



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/23/3325475

Flat 2, 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 Michael Wrennall of Orme Properties Ltd against London Borough of Hammersmith and Fulham.
 - The application Ref 2023/00915/FUL, is dated 10 April 2023.
 - The development proposed is described as "Creation of one self-contained 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.

Background and Main Issues

4. The appeal has been made against a failure by the Council to give notice within the prescribed period of a decision on an application for permission. The Council have not provided a statement of case, although policies of the Hammersmith & Fulham Local Plan 2018 (LP) have been submitted. Third party correspondence has been submitted that the appellant has had an opportunity to respond too.
5. Therefore, the main issue is whether the proposal complies with the relevant development plan policies.

Reasons

6. The proposed basement flat would include two bedrooms and a living, dining, kitchen area. Bedroom II has windows/doors overlooking the amenity area to the east with the kitchen part of the flat having windows/doors facing the amenity area to the west. Bedroom I has windows/doors opening out onto the amenity area to the west however, there would be a wall within close proximity of these windows/doors. Views from bedroom II would be severely restricted that would compromise the outlook of

¹ PINs refs: APP/H5390/W/23/3325474; 3325121; and 3325124

occupants of this room. Whilst there is a lightwell that will provide light to the living room area of the flat, this area of the flat would feel oppressive given the lack of outlook. Given the position of the fenestration, the proposal would have an adverse effect on the living conditions of future occupiers of the flat with regards to outlook.

7. A Flood Risk Assessment (FRA) dated December 2017 has been submitted by the appellants. This FRA identifies the site as being within a Flood Zone 3. Annex 3 of the National Planning Policy Framework (the Framework) classifies basement dwellings as highly vulnerable in terms of flood risk. Table 2 of the Planning Practice Guidance (PPG) 'Flood Risk and Coastal Change' states that proposals classified as Highly Vulnerable and located within Flood Zone 3 should not be permitted.
8. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. The FRA does not include a Sequential or Exceptions Test relating to the proposal. Due to the location of the site within a Flood Zone 3 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.
9. The proposal does not include the provision of parking however, it is noted that the site is within close walking distance to underground and overground stations, and a number of bus stops. The appeal site is located within a Controlled Parking Zone (CPZ) which benefits from a Public Transport Accessibility Level (PTAL) of 6a.
10. Developments with no parking provision would be car-free schemes and these types of development require a mechanism to ensure that anyone living there, other than a Blue Badge holder, would not be eligible to apply for a residents parking permit. Planning legislation is not something that can directly control access to parking permits. This is the responsibility of highway authorities and subject to Traffic Management Orders (TMOs). It will be the TMO within a CPZ that will specify which properties/streets/ areas are eligible to apply for permits.
11. Whilst it may be acceptable in planning terms that the proposal be a car-free scheme, there is no convincing evidence before me which suggests that a mechanism can be implemented to 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.
12. From the evidence before me I find that the proposal would have a harmful effect on flooding, highway safety and on the living conditions of future occupiers in terms of outlook. The proposal would not be in accordance with Policies HO4, HO11, DC11, CC3 and T4 of the LP which, amongst other things, seeks development to provide a high-quality residential environment that will meet the needs of future occupants, reduce the use of water and minimise current and future flood risk and deliver car parking permit free measures on new development and deliver healthy streets.

Other Matters

13. The proposal for a basement flat would be compatible with surrounding uses, suitably located close to shops and services as well as being the development of previously-developed land. The internal and external areas of the proposed flat would meet the minimum space standards and there would not be any adverse effects on the living conditions of neighbouring occupiers. Due to the nature, design and scale of the scheme, the proposal would preserve the character, appearance and the significance of the conservation area and not adversely compromise matters

relating to contamination, waste and recycling. Given the scale of the development, I attribute minimal weight to the benefits described here.

14. A daylight and sunlight assessment dated November 2021 has been submitted which states that in line with the assessment criteria prescribed by the BRE Guidelines, it is shown that the provision of natural daylight will meet or exceed the minimum required threshold for the proposal. Providing the basement flat receives sufficient light that meets the requirements of the most up to date regulations then it is difficult to conclude that the proposal would not compromise living condition of future occupiers with respect of light.
15. My attention has been brought to a 2019 appeal decision² relating to the site. There is a lack of compelling evidence to suggest the 2019 scheme is directly comparable to the development subject of this appeal, particularly with regards to layout, fenestration and submitted evidence. I have had regards to the planning history of the site as well as a legal opinion detailing that the 2019 scheme has been implemented lawfully. The Council have not commented on this matter. Nevertheless, I attribute minimal weight to this given I do not consider the 2019 scheme and this current scheme to be directly comparable.

Conclusion

16. I have found that the proposal would be suitably located, it would not compromise living conditions of neighbouring occupiers or matters relating to contamination, waste and recycling and it would preserve the character and appearance of the conservation area. However, these matters and the benefits described above would not outweigh the significant harm I have identified with regards to living conditions of future occupiers, flooding and highway safety.
17. 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.
18. For the reasons given above, I conclude that the appeal should be dismissed.

Chris Baxter

INSPECTOR

² Ref: APP/H5390/W/18/3204699