



Appeal Decision

Site visit made on 16 March 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2020

Appeal Ref: APP/X5210/W/20/3244112

Flats 1 and 2, 114 Fitzjohn's Avenue, London NW3 6NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Jennifer Kemmeter against the decision of the Council of the London Borough of Camden.
 - The application Ref 2019/0350/P, dated 21 January 2019, was refused by notice dated 4 July 2019.
 - The development proposed is the conversion of ground floor three-bedroom unit with first floor two-bedroom to create one four bed unit (C3).
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of ground floor three-bedroom unit with first floor two-bedroom to create one four bed unit (C3) at Flats 1 and 2, 114 Fitzjohn's Avenue, London NW3 6NT in accordance with the terms of the application, Ref 2019/0350/P, dated 21 January 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: D01 (location plan) and 005 Revision C (proposed plans).
 - 3) The development hereby approved shall achieve a maximum internal water use of 110 litres/person/day. The amalgamated dwelling shall not be occupied until the Building Regulation optional requirement has been complied with.

Application for costs

2. An application for costs was made by Mrs Jennifer Kemmeter against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal site has been stated to be Flat 1, 114 Fitzjohn's Avenue. However, given the proposal, it is clear that it relates to both Flats 1 and 2 of No 114. I have therefore determined the appeal on this basis.
4. In addition to the above, the Council utilised a revised description from that on the application form and the Appellant has also utilised this on their appeal

form. Given that this provides an accurate and more succinct description I have also adopted this revised description.

Main Issues

5. The main issues are the effect on the housing mix in the area and on parking and congestion in the area.

Reasons

Housing mix

6. The appeal site includes flats 1 and 2 of 114 Fitzjohn's Avenue. Flat one is currently a three bedroomed property whilst flat two has two-bedrooms. From the evidence before me, the appeal building was previously one large house which has been subsequently subdivided into five separate flats.
7. The Councils reason for refusal includes conflict with two Development Plan policies, Policy H7 of the Camden Local Plan 2017 (LP) and Policy HC1 of the made Hampstead Neighbourhood Plan (2018) (HNP).
8. Policy H7 seeks to secure a range of homes of different sizes that would contribute to meeting the priorities as set out in the dwelling size priority table. This table identifies that, for market dwellings, that two and three bedroomed properties are high priority whilst one and four bedroomed (and above) properties have a lower priority.
9. The HNP was made after the adoption of the LP and as such the policies within it are of great importance to the appeal scheme. Policy HC1 sets out that except in exceptional circumstances housing proposals which would result in the loss of small self-contained dwellings (which includes 2 bedroomed units) will not be supported. However, there is little guidance of what could constitute such exceptional circumstances.
10. Taking these Development Plan policies together, and the objectives which they seek to achieve, it is clear that there is a very great need to retain two bedroom properties in the HNP area to the extent that without any exceptional circumstances there is a clear edict to resist the loss of such accommodation to support the overarching aim of providing a balanced mix of housing sizes.
11. In coming to that view, I acknowledge that Policy H7 does not explicitly prevent the amalgamation of the two flats subject of this appeal. It could be reasonably said that the appeal building (as a whole) does, and would, provide a mix of dwelling sizes even if the appeal was allowed. That said, I find that the requirements of Policy HC1 to be the most important to the determination of the appeal.
12. With that in mind, the Appellant has indicated that the individual circumstances of the family should be seen as an exceptional circumstance. This includes the health circumstances of a member of the family. It is also stated that the Appellants parents stay with the family for between 6 to 8 months per year which enables additional support to be made.
13. Whilst the plans originally submitted do not show what each of the rooms would be used for, additional details have been provided as part of the appeal

- submission¹. This includes details that the amalgamation of the flats would enable the creation of two household spaces tailored to the needs of the family, including occupational therapy activities, exercise equipment and other physical development tools and a bedroom which would be a distraction free space.
14. The Council has considered this additional information but is of the view that this does not provide a compelling need for additional space which could not be met in the existing Flat 1.
 15. To my mind, the specific health circumstances of the Appellants family are clearly a material planning consideration and, in this case, one which I attach great weight to.
 16. As noted by the Council, the size of the existing Flat 1 is well in excess of the minimum space standard². However, this is a minimum standard (as opposed to a maximum standard) and does not mean that the existing Flat 1 could provide the necessary facilities to support the specific circumstances of the occupants. This is particularly the case when the layout and configuration of the existing property is taken into account.
 17. Whilst I acknowledge that the proposal would not provide the circumstances as set out at paragraph 3.132 of the LP, I am of the opinion that the specific needs of the Appellants family do provide a set of circumstances which weigh very much in favour of the proposal.
 18. The Council have set out that they consider that paragraph 8.8 of the HNP refers exclusively to those adaptations to affordable homes referred to in paragraph 3.132 of the LP. I disagree. The plain reading of Policy HC1 does not set out what such exceptional circumstances might be. Whilst paragraph 8.8 does provide some guidance, this is not closed exception.
 19. Therefore, and in the context of Policy HC1, it is my view that these specific health requirements do provide for an exceptional circumstance which would warrant the granting of planning permission for the amalgamation of the two flats.
 20. For the above reasons, the proposal provides for an exceptional circumstance to justify the amalgamation of the two flats. As a result the loss of the two and three bedroom flats to form one four bedroom flat would accord with Policy HC1 of the HNP and Policy H7 of the LP which amongst other matters seek to protect smaller dwellings and ensure that there is a mix of large and small homes.

Parking

21. The appeal site does not have any on-site parking spaces and therefore any vehicles associated with the occupants of the building have to utilise on-street parking. From the evidence before me, the occupier of Flat 1 currently has two parking permits. The occupier of Flat 2 is also entitled to obtain two parking permits, although at the present time it is understood that this option has not been exercised.
22. Given that the development would reduce the number of dwellings in the area there would clearly be a net benefit to the demand for parking permits as a

¹ Contained within the Appellants appeal rebuttal statement.

² From the Technical housing standards – nationally described space standard

- result of the proposal, including the associated improvements to air quality, congestion and parking stress. To my mind, this is a significant positive factor.
23. Policy T2 of the LP seeks to limit the availability of parking and requires all new developments to be car free. It also goes on to state that the Council will not issue on-street or on-site parking permits in connection with new developments and they will use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits.
24. The Council have set out that Policy T2 is informed by Camden Planning Guidance on Transport (2019) (CPGT). However, as acknowledged by the Council, this does not have the same weight as the LP policies.
25. The CPGT states that car free development means that no parking spaces are provided or associated with the development (other than those reserved for disabled persons). In addition, it states that current and future occupiers are also not issued with parking permits. It also includes provision for less intensive use of existing sites and that the Council will also seek car-free development and a reduction in the parking provision. This includes proposals reduce the number of units on site, amalgamating multiple units into one.
26. The Council have also set out that other Inspectors have found the principle of a section 106 agreement to secure car free development as an acceptable method. Whilst this may well be the case, from what I understand from the case quoted by the Council³, that development involved an increase in the number of residential units and therefore a potential increase in demand for parking permits.
27. Additionally, the Council have also referred to a number of applications⁴ where the proposal would result in a less intensive use of the site which have been secured as being car free. However, I have only been provided with very limited details of these cases and I cannot be sure that these provide the same set of circumstances as those before me. Moreover, each application must be considered on its individual merits.
28. Notwithstanding all the above, the Council have not identified any significant harm which would result should the development not be car-free. As I have already noted, the amalgamation of the two flats into one would have the net result of reducing the demand for such parking permits, together with its associated benefits. In this respect, I consider that the proposal accords with the overarching aims of the policies which seek to reduce the demand for such facilities to the extent that the benefits associated with the development outweigh any conflict with Policies T2 and DM1 of the LP (and the associated CPGT). To my mind, it would also accord with the sustainable transport objectives of the National Planning Policy Framework (the Framework).

Other matters

29. The appeal site is also located in the Fitzjohns Netherall Conservation Area (FNCA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

³ 21 Canfield Place (planning application reference 2017/6066/P and appeal reference APP/X5210/D/18/3201404)

⁴ 14 Greencroft Gardens, 9 Woodchurch Road & flats 1-13 118 Fordwych Road

30. Whilst the Council do not appear to have considered the effect of the proposal on the FNCA, I note that the proposal would not have any external alterations to the building and therefore any effect on the character of the FNCA would be likely to be limited to how the building is occupied and utilised.
31. In this respect, I consider that the proposal would have a neutral effect on the FNCA and would therefore preserve its character and appearance. Therefore, it would accord with the heritage aims of the LP and the Framework.

Conditions

32. The Council has suggested a number of conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty.
33. In addition to the above, for environmental reasons and to accord with Policies CC1, CC2, CC3 of the LP, a condition relating to water efficiency measures is also necessary.

Conclusion

34. Taking all matters into consideration, I conclude that the appeal should be allowed.

Chris Forrett

INSPECTOR