

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/23/3325474

Flat 1, Basement of 49-67 Fitzgeorge Avenue, London W14 0SZ

- 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 2023/00916/FUL, is dated 10 April 2023.
 - The development proposed is described as "creation of one self-contained one-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 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. 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 proposal is for a basement flat with a bedroom and a living area which would have windows facing east over a small amenity area. These windows would be located within close proximity to a high wall. Views from these windows would be

¹ PINs refs: APP/H5390/W/23/3325121; 3325475; and 3325124

onto a large expanse of built development and be oppressive to the occupiers of the flat. Due to the layout of the flat and the positioning of the windows, the proposal would have a detrimental effect on the living conditions of future occupiers with respect of outlook.

7. An Assessment for the Provision Daylight and Sunlight dated November 2021 (the Assessment) has been submitted in support of the scheme. The Council have raised concerns that the Assessment does not reflect updated BRE guidance published in June 2022 which refers to new daylight and sunlight tests. The windows in the east elevation would be restricted by the adjacent high wall, the lightwells are small in size and the doors onto the amenity space to the west would be overshadowed by the existing stairwell for the main building. From the evidence before me, I am not satisfied that the proposal would receive sufficient levels of daylight and sunlight, and this would compromise the living conditions of future occupiers of the flat.
8. 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

9. The appeal site has been identified as being within Flood Zone 2. 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 with Table 2 of the PPG 'Flood Risk and Coastal Change' confirming that Exception Tests are required for proposals classified as Highly Vulnerable and located within Flood Zone 2.
10. A Flood Risk Assessment (FRA) dated May 2016 has been submitted by the appellant. This FRA does not include a Sequential or Exceptions Test relating to the proposal, neither are there any details of the structural water-proofing methods for the basement or confirmation of active drainage devices or a non-return valve to be fitted within the basement.
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. Due to location of the site within a Flood Zone 2 and the type of development that is proposed, I am not satisfied from the evidence before me that the proposal would be safe throughout the lifetime of the development. I note that the Council have suggested a planning condition that would require the submission of a further FRA. However, this does not provide sufficient security that a development can be brought forward that is not harmful to the area in terms of flooding.
12. Accordingly, it has not been demonstrated that the proposal will be safe throughout the lifetime of the development, and therefore 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.

Highway safety

13. The appeal site is located within a Controlled Parking Zone (CPZ) in operation between 09:00 and 20:00 hours, Monday to Saturday. The site benefits from a Public Transport Accessibility Level (PTAL) of 6a, which is excellent, and it is in close proximity to a number of bus stops including underground and overground stations. The proposal does not include the provision of car parking and given the location the Council have stated there is justification for the proposal to be a car-free scheme.
14. 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.
15. The Council have stated that car-free developments are usually secured through a Unilateral Undertaking (UU). An UU has not been submitted with this appeal. I find it acceptable in planning terms that the development can be car-free however, there is no compelling evidence before me that indicates that a mechanism can be put in place which would prevent future occupiers from obtaining a residents parking permit. This therefore could lead to an increase in vehicles parking in the area which in turn could have an adverse effect on highway safety.
16. 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.
17. Whilst the Council have suggested a condition relating to car-free development, this condition does not provide certainty that a suitable mechanism can be provided to ensure that a car-free development can be secured.

Other Matters

18. I have had regard to the appellants submitted evidence including reference to previous schemes at the appeal site and the 2019 appeal decision². Insufficient information relating to this 2019 decision has been provided and therefore I cannot determine whether this scheme and the development subject of this current appeal are directly comparable, particularly with regards to layouts and submitted evidence. It is also notable that there have been significant changes in circumstances since the 2019 decision, including with regards to BRE guidelines. The effect of the proposal on highway safety is a main issue in this appeal that did not form part of the main assessment in the 2019 decision. Whilst I am mindful for the need for consistency in decision making, from the evidence before me, I do not find that the schemes are directly comparable, and I have assessed this appeal on its own merits.
19. The appellant has detailed the planning history of the site which includes a legal opinion commenting that the permitted scheme of the 2019 decision has been implemented lawfully on this site. I attribute minimal weight to this matter, given my comments above with regards to the differences between the scheme of the

² Ref: APP/H5390/W/18/3204698

2019 decision and the scheme subject of this appeal. This matter would not outweigh the harm I have found in the main issues.

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