
Appeal Decision

Site visit made on 12 April 2017

by John Morrison BA (Hons) MSc MRTPI

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

Decision date: 22 May 2017

Appeal Ref: APP/H5390/W/16/3167706
104 Munster Road, London SW6 5RD

- 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 Munster Road Limited against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2016/03404/VAR, dated 25 July 2016, was refused by notice dated 21 September 2016.
 - The application sought planning permission for the erection of a rear roof extension; erection of a rear extension at second floor level on top of existing back addition; erection of a single storey rear extension to the side of the existing back addition; excavation of the rear garden to form a light well in connection with the enlargement of the basement in connection with the conversion of property from two self-contained flats to 1x3 bedroom self-contained flat; 1x1 bedroom self-contained flat and 1x2 bedroom self-contained flat, without complying with conditions 18, 19 and 20 attached to planning permission Ref 2015/03596/FUL, dated 1 October 2015.
 - The conditions in dispute are Nos 18, 19 and 20 which state that: 18. *The three flats 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 three 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;* 19. *No occupiers of the one bedroom self-contained unit 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 written demand;* 20. *The one bedroom self-contained unit 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 flats shall not be occupied other than in accordance with the approved scheme unless prior written agreement is issued by the Council.*
 - The reasons given for the conditions are: 18. *In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new 1 bed flat at first floor level hereby approved, 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 streets 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;* 19. *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 streets 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;* 20. *In order that the prospective occupiers of the residential until concerned are made aware of the fact*
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that they will not be entitled to an on street car parking permit, in the 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 streets 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 the planning permission Ref 2015/03596/FUL erection of a rear roof extension; erection of a rear extension at second floor level on top of existing back addition; erection of a single storey rear extension to the side of the existing back addition; excavation of the rear garden to form a light well in connection with the enlargement of the basement in connection with the conversion of property from two self-contained flats to 1x3 bedroom self-contained flat; 1x1 bedroom self-contained flat and 1x2 bedroom self-contained flat at 104 Munster Road, London SW6 5RD, granted on 1 October 2015 by the Council of the London Borough of Hammersmith & Fulham, is varied by deleting conditions 18, 19 and 20 and substituting for them the following 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 the following approved plans: 419.100.PL.02 Rev B, 419.100.PL.03 Rev A, 419.100.PL.05 Rev B and 419.200.PL.02 Rev B.
 - 3) The materials and finishes to be used on the external surfaces of and new openings to the development hereby permitted shall match those of the existing building.
 - 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification, no externally mounted water tanks, extraction fans or flues, air conditioning units or pipes other than those expressly authorised by this permission shall be mounted on the external elevations of the development hereby permitted.

Main Issue

2. The main issue is whether or not conditions 18, 19 and 20 of the above mentioned planning permission are reasonable and necessary to ensure that the development does not lead to additional on street car parking in an area with high on street parking stress levels which may have an effect on the living conditions of existing local residents.

Reasons

3. The appeal before me seeks to remove three conditions imposed on the same planning permission. Together, they seek to achieve the same objective which is to effectively prevent residents of the one bedroom flat that was created out of the permission from applying for an on street parking permit. For completeness however, I shall address each separately.

Condition 19

4. This condition explicitly states that no occupiers of the one bedroom flat, unless they are disabled badge holders, may apply to the Council for an on street parking permit. If they gain such a permit, it must be surrendered on demand following written notice.
5. A planning permission granted, and by association any conditions that it may be subject to, runs with the land or building and not the individual. A planning condition may restrict what an individual can do with the land or building or prevent certain things taking place until details have been agreed between an individual and a decision making body.
6. However, condition 19 seeks to place a restriction on the act of an individual person. I.e. it is worded to restrict someone applying for an on street parking permit as an act. Worded in this manner therefore, whilst it would achieve the objective of preventing an occupier from applying for a permit, it takes an unreasonable approach to do so. Consequently, I allow the removal of the condition.

Condition 20

7. This condition seeks the agreement of a scheme, prior to the occupation of the one bedroom flat created, to ensure that all occupiers, other than those who are disabled badge holders, have no entitlement to parking permits from the Council and to ensure that occupiers are informed, prior to occupation, of such a restriction.
8. Planning Practice Guidance makes it clear that, in exceptional circumstances, a negatively worded condition requiring a planning obligation or other agreement (my emphasis) to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. The scheme before me cannot be defined as complex or strategically important and no exceptional circumstances have been demonstrated. Whilst I accept that the activation clause of this condition is prior to occupation it would have a similar delaying effect to the use of the development granted planning permission.
9. Further, it is not sufficiently clear that, whatever the mechanism that would be used, it would not still seek to restrict the right of an individual to undertake an act rather than a restriction that would be associated with the land, or in this case the building that was the subject of the planning permission granted.
10. The approach that the Council has taken in respect of this condition is therefore unreasonable and unrelated to the planning permission granted. As it therefore fails more than one of the six legal tests set out by the Framework¹, its removal is allowed.

Condition 18

11. This condition requires the Council to be notified of the postal addresses of the resulting three flats (following the creation of one net additional flat). This

¹ The National Planning Policy Framework 2012

appears to be so they are able to update their records since it would also be the Council issuing any parking permit.

12. Whilst I acknowledge that this would afford the Council with some information pertaining to postal addresses, in the absence of the other two conditions mentioned above, it would cease to have the effect of restricting the issuing of a parking permit. The Council may be aware of the full postal addresses but alone, the condition does nothing to prevent the Council from issuing one. The condition therefore, in ceasing to have any objective effect, is unnecessary. As such, I allow its removal.

Conditions

13. I have regard to the conditions set out on the original decision notice. I have re imposed the following conditions for the following reasons; making changes to the wording in the interests of clarity and enforceability.
14. As well as the standard time condition I have specified the approved plans. In the interests of ensuring an appropriate external appearance, I have specified external materials and finishes as well as new openings, to match the existing building. For the same reason, I have also restricted the installation of externally mounted water tanks, extraction fans or flues, air conditioning units or pipes other than those shown on the approved plans on the external elevations of the development permitted. It would be beyond the reasonable power of the planning permission to apply such a restriction to the existing building or any elements not affected by the planning permission granted.
15. I have not been provided with any evidence as to precisely why the ground floor extension should be finished in painted cement render. In any event, the relevant condition does not specify a colour and I have already set out that materials should match. Similarly, and having regard to the existing building, detailed matters such as the use of slate or artificial slate to the relevant new roof sections, white painted timber windows, brick arches and brick faced lintels will all be secured by the matching materials and finishes condition.
16. The height of the party walls are also shown on the approved plans, as is the height of the rear extension. Conditions controlling such are therefore superfluous. In addition, the creation of a raised balcony or enclosure on the roof at the rear as well as changing the use of the basement to a separate dwelling would both require express planning permission. Conditions restricting these are therefore unnecessary.
17. The Council have confirmed that details have been submitted to and agreed by them in respect of cycle and refuse storage as well a scheme for the management of surface water in respect of flood prevention. Whilst dealt with primarily by the building control regime, they have also agreed sound insulation measures to be incorporated. Conditions requiring details of these matters are therefore no longer needed. A further condition restricting refuse being deposited on the street would be unnecessary since an appropriate scheme for its storage has been provided and agreed in accordance with a separate condition.

Conclusion

18. Munster Road is marked with single yellow lines and only permits limited waiting in marked bays. Overnight residents' parking is not permitted. The

evidence I have been provided with shows the levels of parking stress in the context of the capacity of the streets surrounding the appeal building; Hestercombe Avenue, Ringmer Avenue and Felder Street.

19. It is clear from this evidence that spare overnight capacity on the aforementioned streets already falls below an acceptable level by a degree that is, in most cases, more than marginal. In some cases the number of cars outstrips the on street capacity by some margin. This indicates a very high level of parking stress on the roads around the appeal building. Any further on street parking would clearly therefore exacerbate a problem that is already at the proverbial bursting point. It would increase this stress level even further, which would be passed onto existing local residents, adversely affecting their living conditions.
20. Whilst all this is of clear and justified concern to local residents, for the reasons I have given the Council have not advanced a suitably robust, reasonable or necessary mechanism to be able to secure a restriction on the allocation of parking permits through the planning permission concerned. On these grounds therefore the appeal has to be allowed and the planning permission varied, imposing the conditions set out in the schedule above.

John Morrison

INSPECTOR