
Appeal Decision

Hearing held on 22 November 2016

Site visit made on 22 November 2016

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03 January 2017

Appeal Ref: APP/X5990/C/16/3149981

Land at 47 Huntsworth Mews, London NW1 6DB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Dr Rupinder Singh against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 4 April 2016.
 - The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref TP/8124 granted on 10 September 1971.
 - The development to which the permission relates is the conversion of 47 Huntsworth Mews W.1 into a dwelling house including the erection of a 2nd floor. The condition in question is No 2 which states that: The garage shall not be used for any purpose other than the garaging or storage of a private vehicle and for no other purpose (including use as living accommodation) and no trade or business shall be carried on therefrom. The notice alleges that the condition has not been complied with in that the garage space has been converted to habitable living space.
 - The requirements of the notice are:
 - a) Cease the use of the ground floor area specifically reserved for use as garage space, as shown on the approved plan attached to the planning permission dated 10 September 1971 (attached to the notice as Plan B), or as shown on the approved plan attached to the planning permission dated 8 October 2008 (attached to the notice as Plan C), for any purpose than for the garaging or storage of a private motor vehicle (including use as living accommodation);
 - b) Alter the internal layout at ground floor level of the property, ensuring that suitable garage space is reinstated, either to accord with the approved plans attached to the planning permission dated 10 September 1971 (attached to the notice as Plan B), or to accord with the approved plan attached to the planning permission dated 8 October 2008 (attached to the notice as Plan C);
 - c) Remove any fixtures, fittings, furniture and equipment which preclude the use of the garage space (as shown by the red dotted line in Plan B or Plan C) for garaging or storage of a private motor vehicle;
 - d) Reinstatement the garage floor with a suitable hardstanding surface, such that the hardstanding is a suitable surface for the use of the garage space for garaging or for the storage of a private motor vehicle; and
 - e) Reinstatement garage doors to match the materials and design of the garage doors which were approved by the planning permission dated 10 September 1971 (as shown by the blue dotted line in Plan B or in Photograph A) or which were approved by the planning permission dated 8 October 2008 (as shown by the blue dotted line in Plan C), such that the doors are made suitable for the entrance or egress of a standard motor vehicle, ensuring that the installation of the garage doors do not obstruct the public highway when open.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the
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Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice upheld.

The appeal on ground (c)

1. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. The essence of the appellant's appeal on this ground is that the permission granted in 1971 for the conversion of 47 Huntsworth Mews into a dwelling house, and in relation to which Condition No 2 requires that the garage shall not be used for any purpose other than the garaging or storage of a private vehicle, has been superseded by a later permission with which it is inconsistent and which, at the time the enforcement notice was issued, was not subject to a condition requiring that the garage shall only be used for the garaging or storage of a vehicle. The appellant therefore argues that, in accordance with the principle established by *Pilkington v SSE* [1973] 1 WLR 1527 CA and related cases, the most recently granted permission prevails and that accordingly there has been no breach of planning control. In order to test that argument, it is first necessary to first set out the relevant planning history of the appeal property.
2. In September 1971, planning permission was granted by the City Council for the conversion of the appeal property into a dwelling house, including the erection of a 2nd floor (Ref: TP/8124). The approved plans for that permission show a one-bedroom house with a living room/kitchen at first floor level and the single bedroom at second floor level. Apart from an entrance lobby and the staircase against one wall, practically the whole of the ground floor was shown as a garage. The elevation drawings show a garage door spanning the majority of the ground floor. This permission was subject to conditions, including Condition No 2, which in summary required that the garage shall not be used for any purpose other than the garaging or storage of a private vehicle and for no other purpose. There is no dispute that the planning permission granted in 1971 was properly implemented and that Condition No 2 attached to that permission took effect.
3. A permission granted in September 1986 (Ref: RN:86/3037) for the creation of additional residential space was never implemented but in October 2008 planning permission was granted by the City Council for a development described as "Alterations to roof extension to provide a roof terrace to the front elevation and alterations to windows and door openings at ground floor and first floor levels" (Ref: 08/06746/FULL). The approved plans for this permission show a three-bedroom house, with two bedrooms on the first floor and a single bedroom on the second floor. However, in this layout, the kitchen formed part a 'reception' space within a redesigned ground floor, in which the size of the garage was much reduced and occupied some 50% of the total area. This layout was reflected in changes to the front elevation, which now featured a smaller garage door with a window inserted between that and the entrance door. This permission was also subject to a number of conditions, one of which, condition No 4, required that the garage should only be used by people living in the property to park their private motor vehicles.
4. In August 2013, the City Council granted planning permission for the removal of Conditions 3 and 4 of planning permission 08/06746/FULL dated 8 October

2008 (Ref:11/06186/FULL). In granting that permission, the City Council attached an Informative to the effect that Condition 3 of planning permission RN:86/3037 was still relevant. That condition effectively replicated Condition 2 of the permission granted in 1971, and required that the garage shall not be used for any purpose other than the garaging or storage of a private vehicle and for no other purpose (including use as living accommodation) and no trade or business shall be carried on therefrom.

5. The permission granted in September 1986 was never implemented, such that Condition 3 of that permission never took effect. The City Council representative at the Hearing had no involvement in the granting of the planning permission in August 2013 and was not able to shed any light as to why the City Council had referred to a condition attached to a permission that had not been implemented and had expired. In any event, it could be said that Condition 4 of the permission granted in 2008 was not necessary because there was already a condition in place to that same effect, but erroneously stated as that in the 1986 permission rather than the planning permission granted in 1971.
6. The appellant concedes that the permission granted in 2008 was not implemented in full accordance with the approved plans, insofar as the ground floor windows and garage door differ in their respective dimensions from those shown on the approved plan. Nevertheless, both the appellant and the City Council consider that the 2008 permission has been implemented.
7. There is also no dispute that a wall was constructed behind the garage doors in or around 2009 and that the garage space was converted into habitable accommodation in or around April/May 2011. These works therefore occurred at a time after the permission granted in October 2008 but before Condition 4 of that permission was removed by virtue of the permission granted in 2013. The enforcement notice was issued in April 2016, and therefore after Condition 4 of the 2008 permission was removed by virtue of the permission granted in 2013.
8. The principle established by *Pilkington* is that where two planning permissions exist in relation to the same land, both cannot be implemented if they are mutually inconsistent. It is therefore first necessary to consider whether the permissions granted in 1971 and 2008 are inconsistent in that respect.
9. The first point to note is the 1971 permission has been implemented. The granting of the later permission in 2008 cannot retrospectively change that. Moreover, there is no dispute that the permission granted in 2008 has itself also been implemented. Consequently, it is evident that the permissions granted in 1971 and 2008 are not and cannot be inconsistent in the terms of *Pilkington*, given that both have been implemented. It follows that the principle established by *Pilkington* does not apply in this situation.
10. Furthermore, I am not persuaded that the implementation of the planning permission granted in 2008 opened a new chapter in the planning history of the site, as suggested by the appellant. The planning permission granted in 1971 was for a single dwelling over three floors, with the ground floor largely devoted to a garage space. Although the planning permission granted in 2008 resulted in the addition of two additional bedrooms and various alterations to the internal layout, it did not change the overall use as a single dwelling over three floors, or the overall character of that use.

11. Moreover, although significantly reduced in area, the layout granted permission in 2008 retained a garage on the ground floor covering, in part, the same area as that granted by the planning permission granted in 1971. Notwithstanding the alterations to the front elevation and the attendant change in the external appearance of the building, the granting of the planning permission in 2008 does not amount to a new chapter in the planning history. Rather, that permission represented a new page in the same chapter of the planning history of the appeal property analogous, in that sense, to an extension to a dwellinghouse.
12. The appellant suggests that, in imposing Condition 4 on the planning permission granted in 2008, the City Council accepted that the permission granted in 1971 would be superseded by that later permission. I am not convinced that this was the true effect of that permission. The garage space in the planning permission granted in 2008 overlaps, in part, exactly the same area as that in the permission granted in 1971. There is no reference in the wording of Condition 4 that directly seeks to replace, supersede or even refer to Condition 2 of the permission granted in 1971. There is, in my opinion, no reason why two separate conditions imposed on two separate planning permissions relating to same land cannot sit side by side and both be in effect at the same time, albeit only to the extent that they are consistent with each other. That, in my view, was the true effect of the permission granted in 2008.
13. The permission granted in 2013 did, of course, remove Condition 4 on the planning permission granted in 2008. However, given that the planning permission granted in 1971 has been implemented and that Condition 2 of that permission has not been removed at any time, Condition 2 remained in effect at the time that the enforcement notice was issued and remains in effect. The conversion of the garage to habitable living space in or around April/May 2011 was in breach of Condition 2 of the planning permission granted in 1971, and therefore constitutes a breach of planning control.
14. Accordingly, the appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

15. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation ought to be discharged. The Council has stated one substantive reasons for issuing the enforcement notice, from which the following main issues are raised:
 - whether Condition 2 of planning permission Ref TP/8124 is necessary and reasonable having regard to highway safety and the convenience of other highway uses, and
 - whether the breach of planning control preserves or enhances the character or appearance of the Dorset Square Conservation Area.

Highway safety and the convenience of other highway uses

16. The reason for the imposition of Condition 2 of planning permission Ref TP/8124 is stated as being to avoid the obstruction of the surrounding streets and to safeguard the amenities of adjacent premises. At the Hearing, the City Council representative explained that the reference to the amenities of the adjacent premises relates to the effect on the convenience of the occupiers in

terms of finding a parking space rather than considerations of noise disturbance.

17. The enforcement notice refers to Policy TRANS23 of the City of Westminster Unitary Development Plan (UDP) which, in Part (A), indicates that the permanent loss of any existing off-street residential car parking space will not be permitted other than in exceptional circumstances. The conversion of the garage into habitable space that occurred in or around April/May 2011 has resulted in a 'permanent' loss of that car parking space, and I must therefore consider whether there are any exceptional circumstances to justify that loss in the terms of Policy TRANS23.
18. I was advised that the appeal site is within an area having a Public Transport Accessibility Level (PTAL) rating of 6(b), the highest possible. The site must therefore be considered to have good access to public transport which, I accept, reduces the need for a private car. However, a high PTAL rating does not entirely negate the need or desire for occupiers to own a car. Moreover, I understand that much of the City of Westminster has a high PTAL rating and therefore the high PTAL rating of the appeal site does not qualify as exceptional circumstances for the purposes of Policy TRANS23.
19. The controlled parking zone within which Huntsworth Mews is situated only operates between 08:00 to 18:30 Mondays to Fridays, and there are no parking restrictions outside of these times on weekdays or at weekends. I take the appellant's point that this would make car ownership more problematic and possibly less likely, but it would not preclude ownership of a car and parking a car outside of those hours. This is also a consideration that applies equally to all properties in this controlled parking zone, and similarly does not qualify as exceptional circumstances for the purposes of Policy TRANS23.
20. I acknowledge a number of properties in Huntsworth Mews appear to have had the garage converted to habitable space. I was provided with photographs that showed these properties and I was also able to view these properties from the public highway as part of my site visit. The appellant provides a list of some 15 of the 25 properties in Huntsworth Mews (North) that have living space on ground floor, equating to some 60% of the total. Only 6 properties (24%) have garage spaces actually in use. Nonetheless, these figures simply set the baseline for the situation in Huntsworth Mews and do not bear directly upon the issue before me, namely the effect that the permanent loss of garage at the appeal property has on highway safety and the convenience of other highway uses given that baseline.
21. The appellant contends that the City Council has demonstrated a high degree of inconsistency in its decision making by accepting the loss of parking spaces in areas deemed to be in parking stress. In particular the appellant cites three examples in Huntsworth Mews where the City Council has granted planning permission for either the conversion of garages to habitable space or car-free development. I have not been provided with the planning histories of those properties and there may have been material considerations that justified planning permission being granted for those developments that do not apply in this case and of which I am not aware. I acknowledge the importance of consistency on decision making, as rehearsed in *North Wiltshire DC v Secretary of State for the Environment and Clover* [1992] JPL 955. However, on the information available to me, I cannot be certain that the examples referred to

by the appellant are directly comparable to that now before me and accordingly I am not convinced that these planning permissions serve as a precedent for granting planning permission in this case.

22. I have also been referred to the appeal decision in September 2014 relating to the appeal premises itself (APP/X5990/D/14/2221050). That appeal concerned the conversion of the garage space to habitable accommodation, albeit with reference to Condition 3 of planning permission RN:86/3037 that was never implemented. Notwithstanding that the appeal focused on a condition that had not taken effect, the Inspector was not aware of that at the time and his reasoning focused on essentially the same arguments that have been put to me. The appeal was dismissed, the Inspector finding that there were no exceptional circumstances to point towards a deviation from Policy TRANS23 of the UDP. There have been no material changes in circumstances since that decision was issued, in terms of considerations such as PTAL rating or the status of Policy TRANS23. In the interests of consistency, this appeal decision is a material consideration to which I must attach significant weight.
23. The application subject to the above appeal decision was not accompanied by a planning obligation to restrict the issue of parking permits. In order to overcome the findings of the Inspector in that decision, the appellant has provided a Unilateral Undertaking under Section 16 of the Greater London Council (General Powers) Act 1974 (the 1974 Act) through which the landowner of the appeal site undertakes not to apply to the City Council for a parking permit nor knowingly permit any Occupier of the Land to apply to the City Council for a parking permit. The Unilateral Undertaking also provides that, in the event that a parking permit is issued in respect of the Land, that permit will not be utilised and would be surrendered to the City Council on demand.
24. The appellant considers that the Unilateral Undertaking under Section 16 of the 1974 Act provides the necessary assurances to prevent the owners or occupiers from having access to on-street parking spaces, whilst overcoming the problems in achieving a similar objective with a planning obligation under the provisions of Section 106 of the Town and Country Planning Act 1990, as found in *Westminster City Council v Secretary of State for Communities and Local Government and another* [2013] EWHC 690 (Admin). In particular, it was found in *Westminster City Council* that the Unilateral Undertaking offered in that case did not meet the requirements of sub-paragraphs (1)(a)-(d) of Section 106 and therefore did not have the characteristics of a planning obligation, in that it was purely a personal undertaking by the land owners which did not run with the land and which was not capable of being registered as a land charge.
25. In my view, the Unilateral Undertaking under Section 16 the 1974 Act suffers from the same defects identified in *Westminster City Council*. The Unilateral Undertaking provides that the landowner shall not to apply to the City Council for a parking permit. That is a personal undertaking which does not run with land; in terms of Section 16, it is not an undertaking "in connection with the land". Similarly, the undertaking not to knowingly permit any Occupier of the Land to apply to the City Council for a parking permit is a personal undertaking that does not run with land, and in addition raises the spectre of uncertainty should the landowner claim that he did not knowingly permit an application for a parking permit. Moreover, because these are both personal undertakings,

the Unilateral Undertaking is not capable of being registered as a local land charge.

26. The appellant argues that the City Council would be able to enforce the Unilateral Undertaking through an injunction. I am, however, mindful of the comments made by Deputy Judge Bucknall QC in *Westminster City Council* who, in contemplating a similar scenario, considered that the putting out on the street of, say, a family of four because one of them has applied for a parking permit “does not strike me as a procedure to which the court would readily lend its aid”. In my view, the same could equally be said of the occupiers of the appeal property, and for that reason I am not persuaded that the Unilateral Undertaking provided by the appellant would be readily enforceable.
27. I accept that the Unilateral Undertaking provided by the appellant would be directly, fairly and reasonably related to the development. I can also accept that it could be considered to be necessary, in terms of seeking to address a specific policy in the development plan. The Unilateral Undertaking provided by the appellant would therefore meet the tests in the National Planning Policy Framework (Framework) in those respects. However, it cannot be a planning obligation, because it was not expressly made pursuant to Section 106 of the 1990 Act. Moreover, for the reasons set out above, I consider that the Unilateral Undertaking would not be enforceable against subsequent owners. I am therefore unable to give it significant weight.
28. I recognise that a colleague reached the opposite conclusion in relation to a Unilateral Undertaking before him in relation to appeals decided in December 2015 (APP/K5600/A/13/2204626; 2221982; 3005733; 3014417; 3135365). The Unilateral Undertaking then before him was made pursuant to both Section 106 of the 1990 Act and Section 16 the 1974 Act. I have not been provided with a copy of that Unilateral Undertaking, although the Inspector does record that it was worded in almost identical terms to that found not to comply with the requirements of Section 106 (1) in *Westminster City Council*. This would suggest that the Unilateral Undertaking was worded in similar terms to that now before me. However, I am only able to consider the Unilateral Undertaking that has been presented to me and I have concluded that I am unable to give that Unilateral Undertaking significant weight.
29. The loss of the garage space at the appeal property results in the possibility that an additional vehicle or vehicles would need to be accommodated in an area where on-street parking is both limited and controlled. This could lead to haphazard parking and the obstruction of the surrounding streets, thereby prejudicing conditions of highway safety. It would also increase the demand for the limited number of car-parking spaces that are available, to the inconvenience of other residents and highway users. I therefore conclude that Condition 2 of planning permission Ref TP/8124 is necessary and reasonable to protect these interests, and that the breach of planning control that has occurred is contrary to Policy TRANS23 of the UDP.

Character and appearance of the Dorset Square Conservation Area

30. The character and appearance of the Dorset Square Conservation Area is derived, in part, from the uniform townscape of Georgian terraced townhouses set within a grid layout of squares and streets. The character and appearance of the northern section of Huntsworth Mews is different from that of the wider conservation area, being largely comprised of modest mews houses.

Notwithstanding a general consistency in scale, these mews houses display a variety of external finishes and detailing, providing a degree of visual interest in the street scene. Only a few of the mews houses have dedicated parking spaces on street, whereas others retain garage doors or recessed parking spaces.

31. Although the internal space has been converted to habitable accommodation, the front elevation of the appeal property features a garage door, an entrance door and a window. These features are all broadly consistent with those approved by the planning permission granted in 2008. The breach of planning control which has taken place has no effect on these approved details. In the absence of a parking permit, the breach of planning control could result in one or more vehicles being parked in the mews outside of the in which the controlled parking zone operates. This could result in additional cars being parked within Huntsworth Mews during the hours not covered by the controlled parking zone although, in visual terms, I do not consider that this would be significant given that a number of other vehicles could be parked there outside of controlled hours.
32. I conclude that the breach of planning control preserves the character and appearance of the Dorset Square Conservation Area. I therefore conclude that the breach of planning control does not conflict with Policies 7.4 or 7.8 of The London Plan, S25 of the Westminster City Plan: Strategic Policies and Policy DES 9 of the UDP.

Conclusion on the ground (a) appeal

33. I recognise, as the appellant points out, that the Framework encourages strategies which support the reduction of greenhouse gases and which reduce congestion. However, in the absence an enforceable planning obligation, these are potential benefits arising from the development to which I can only attach limited weight. Having regard to the above, I find that the failure to comply with condition No 2 of a planning permission Ref TP/8124 granted on 10 September 1971 is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted.
34. Accordingly, the appeal on ground (a) fails.

Conclusion

35. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

36. The appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Rupinder Singh	Appellant
Ms Elena Makrak	
Mr Andrew Ransome MRTPI	Plainview Planning Ltd
Mr Andrew Parkinson	of Counsel

FOR THE LOCAL PLANNING AUTHORITY:

Mr Zia Sarkar PDip BA (Hons)	Senior Planning Officer, Planning Enforcement Team
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DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ Photographs of Huntsworth Mews, submitted by Ms Elena Makrak.
- 2/ Westminster City Council Parking Standards (submitted electronically).
- 3/ Dorset Square Conservation Area Audit & Management Proposals, December 2008 (submitted electronically).