



Appeal Decision

Site visit made on 2 July 2019

by J Wilson BA Hons BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 12th July 2019

Appeal Ref: APP/H5390/W/19/3224611
67-69 Aspenlea Road, London W6 8LH

- 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 Morgans Dairy LTD, against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2018/03998/VAR, dated 13 November 2018, was refused by notice dated 13 February 2019.
- The application sought planning permission for Demolition of existing mixed-use building comprising of part residential (Class C3) and part light industrial use (Class B1/B8), and the erection of a part two, part three and part four storey plus-basement building to provide 2 x 1 bedroom and 4 x two bedroom self-contained flats (Class C3); formation of roof terraces at first and second floor level without complying with conditions attached to planning permission Ref 2017/02410/FUL, dated 13 November 2017.
- The conditions in dispute are Nos 23, 24 and 25 which state that:

(23) The six dwellings 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 new dwellings. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter.

(24) No occupiers of six dwellings 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.

(25) The six dwellings hereby permitted shall not be occupied until such 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 dwellings 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:

(23) In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the dwellings 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 DM A1, A9, J2 and J3 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011.

(24) 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.

(25) In order that the prospective occupiers of the residential units concerned are made aware of the fact 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 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 Demolition of existing mixed-use building comprising of part residential (Class C3) and part light industrial use (Class B1/B8), and the erection of a part two, part three and part four storey plus-basement building to provide 2 x 1 bedroom and 4 x two bedroom self-contained flats (Class C3); formation of roof terraces at first and second floor at 67-69 Aspenlea Road, London W6 8LH in accordance with the application Ref 2018/03998/VAR dated 13 November 2018, without compliance with condition numbers 23, 24 and 25 previously imposed on planning permission Ref 2017/02410/FUL dated 13 November 2017 and subject to the conditions in the attached schedule.

Background

2. This appeal seeks to remove three conditions, which together seek to prevent future residents of the appeal property from applying for an on-street parking permit in an area that is said to have significant on-street parking stress.
3. Following the granting of planning permission subject to conditions, the appellants sought to remove conditions 23, 24 and 25 on the grounds that evidence pointed to a lack of parking stress in the vicinity of the site. The evidence supporting that application was supported by parking stress figures obtained from the Council under a freedom of information request. The appellants contend that the evidence supports the premise that there is on-street parking capacity in the area. The appellants also argue against the legality of the conditions contending that the conditions are not reasonable or necessary to ensure the development does not lead to parking stress and which may have an effect on living conditions of nearby residents.

Main Issues

4. In the light of the above the main issues are;
 - whether the conditions meet the six tests for the use of conditions contained in the National Planning Policy Framework 2019 (the Framework) and in Planning Practice Guidance (PPG); and
 - if they do meet those tests whether, or not, conditions 23, 24 and 25 of the planning permission referred to above are reasonable and necessary to ensure that the development does not harm the amenities of the occupiers of neighbouring residential properties by adding to an already high level of on-street parking stress in the area.

Reasons

Legality

5. The appellant has drawn my attention to another appeal decision¹ related to a site also in the London Borough of Hammersmith and Fulham, made on 22 May 2017. That appeal was also against a refusal to remove three conditions attached to a grant of planning permission for a residential development, which sought to restrict the ability of future occupants to possess on-street-parking permits. Each appeal should be determined on its individual merits however, given that the conditions subject to the appeal cited are substantively the same as those before me now, it is a relevant consideration in this case, and one that I have taken into account in my assessment of the merits of this appeal.

Condition 24

6. This condition states that no occupiers of any of the six dwellings, except for disabled persons who are blue badge holders, may apply to the Council for an on-street parking permit or retain such a permit. If they were to gain such a permit, the condition requires them to surrender it within seven days of written notification to do so.
7. A planning permission that is granted, and by association any condition that it may be subject to, runs with the land or building and not with an individual. A planning condition may restrict what an individual can do with the land or building, or it can prevent certain things from taking place until specific details have been agreed between an individual and the Council. However, condition 24 encumbers the actions of a group of individuals. The wording imposed sought to restrict any of the occupiers from applying for an on-street parking permit and whilst it would have the effect of preventing an occupant from applying for a permit it takes an unreasonable approach in doing so as it impedes the actions of a person and is not a restriction on land or buildings. I therefore conclude that it is not relevant to planning and does not meet all the relevant tests.

Condition 25

8. This condition seeks the agreement of a scheme, prior to the occupation of the six dwellings, to ensure that all occupants, other than disabled persons who are blue badge holders, have no entitlement to parking permits from the Council and to ensure that occupants are informed, prior to occupation, of such restriction.
9. From the evidence, it is clear that, despite the mechanism that may be used, it would seek to restrict the rights of an individual or individuals to undertake an act rather than a restriction that would be associated with the building that is the subject of the planning permission granted. The approach that the Council has taken in respect of this condition is therefore unreasonable and not relevant to planning. I therefore conclude that it does not meet all the relevant tests.

¹ APP/H5390/W/16/3167706

Condition 23

10. This condition requires the Council to be notified of the postal address of the new residential units. This would be to enable the Council to update its records, and since it would also be the Council issuing any parking permit, to ensure that parking permits are not issued to the occupants of the new residential units.
11. This condition is not relevant to planning. Moreover, it would only be of purpose in conjunction with the conditions that follow it, i.e. conditions 24 and 25, without them it would not have the effect of restricting the issuing of a parking permit even though the Council would be aware of the full postal address. Therefore, its retention would only have any effect if I were to conclude that conditions 24 and 25 met the required tests which I have concluded they do not.

Relevance to planning, reasonableness and necessity of the disputed conditions

12. Given that I have concluded that conditions 24 and 25 do not meet the required tests and condition 23 would have no purpose in the absence of conditions 24 and 25 it is not necessary for me to go on to consider the evidence that the appellants put forward in relation to parking stress.

Conditions

13. The guidance in the PPG makes clear that decision notices for the grant of planning permission under Section 73 of the Town and Country Planning Act 1990 (as amended) (the Act) should also repeat the relevant conditions from the original planning 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 planning permission, I shall impose all those that I consider remain relevant. If some have in fact been discharged, that is a matter which can be addressed between the parties.
14. Whilst the appellants have not specified² their written consent for pre-commencement conditions, likewise their submissions do not raise any issue with those other conditions. In accordance with the PPG guidance I shall re-impose them unchanged save for minor amendments to their wording where typographical errors had previously occurred.
15. Section 73(5) of the Act states that planning permission must not be granted under this section for the development of land in England to the extent that it has an effect to change a condition subject to which a previous planning permission was granted by extending the time within which a development must be started. Accordingly, I have amended the standard commencement condition.
16. In the interests of clarity and certainty, I have attached a list of the approved plans to condition 2.
17. The Framework sets out that conditions should be kept to a minimum and only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have no evidence before me from either party that the remaining

² with regard to Section 100ZA (5) of the Act

conditions have been found to be unnecessary or unreasonable and have assessed them on this basis.

Conclusion

18. For the reasons set out and having taken into consideration all other matters raised the appeal is allowed in accordance with my formal decision above and subject to the conditions set out in the attached schedule.

Janet Wilson

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall not commence later than the expiration of 3 years from 13 November 2017.
- 2) The development shall not be erected otherwise than in accordance with the approved drawing No's: pl_50; pl_51; pl_52A; pl_53A; pl_54A; pl_55; pl_56; pl_57; pl_58; pl_59; pl_60; pl_61; pl_62A; pl_63A; pl_64A; pl_65A.
- 3) Prior to commencement of the development hereby approved, a Demolition Management Plan and Construction Management Plan shall be submitted to and approved in writing by the Council. Details shall include length of time for the obstruction of the footway and control measures for pedestrian safety, control measures for dust, noise, vibration, lighting, delivery locations, restriction of hours of work and all associated activities audible beyond the site boundary between 0800-1800hrs Mondays to Fridays and 0800 -1300 hrs on Saturdays, advance notification to neighbours and other interested parties of proposed works and public display of contact details including accessible phone contact to persons responsible for the site works for the duration of the works and details of temporary site fencing/means of enclosure to be erected prior to any demolition works taking place. Approved details shall be implemented throughout the project period.
- 4) Prior to commencement of the development hereby approved, a Demolition Logistics Plan and Construction Logistics Plan shall be submitted to and approved in writing by the Council. The details shall include the numbers, size and routes of demolition and construction vehicles, provisions within the site to ensure that all vehicles associated with the construction works are properly washed and cleaned to prevent the passage of mud and dirt onto the highway, and other matters relating to traffic management to be agreed. Approved details shall be implemented throughout the project period.
- 5) The development hereby permitted shall not commence prior to the submission and approval in writing by the Council of details and samples of all materials to be used on the external faces of the new buildings and all surface treatments, and of railings, windows and doors and no part of the development shall be used or occupied prior to the completion of the development in accordance with the approved details.
- 6) No plant, water tanks, water tank enclosures or other structures, that are not shown on the approved plans, shall be erected upon the roofs of the buildings hereby permitted.
- 7) No plumbing, extract flues or pipes other than rainwater pipes shall be fixed on the elevations of the building fronting Aspenlea Road and Lurgan Avenue hereby approved.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any external part of the approved buildings, without planning permission first being obtained.

- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) no extensions or other form of enlargement to the development hereby permitted, nor erection of porches, outbuildings, hardstandings, storage tanks, gates, fences, walls or other means of enclosure, shall take place without the prior written permission of the Council.
- 10) No alterations shall be carried out to the external appearance of the development, including the installation of air-conditioning units, ventilation fans or extraction equipment not shown on the approved drawings, without planning permission first being obtained. Any such changes shall be carried out in accordance with the approved details.
- 11) The development shall not commence until a statement of how "Secured by Design" requirements are to be adequately achieved has been submitted to and approved in writing by the Council. The approved details shall be carried out prior to occupation of the development hereby approved and permanently maintained thereafter.
- 12) With exception to the private roof terrace areas shown on approved drawings, no part of the remainder of the roof areas provided by the development hereby approved shall be used as a terrace or other accessible amenity space. No walls, fences, railings or other means of enclosure shall be erected around the roofs, and no alterations shall be carried out to the approved building (including the permitted roof terrace enclosures) to form access onto these roofs.
- 13) The development hereby permitted shall not commence until details and samples of the 1.8m high obscure glazed screen as measured from the floor level of the terrace to be used in connection with the roof terraces at second floor level to both flat 5 and flat 6 which shall be positioned on the southern side of the building, have been submitted to and approved in writing by the Council. The use of these terrace spaces shall not commence, until the obscure glazed screening as approved has been Installed and It shall be permanently retained as such thereafter.
- 14) The development hereby permitted shall not be occupied until the new windows, southern facing, in the dormer at roof level, have been Installed fixed shut with obscure glazing, a sample of which shall have been submitted to and approved in writing by the Council prior to any development on site. Thereafter the window shall be retained in the form approved.
- 15) No part of the development hereby approved shall be occupied prior to the provision of the refuse Storage enclosures, as indicated on the approved drawing pl_50.
- 16) Any refuse/recycling generated by the residential units hereby approved shall be stored in the refuse stores forming part of the details approved pursuant to Condition 15 and shall not be stored on the pavement or street.
- 17) No part of the development hereby approved shall be occupied prior to the provision of the cycle storage for the residential development hereby approved, as indicated on the approved drawing pl_50.

- 18) Prior to commencement of the development details shall be submitted to and approved in writing by the Council, 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, namely Kitchen/living/dining above or below bedrooms of a separate dwelling. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 19) The noise level in rooms at the development hereby approved shall meet the noise standard specified in BS8233:2014 for internal rooms and external amenity areas.
- 20) External artificial lighting at the development shall not exceed lux levels of vertical illumination at neighbouring premises that are recommended by the Institution of Lighting Professionals in the 'Guidance Notes for The Reduction Of Light Pollution 2011'. Lighting should be minimized, and glare and sky glow should be prevented by correctly using, locating, aiming and shielding luminaires, in accordance with the Guidance Notes.
- 21) The development shall be implemented in accordance with the recommended flood mitigation measures as proposed in the submitted Flood Risk Assessment unless otherwise agreed in writing by the local planning authority. In line with advice from Thames Water, a non-return valve or other suitable device shall be installed to avoid the risk of the sewerage network surcharging wastewater to basement/ground level during storm conditions. 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.
- 22) The development hereby permitted shall not commence until a surface water drainage scheme, based on sustainable drainage principles, and a maintenance programme for the sustainable urban drainage measures, have been submitted to and approved in writing by the Council. The scheme shall be implemented in accordance with the approved details prior to first occupation of the development hereby permitted, and thereafter permanently maintained in accordance with the agreed details.
- 23) DELETED
- 24) DELETED
- 25) DELETED
- 26) No part of the development hereby approved shall be used or occupied prior to the completion of works for the removal of the dropped kerb and reinstatement of the section of footway outside the site on the western side of Lurgan Avenue, the extension to the parking bays and making good of the highway.
- 27) Prior to the commencement of the development an Air Quality Dust Management Plan (AQDMP) shall be submitted to and approved in writing by the Council. The AQDMP must include an Air Quality Dust Risk Assessment (AQDRA) that considers residential receptors on-site and off-site of the development and is undertaken in compliance with the

methodology contained within Chapter 4 of the Mayor's of London 'The Control of Dust and Emissions during Construction and Demolition', SPG, July 2014 and the identified measures recommended for inclusion into the site specific AQDMP. The AQDMP submitted must comply with and follow the chapter order (4-7) of the Mayors SPG and should include an Inventory and Timetable of dust generating activities during demolition and construction; Dust and Emission control measures including on road construction traffic e.g. use of Low Emission Vehicles; Non-Road Mobile Machinery (NRMM). Details of all the NRMM that will be used on the development site will be required and the NRMM should meet as minimum the Stage 111B emission criteria of Directive 97/68/EC and its subsequent amendments. This will apply to both variable and constant speed engines for both NO_x and PM. An inventory of all NRMM must be registered on the NRMM register <https://nrmm.london/user-nrmm/register>. Air quality monitoring of PM₁₀ should be undertaken where appropriate and used to prevent levels exceeding predetermined Air Quality threshold trigger levels.

- 28) Prior to the commencement of the development (excluding site clearance and demolition) details must be submitted to and agreed in writing by the Council of the Ultra Low NO_x Gas fired boilers to be provided for space heating and domestic hot water. The Gas fired boilers to be provided for space heating and domestic hot water shall have dry NO_x emissions not exceeding 30 mg/kWh (at 0% O₂). Where any installations do not meet this emissions standard it should not be operated without the fitting of suitable NO_x abatement equipment or technology as determined by a specialist to ensure comparable emissions. Following installation, emissions certificates will need to be provided to the council to verify boiler emissions. Approved details shall be fully implemented prior to the occupation/use of the residential development and thereafter permanently retained and maintained.
- 29) No development shall commence until a preliminary risk assessment report is submitted to and approved in writing by the Council. 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.
- 30) No development shall commence until a site investigation scheme is submitted to and approved in writing by the Council. 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.

- 31) Unless the Council agree 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 Council. 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.
- 32) Unless the Council agree 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.
- 33) Unless the Council agree 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 Council. 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 Council is to be informed immediately and no further development (unless otherwise agreed in writing by the Council) 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 Council. 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.
- 34) Unless the Council agree 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 Council 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

Council 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.

[End of Schedule of conditions]