.
 - The development proposed is described as "Creation of one self-contained 2 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 cycle."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Separate planning appeals¹ have been submitted in relation to 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. For the sake of clarity, I have taken the appeal site address from the appeal form.

Main Issues

4. 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

5. The proposal for the basement flat includes a living/dining/kitchen area and two bedrooms. The living/dining/kitchen area would have a small lightwell and windows and doors which would overlook a narrow amenity area. Given the narrowness of the amenity area and the height of the wall directly adjacent to these proposed windows, the outlook would be severely compromised from this room of the living/dining/kitchen area. The proposed bedrooms would have windows onto an amenity area however, given the size of the proposed windows and the distance between these windows and the adjacent wall, views would be

¹ PINs refs: APP/H5390/W/23/3325474; 3325475; and 3325121

compromised that would adversely affect the living conditions of occupiers of the bedrooms. Due to the layout, positioning of windows and relationship with the high walls of the proposed amenity areas, the rooms of the proposed flat would have an oppressive environment that would be harmful to the living conditions of future occupiers.

6. The Council have raised concerns with the submitted daylight and sunlight assessment dated November 2021, indicating that it does not reflect updated BRE guidance that was published in June 2022. Given the narrowness of the amenity areas and height of the walls, as well as the position of the proposed windows in relation to the existing building, I am not satisfied that the proposed basement flat would receive sufficient levels of light suitable for satisfactory living conditions for future occupiers.
7. The proposal would have a harmful effect on the living conditions of future occupiers of the flat with regards to outlook and light. 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

8. The appellants have submitted a Flood Risk Assessment (FRA) dated July 2019. This FRA states that the appeal site is located within a Flood Zone 3, although the Council contradict this by stating the site lies within a Flood Zone 2.
9. In Annex 3 of the National Planning Policy Framework (the Framework), basement dwellings are classified 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 falling into the classification of 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.
10. Paragraph 170 of the Framework requires two tests to be demonstrated in order for an Exception Test to be considered passed. The submitted FRA provides information on the second test however, there is no compelling information within the FRA that demonstrates that the first test has been met. There is also not a Sequential Test within the submitted FRA.
11. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. There is uncertainty as to which Flood Zone the site lies within. The Framework and the PPG advises that development should not be permitted in Flood Zones 3 for schemes such as the proposed basement flat. Even if the site is found to be within Flood Zone 2, insufficient evidence has been provided that demonstrates that the two tests, set out in the Framework, have been passed. Due to the type of development proposed, I am not satisfied that the proposal would be safe throughout the lifetime of the development.
12. Accordingly, 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.

13. A planning condition has been suggested by the Council for the submission of a further FRA. This would not be appropriate as there is no certainty that a basement flat can be accommodated without risk from flooding.

Highway safety

14. The appeal site lies within a Controlled Parking Zone (CPZ) with the site also benefiting from a Public Transport Accessibility of 6a, which is excellent. The site is within close proximity to public transport such as bus stops, overground and underground stations. There is no parking provision included within the proposed scheme and the Council have confirmed that there would be justification for the proposal to be a car-free scheme.
15. 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.
16. The Council state that car-free schemes are usually secured by Unilateral Undertakings (UU) however, an UU has not been submitted with this development. There is a lack of convincing evidence detailing how a mechanism can be put in place to secure a car-free scheme, whether this be through an UU or a planning condition. So, whilst a car-free development could be acceptable in planning terms, there is insufficient evidence before me and I am not satisfied that a mechanism could be put in place which would prevent future occupiers 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.
17. 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

18. The appellant's submitted evidence has drawn my attention to the planning history of the site as well as various planning applications and appeal decisions. From the evidence before me, there is no compelling information to indicate that previous schemes are directly comparable to the scheme subject of this appeal, particularly with regards to submitted evidence, main issues, up to date guidance and layout of the basement flat.
19. 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.
20. 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

21. 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.
22. For the reasons given above, I conclude that the appeal should be dismissed.

Chris Baxter

INSPECTOR