



Appeal Decision

Site visit made on 6 November 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2024

Appeal Ref: APP/H5390/W/24/3348144

Boot Court 75-77 Jeddo Road, London W12 9ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) 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 Barry Doherty of Flanchford Developments Limited against the Council of the London Borough of Hammersmith and Fulham.
 - The application Ref is 2023/00171/FUL.
 - The development proposed was originally described as a conversion of the vacant commercial space on the ground floor and southern part of the first floor into five residential units.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of the ground floor and southern part of first floor from commercial (Class E) into 5no. self-contained flats (Class C3), consisting of 4 x 2 bedroom and 1 x 1 bedroom self-contained flats; replacement of 3no. single doors with new windows fronting Jeddo Road; removal of part of the existing roof to the eastern elevation of unit 2; alterations within the internal courtyard and associated works, at Boot Court 75-77 Jeddo Road, London W12 9ED in accordance with the terms of the application, Ref 2023/00171/FUL subject to the conditions in the attached schedule.

Preliminary Matters

2. In my decision I have used the description of development provided on the appeal form and used by the Council in their statement of case. This more accurately describes the proposal than the description provided on the application form given in the banner heading above.

Main Issue

3. Although the Council did not make a decision on the application, they have provided a putative reason for refusal in their statement of case. From this, the main issue is whether it is viable for the development to make a contribution towards affordable housing.

Reasons

4. Planning permissions¹ were granted in 2017 and in 2019 for the erection of a building on the appeal site to provide 8 residential units, a retail unit and Class B1 floorspace. The residential units are occupied, though the commercial

¹ Refs 2017/00391/FUL and 2018/03682/FUL

floorspace remains vacant. The development provided no affordable housing at that time.

5. The Council suggests that the current proposal should be aggregated with the original development to total a scheme of 13 residential units. Policy HO3 of the Hammersmith and Fulham Local Plan (2018) refers to affordable housing and requires that, on developments of more than 11 dwellings, 50% of the units are affordable. In enforcing that requirement the Council will take account of financial viability. Although the appellant considers the current proposal should not be aggregated with the previous development, they provided a Financial Viability Appraisal (FVA) of the 13 unit scheme. This initially concluded it would not be viable to provide a contribution towards affordable housing as the scheme shows a deficit of more than £3million.
6. The Council queries the Gross Development Value (GDV) in the FVA, stating that it is based on other properties that are not comparable to the development and are not within the Borough. However most of the properties referenced are one or two bedroom flats, like the proposal, and although some may be beyond the Borough boundary this is not unexpected given the site is very close to the Borough boundary. Most of the properties are within ¼ mile of the site.
7. The GDV is complicated by the fact that it accounts for the actual sales values of the existing flats in Boot Court and because these values do not reflect their current market value which is lower. Nonetheless the values estimated for the proposed flats broadly reflect the market data, including a flat sold elsewhere on Jeddo Road, and the values for the existing flats reflect a reduction in value since their sale.
8. Furthermore the appellants have reviewed additional properties sold since the submission of the appeal. These illustrate further decreases in value in that time. They acknowledge another flat currently for sale in Jeddo Road which is valued higher, but this is still generally reflective of the values estimated in their original FVA.
9. Notwithstanding that, a revised calculation has been provided which purports to take the average sold price of the existing flats in Boot Court and applies it to the proposed flats. This would mean the new flats are valued as new build, rather than conversions, and on higher historic rates, not current market rates. Even with this higher value, the scheme would show a deficit of over £2million. The revised calculation also accounts for the removal of the cost of a biodiversity net gain contribution, as advised by the Council.
10. The Council also criticise the FVA as it is not a Red Book valuation. However I consider the valuations given are valid based on a robust assessment of a range of other similar properties nearby and the actual sales value of the existing flats at Boot Court.
11. Overall, even allowing for some flexibility in the assessment, it is sufficiently robust to clearly show that the benchmark land value would considerably exceed the residual land value when the development is considered on an aggregated basis. Therefore it would not be viable for the development to make a contribution towards affordable housing. Moreover, the Council have not provided a FVA to support an alternative conclusion.

12. Notwithstanding the above, the appellant has provided a planning obligation which secures a Late Stage Review Mechanism which would require a revised FVA to be provided should development not commence within two years of the discharge of the last pre commencement condition. This would allow the Council to review, and potentially collect a contribution to affordable housing should the scheme be sufficiently viable at that time. This obligation meets the tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and hence I have taken it into account.
13. In summary, it is considered that, at this time, it would not be financially viable for the development to provide contributions towards affordable housing. As such there would be no conflict with policy HO3 as set out above, nor with policy H4 of the London Plan (2022) which supports the provision of affordable housing subject to viability. It would also accord with Local Plan policy HO1, which supports the provision of new homes through conversions and the change of use of buildings where there is no reasonable prospect of the premises being used for that purpose.

Other Matters

14. The development would provide an additional terrace at first floor level to serve unit 5. This would face towards the properties to the rear. However there are some tall and thick conifer trees on the common boundary which would obscure any potential for overlooking. In addition there is a tall brick wall on the side boundary to prevent any overlooking to the adjacent property at 1 Lefroy Road.
15. The development would provide no car parking and the Council confirm that a planning obligation should be secured to ensure residents are unable to apply for parking permits for on-street parking. This has been provided and meets the tests in Regulation 122 of the CIL Regulations and so I have taken it into account. It would ensure that there is no additional pressure on on-street parking nearby.
16. I note the concerns regarding noise and disturbance during the construction period. However, notwithstanding the fact that works for conversion of the existing units is likely to be far less disruptive than the construction of the building originally, excessive noise can be address by other legislation.
17. The concerns regarding the compliance with conditions on the previous permission is not a matter for this appeal and is for the Council to enforce.
18. The commercial and retail units have been marketed by two separate companies since 2019 with no success. The Council does not dispute their conclusions and so raises no objection to the principle of the conversion of the commercial units to residential use. I have no reason to disagree.

Conditions

19. The Council have suggested a number of conditions. Where necessary I have slightly altered them to better reflect the advice in the Planning Practice Guidance and the National Planning Policy Framework.
20. In the interests of certainty, conditions regarding the commencement of the development and identifying the approved plans are imposed. The condition requiring the development is undertaken in accordance with the Flood Risk

Assessment is necessary to ensure flood risk is suitably mitigated. The conditions relating to zero emission heating and ventilation are necessary in the interests of improving air quality. Conditions relating to cycle parking and waste storage are imposed in the interest of promoting sustainable travel and recycling respectively. The condition relating to the logistics plan is necessary in the interests of highway safety, and that relating to noise insulation is necessary to ensure appropriate living conditions for occupiers of the development.

21. I have not imposed three suggested conditions. These relate to details of external plant, and noise insulation between residential and commercial uses. This is because there would be no commercial use at the site, there are no commercial use at adjoining sites, and there is no reason to consider it likely that any plant would be installed on the residential units other than that allowed for under the conditions relating to ventilation.

Conclusion

22. The proposal would accord with the development plan as a whole. Therefore, for the reasons given above, the appeal is allowed and planning permission is granted.

A Owen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: 00-001, PR-02-100, PR-02-101, PR-03-100, PR-03-101, PR-03-102, PR-03-103, PR-03-104, PR-03-105, PR-03-106.
- 3) The development shall be carried out and completed in full accordance with the details contained within the approved Flood Risk Assessment by GTA Civils Ltd (January 2023). No part of the development shall be occupied until all flood prevention and mitigation measures have been provided in accordance with the submitted details and the development shall be permanently retained in this form and maintained as necessary thereafter.
- 4) Prior to first occupation of the development, details of the installation of the Zero Emission MCS certified Air/Water Source Heat Pumps or Electric Boilers to be provided for space heating and hot water for the dwellinghouses shall be submitted to and approved in writing by the local planning authority. Approved details shall be fully implemented prior to the first occupation of the development and thereafter permanently retained and maintained.
- 5) Prior to commencement of above ground works in the development hereby permitted, a Ventilation Strategy Report to mitigate the impact of existing poor air quality for residents shall be submitted to and approved in writing by the local planning authority. This is applicable to all receptor locations where the Annual Mean Nitrogen Dioxide concentrations are equal to or exceed 30ug/m-3 and the World Health Organisation Air Quality Guideline Values (2005) for Particulate Matter (PM2.5, PM10) are already exceeded, and where current and future predicted pollutant concentrations are within 5 % of these limits. The report shall include the following information:
 - (a) details and locations of the ventilation intake locations on the rear elevation of each floor;
 - (b) details of restricted opening windows (maximum 100mm for emergency purge ventilation) for all habitable rooms (Bedrooms, Living rooms) on all floors;
 - (c) details and locations of ventilation extracts, to demonstrate that they are located a minimum of 2 metres away from the air ventilation intakes, in order to minimise the potential for the recirculation of extract air through the supply air ventilation intake in accordance with best practice guidance; and
 - (d) details of the independently tested mechanical ventilation system with Nitrogen Oxides (NOx) and Particulate Matter (PM2.5, PM10) filtration with air intakes on the rear elevation to remove airborne pollutants. The filtration system shall have a minimum efficiency of 75% in the removal of Nitrogen Oxides/Dioxides, Particulate Matter (PM2.5, PM10) in accordance with BS EN ISO 10121-1:2014 and BS EN ISO 16890:2016.

The whole system shall be designed to prevent summer overheating and minimise energy usage. The maintenance and cleaning of the systems shall be undertaken regularly in accordance with manufacturer specifications and shall be the responsibility of the primary owner of the property. The approved details shall be fully implemented prior to the first occupation of the development and thereafter permanently retained and maintained.

- 6) Prior to first occupation of the development hereby permitted, details of a post installation compliance report of the approved ventilation strategy as required by condition 5 to mitigate the impact of existing poor air quality shall be submitted to and approved in writing by the local planning authority. The report shall be produced by an accredited Chartered Institute of Building Services Engineer (CIBSE). Approved details shall be fully implemented prior to the first occupation of the development and thereafter permanently retained and maintained.
- 7) Prior to first occupation of the development hereby permitted, cycle storage for at least 28 no. bicycles as shown on drawing no PR-02-100, shall be installed in full. Evidence of cycle storage shall be provided to and agreed in writing by the local planning authority. Thereafter the provision for cycle storage shall be maintained as such for the life of the development.
- 8) Prior to first occupation of the development hereby permitted, waste and recycling storage facilities as shown on drawing no PR-02-100 shall be installed in full. Evidence of the waste and recycling storage facilities shall be provided to and agreed in writing by the local planning authority. Thereafter the provision for waste and recycling storage facilities shall be maintained as such for the life of the development.
- 9) No development shall take place until a Construction Logistics Plan has been submitted to and approved in writing by the local planning authority. The Plan shall include the numbers, size and routes of construction vehicles and other matters relating to traffic management to be agreed. The approved Plan shall be adhered to throughout the construction period.
- 10) Prior to first occupation of the development hereby permitted, details of an enhanced sound insulation value $D_{nT,w}$ and $L'_{nT,w}$ of at least 5dB above the Building Regulations value, for the floor/ceiling/wall structures separating different types of rooms/uses in adjoining dwellings shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to first occupation of the development and thereafter be permanently retained.