
Appeal Decision

Site visit made on 20 February 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 17 March 2017

Appeal Ref: APP/H5390/W/16/3158027
111 Bishop's Road, London SW6 7AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms C Ephson (Rathplace Developments) against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2016/01521/VAR, dated 4 April 2016, was refused by notice dated 2 June 2016.
 - The application sought planning permission for change of use of the ground floor from retail (class A1) into a 1 x one bedroom self-contained flat without complying with conditions attached to planning permission Ref 2015/06040/PD56, dated 3 February 2016.
 - The conditions in dispute are Nos (2), (3) and (4) which state that:
 - (2) The flat hereby permitted shall not be occupied until the Council has been notified in writing (and has acknowledged such notification) of the full postal address of the flats. Such notification shall be to the council's Head of Development Management and shall quote the planning application number specified in this decision letter.
 - (3) No Occupier of the self-contained unit at ground floor level hereby permitted, with the exception of disabled persons who are blue badge holders, shall apply to the Council for a parking permit or retain such a permit, and if such a permit is issued it shall be surrendered to the Council within seven days of a written demand.
 - (4) "No occupier of the self-contained unit at ground floor level hereby permitted shall not be occupied until such a time as a scheme has been submitted to and approved in writing by the local planning authority to ensure that all occupiers, other than those with disabilities who are blue badge holders, have no entitlement to parking permits from the Council and to ensure that occupiers are informed, prior to occupation, of such restriction. The flat shall not be occupied otherwise than in accordance with the approved scheme unless prior written agreement is issued by the Council."
 - The reasons given for the conditions are:
 - (2) "In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new flats hereby approved, and thus ensure that the development does not harm the existing amenities of the occupiers of neighbouring residential properties by adding to the already high level of on-street car parking stress in the area, in accordance with Policy T1 of the Core Strategy 2011, Policy DM J2 and J3 of the Development Management Local Plan 2013, and SPD Transport Policies of the Planning Guidance Supplementary Planning Document 2013."
 - (3) "In order to ensure that the development does not harm the existing amenities of the occupiers of neighbouring residential properties by adding to the already high level of on-street car-parking stress in the area, in accordance with Policy DM A1, A9, J2 and J3 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011."
 - (4) "In order that the prospective occupiers of the residential unit concerned are made aware of the fact that they will not be entitled to an on-street car parking permit in the
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interests of the proper management of parking, and to ensure that the development does not harm the existing amenities of the occupiers of neighbouring residential properties by adding to the already high level of on-street car parking stress in the area, in accordance with Policy DM A1, A9, J2 and J3 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011"

Decision

1. The appeal is allowed and planning permission is granted for change of use of the ground floor from retail (class A1) into a 1 x one bedroom self-contained flat at 111 Bishop's Road, London SW6 7AU in accordance with the application Ref 2016/01521/VAR dated 4 April 2016, without compliance with condition numbers (2), (3) and (4) previously imposed on planning permission Ref 2015/06040/PD56 dated 3 February 2016 subject to the conditions in the schedule to this decision below.

Background and Main Issue

2. This appeal follows the Council's refusal of an application to remove conditions which restrict the availability of parking permits for the occupants of a dwelling at 111 Bishops Road. The conditions were attached to an approval under Schedule 2, Part 3, paragraph M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) for a conversion from retail use to residential. Paragraph M.2. (1) (a) of the GPDO establishes that, amongst other matters, the transport and highways impacts of a development proposed under Class M should be assessed as part of an application for the local planning authority's prior approval.
3. Paragraph W (13) of the GPDO, which applies to this class of permitted development establishes that "The Local Planning Authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the appeal." Paragraph W 10 (b) also states that the local planning authority must, when determining an application "have regard to the National Planning Policy Framework issued by the Department of Communities and Local Government in March 2012, so far as relevant to the subject matter of the prior approval, as if the application were a planning application".
4. Accordingly, the main issue in this appeal is whether the disputed conditions are necessary to address the transport and highways impacts of the development.

Reasons

5. The appeal property comprises the ground floor of a building situated within a short terrace between Rostrevor Road and Chesilton Road. Formerly in use as a shop, at the time of my site visit the appeal property appeared to be undergoing conversion in line with the terms of the grant of prior approval. Whilst shops are dotted here and there within the surrounding terraces, including on the corner of Radipole Road adjacent to No 111, the appeal property's surroundings are predominantly residential. Under the terms of the scheme granted prior approval the use of the appeal property would change to provide a one-bedroom flat.
6. Policy DMJ2 of the Development Management Local Plan (adopted July 2013) (the DM Plan) sets a maximum parking standard of less than one space for one

bedroom dwellings. The supporting text of Policy DMJ3 of the DM Plan highlights that 'permit-free' or 'reduced parking' housing principles would apply to new dwellings where on-street parking would lead to unacceptable levels of local traffic congestion and increased competition for scarce on-street parking resources. The supporting text of Policy DMA1 in relation to housing supply states that where conversions give rise to a demand for additional on-street parking space in streets where there is less than 10% night-time free space conditions may be attached to allow no additional on-street parking.

7. Taken together, the disputed conditions seek to restrict the availability of on-street parking permits for the occupants of the scheme. I saw at my afternoon site visit along Bishop's Road, and on the side streets branching from it in the environs of the appeal site, that although in some localised instances kerbsides were densely parked, spaces were available including adjacent to the appeal property itself. I noted that no parking suspensions were in place at the time of my visit, although some were mooted.
8. Whilst these observations were admittedly snapshots, and I acknowledge that parking patterns could change over the course of a day and at night time, I am mindful of the figures submitted by the appellant and the Council in this regard, which show that between 87% and 88% of available night-time on-street parking spaces were taken up at the time of the respective surveys in the environs of the appeal property. Whilst I note that over time on-street parking in the vicinity appears to have increased, both the appellant and Council figures are below the 90% uptake of night-time parking spaces that could trigger the development plan restriction of the availability of parking permits for new dwellings. Furthermore, the surveys establish that there would be around 20 spaces available on the street before the 90% threshold is reached.
9. Moreover, due to the modest size of the residential conversion of No 111 it would only accommodate a limited number of occupants. As a consequence, car ownership is also likely to be similarly limited, and would not increase the uptake of night-time on-street parking space over the 90% level. In arriving at this view, I am also mindful of Census figures that show that only 13% of households in the area own more than one car.
10. My attention was also drawn to the charging regime for parking permits within the Borough, where the cost of an individual permit for a household is £119, and permits for additional vehicles cost £497 each. I consider that this measure effectively rations the availability of permits, and is a further matter that would tend to limit additional parking in the environs of the appeal property as a result of its conversion.
11. These considerations, taken together, lead me to the conclusion that the removal of the disputed conditions would not cause an unacceptable level of local traffic congestion or a harmful increase in competition for scarce on-street parking resources, to the detriment of either highway safety or the living conditions of adjacent occupants. As a result the removal of the disputed conditions would not conflict with Policies T1 of the Hammersmith and Fulham Core Strategy (adopted October 2011) (the Core Strategy); or Policy J2 of the DM Plan. For these reasons also the disputed conditions are not necessary to mitigate any transport or highways impacts, and as a consequence do not meet

the test given in paragraph 206 of the National Planning Policy Framework (the Framework).

12. The removal of the disputed conditions could lead to a breach of SPD Transport Policy 4 from the Planning Guidance Supplementary Planning Document (adopted July 2013) (the SPD), as it relates to the restriction of parking permits where the level of overnight parking stress leaves less than 20% free notional on-street parking capacity. However, this figure is different from the 10% given within the supporting text to the Policy DMA1 of the DM Plan. As the DM Plan is part of the development plan for the borough I give it more weight than the guidance of the SPD and thus the conflict with Transport Policy 4 does not constitute a reason to dismiss the appeal in this instance.

Conditions

13. The GPDO attaches standard conditions to this type of development which are that:
 - (a) Development must be completed within a period of 3 years starting with the prior approval date; and
 - (b) A building which has changed use under Class M is to be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as such a dwellinghouse.
14. In terms of the conditions attached to the original grant of approval, as I have concluded that Conditions (2), (3) and (4) are unnecessary I have amended the pre-commencement condition (1) to reflect the altered numbering. The advice in the Government's Planning Practice Guidance establishes that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original grant of prior approval, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have made minor amendments to the conditions where necessary in the interests of precision and clarity.

Conclusion

15. The removal of the disputed conditions would not conflict with the development plan insofar as the policies that have been brought to my attention are concerned. Moreover, the disputed conditions are not necessary to mitigate the transport and highways impacts of the development, and thus do not meet the relevant test given in paragraph 206 of the Framework. Accordingly, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

Schedule of Conditions

- 1) The change of use of the retail unit to a residential unit shall not take place until Conditions (2) to (12) attached to this decision are fully complied with.
- 2) The residential unit hereby permitted shall not be occupied until details of 1 secure cycle parking space to be provided in connection with the proposed residential dwelling have been submitted to, and approved in writing by, the local planning authority, and such details as are approved shall be implemented prior to occupation or use of the flat and permanently retained thereafter for such use.
- 3) The development shall not be occupied until full details of refuse storage, including provision of recyclable materials, have been submitted to and approved in writing by the local planning authority and provided onsite in accordance with the approved details. The refuse and recycling facilities shall thereafter be permanently retained for such use.
- 4) The development hereby permitted shall not commence until details of water efficiency measures have been submitted to and approved in writing by the local planning authority. The measures/scheme shall be implemented in accordance with the approved details prior to occupation of the development hereby permitted, and thereafter permanently retained and maintained in line with the agreed plan.
- 5) The development shall be implemented in accordance with the submitted Flood Risk Assessment.
- 6) No development shall commence until a preliminary risk assessment report is submitted to and approved in writing by the local planning authority. This report shall comprise: a desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses; a site reconnaissance; and a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
- 7) No development shall commence until a site investigation scheme is submitted to and approved in writing by the local planning authority. This scheme shall be based upon and target the risks identified in the approved preliminary risk assessment and shall provide provisions for, where relevant, the sampling of soil, soil vapour, ground gas, surface and groundwater. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
- 8) Unless the local planning authority agrees in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until, following a site investigation

undertaken in compliance with the approved site investigation scheme, a quantitative risk assessment report is submitted to and approved in writing by the local planning authority. This report shall: assess the degree and nature of any contamination identified on the site through the site investigation; include a revised conceptual site model from the preliminary risk assessment based on the information gathered through the site investigation to confirm the existence of any remaining pollutant linkages and determine the risks posed by any contamination to human health, controlled waters and the wider environment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

- 9) Unless the local planning authority agrees in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until, a remediation method statement is submitted to, and approved in writing by, the Council. This statement shall detail any required remediation works and shall be designed to mitigate any remaining risks identified in the approved quantitative risk assessment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
- 10) Unless the local planning authority agrees in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until the approved remediation method statement has been carried out in full and a verification report confirming these works has been submitted to, and approved in writing by, the local planning authority. This report shall include: details of the remediation works carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all waste management documentation showing the classification of waste, its treatment, movement and disposal; and the validation of gas membrane placement. If, during development, contamination not previously identified is found to be present at the site, the local planning authority is to be informed immediately and no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the local planning authority. Any required remediation shall be detailed in an amendment to the remediation statement and verification of these works included in the verification report. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
- 11) Unless the local planning authority agrees in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until an onward long-term monitoring methodology report is submitted to and approved in writing by the local planning authority where further monitoring is required past the completion of development works to verify the success of the remediation undertaken. A verification report of these monitoring works shall then be

submitted to and approved in writing by the local planning authority when it may be demonstrated that no residual adverse risks exist. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

- 12) The doors and windows in the development hereby approved shall be of timber frame construction and retained as such thereafter.