



Appeal Decision

Site visit made on 16 July 2019

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th July 2019

Appeal Ref: APP/H5390/W/19/3227248

Garden Flat, 194 Fulham Palace Road, London W6 9PA

- 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 Mr Patrick Weiss against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2018/04155/VAR, dated 24 December 2018, was refused by notice dated 21 February 2019.
- The application sought planning permission for change of use of part of ground floor from retail (Class A1) into a 2 bedroom self-contained residential flat (Class C3); erection of a single storey rear extension, to the side and rear elevations of the existing back addition; removal of 1no door and window to the side of single storey back addition at ground floor level; formation of planters in the rear garden, without complying with conditions attached to planning permission Ref 2014/04443/FUL, dated 4 November 2014.
- The conditions in dispute are Nos 8 and 9 which state that:
 - (8) No occupiers of the 1x two bedroom residential 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 written demand.
 - (9) The 1x two bedroom residential unit at ground floor level 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 residential unit hereby approved 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:
 - (8) 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 T1 of the Core Strategy (2011), policies DM J2 and DM J3 of the Development Management Local Plan (2013), and SPD Transport policies of the Planning Guidance Supplementary Planning Document (2013).
 - (9) 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 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 T1 of the Core Strategy (2011), policies DM J2 and DM J3 of the Development Management Local Plan (2013), and SPD Transport policies of the Planning Guidance Supplementary Planning Document (2013).

Decision

1. The appeal is allowed and planning permission is granted for change of use of part of ground floor from retail (Class A1) into a 2 bedroom self-contained residential flat (Class C3); erection of a single storey rear extension, to the side and rear elevations of the existing back addition; removal of 1no door and window to the side of single storey back addition at ground floor level; formation of planters in the rear garden at Garden Flat, 194 Fulham Palace Road, London W6 9PA in accordance with the application Ref 2018/04155/VAR dated 24 December 2018, without compliance with condition numbers 8 and 9 previously imposed on planning permission Ref 2014/04443/FUL dated 4 November 2014 and subject to the conditions set out in the schedule.

Main Issue

2. The main issue is the effect removing the conditions would have on parking demand, with particular regard to existing parking stress, amenity of local residents, delivery of car parking permit free development and encouragement of other sustainable forms of transport.

Reasons

3. The appeal site is located to the rear of 194 Fulham Palace Road, a busy A-road which is predominantly commercial. Pedestrian access to the garden flat is taken from the adjacent Nella Road, which is predominantly residential. These two roads, and other nearby streets, are within controlled parking zones. The disputed conditions restrict the occupier of the appeal site from applying for a car parking permit, and the effect of the current appeal would be to introduce additional car parking demand associated with the flat within the controlled parking zones.
4. A key objective of the Council's policies is to improve public transport and accessibility in the borough, whilst reducing the adverse impact of road traffic and traffic congestion. As such, Policy T1 of the Hammersmith and Fulham Local Plan 2018 (the "HFLP") aims to ensure that traffic generated by new development is minimised so that it does not add to parking pressures on local streets or congestion, or worsen air quality.
5. The appellant conducted a Parking Beat Survey, carried out on 31 October and 1 November 2018, which found that the average night-time occupancy on Nella Road and Larnach Road was 74%, with average occupancy within 200m being 63%. The Council's own survey results, as quoted in the officer delegated report, refer to slightly higher occupancy levels of 81% for Nella Road itself. Together these surveys suggest a nominal parking capacity of between 19% and 37% within the surrounding streets. I conclude from this information that were the occupants to be permitted to apply for a car parking permit, there would be sufficient capacity within walking distance to meet this demand without significantly increasing parking stress.
6. In terms of amenity, I am not entirely clear from Council and third parties submissions exactly what amenities of local residents would be affected by the proposal, or how. However, on the basis that the evidence indicates that parking capacity is available, I find that there would not be any significant adverse impact upon the living conditions of local residents.

7. Consequently, removal of the disputed conditions would comply with the requirements of Policy T1 to ensure that traffic generated by new development is minimised so that it does not add to parking pressures on local streets. The proposal would also comply with HFLP Policy HO2 (which relates to housing conversion and retention), insofar as it may be relevant for this appeal, which may restrict additional on-street parking in streets where there is less than 10% night-time free space.
8. Policy T4 of the HFLP requires car parking permit free measures on all new development unless evidence is provided to show that there is a significant lack of public transport available. The Council identifies the appeal site as being within a Public Transport Accessibility Level (PTAL) 5 designation, indicating very good accessibility to public transport links. Policy T4 is supported by key principle TR3 which expects that development in such areas (i.e. those areas not identified as PTAL 1-2) will be car-free, other than for disabled people. The removal of the disputed conditions would cause a degree of conflict with this policy and key principle. Whilst occupation without compliance with the conditions would not deliver car parking permit free development, it would not in itself discourage other sustainable forms of transport. Overall, in considering the particular proposal before me, I find that this conflict is outweighed by the lack of harm caused, as reasoned above.
9. I have considered the Council's concern that occupation without compliance with the disputed conditions could serve as a precedent that creates further parking demand, but I must determine this particular appeal on the basis of the evidence before me. The Council further states that the number of permits issued to each property could not be controlled or further restricted. However, given the size and likely occupancy of the property, this would not outweigh my above findings.
10. In conclusion, for the reasons set out, I find that occupation of the premises without compliance with Conditions 8 and 9 would have no significant adverse impact on parking demand, with particular regard to parking stress and amenity of local residents. Whilst the proposal would not deliver car parking permit free development, this would not in itself discourage other sustainable forms of transport. As such, removal of the conditions would comply with Policy T1 of the Hammersmith and Fulham Local Plan 2018. Furthermore, the proposal would not conflict with the requirements of Policy HO2 insofar as it may be relevant for this appeal. The conflict with Policy T4 of the Local Plan and associated key principle TR3 is outweighed by likely availability of parking capacity.

Other matters

11. I can only give limited weight to third party representations that the original planning permission may not have been granted if the conditions had not been imposed, as I must determine the appeal that is before me. Similarly, the appellant's personal circumstances are not determinative in my above assessment of the effect of the proposal. Ownership and tenancy issues are private matters between the relevant parties and are not within my jurisdiction.
12. The effect of the development on the Crabtree Conservation Area is not evidenced as a matter of concern to the Council. Based on my findings above on the effect of the proposal, I conclude that removing the conditions would preserve the character and appearance of the conservation area.

Conditions

13. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no definitive 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. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have also made minor amendments to the wording of some of the original conditions for clarity and to ensure that they accord with the tests set out in paragraph 55 of National Planning Policy Framework.
14. The evidence indicates that the development is completed and occupied and, as such, a time limit condition is not required. As I do not have details of the original planning permission before me, it is necessary to impose the same conditions relating to completion being carried out in accordance with drawings; brickwork that matches the existing building; and reaching agreement on formation of openings, to ensure that the external appearance prevents harm to the street scene.
15. A condition restricting use of the roof as a terrace is required to preserve living conditions for neighbouring properties. Condition 7 on the original planning permission required submission of occupier details, to allow the Council to update its records for parking permits, and my above decision means that this condition is no longer necessary. A condition requiring cycle parking provision remains necessary to encourage use of sustainable transport, notwithstanding my decision relating to parking demand and stress. A condition to agree refuse storage is necessary to avoid harm to living conditions and appearance of the street scene, and agreement of water management measures is required to ensure effective sustainable drainage.

Conclusion

16. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Patrick Hanna

INSPECTOR

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Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 7593-PO3, PO4.

- 2) Any alterations to the elevations of the existing building shall be carried out in the same materials as the existing elevation to which the alterations relate.
- 3) The ground floor level extensions hereby approved shall be constructed in brickwork to match the existing building.
- 4) Any external openings shall be supported by brick arches or brick faced lintels, or such other means that shall first have been submitted to and agreed in writing by the local planning authority.
- 5) The roof of the single storey extensions at lower ground floor level hereby approved shall not be converted into or be used as a terrace or other form of open outdoor space. No alterations shall be made to the roof, no railings or other means of enclosure shall be erected on the roof, and no alterations to the rear elevation shall be made to facilitate access onto the roof.
- 6) The residential unit hereby approved shall not be occupied until details of two secure cycle parking spaces to be provided in connection with the proposed residential unit have been submitted to and approved in writing by the planning authority, and such details as may be so approved shall be implemented prior to the occupation or use of the flat hereby permitted and permanently retained thereafter for such use.
- 7) No part of the development hereby approved shall be occupied unless details of refuse storage facilities have been submitted to and approved in writing by the local planning authority. All refuse generated by the development hereby approved shall be stored within these facilities, which shall be permanently retained for these purposes.
- 8) The development hereby approved shall not be occupied until details of water efficient fixtures, fittings and appliances to help minimise water use and foul water flows in the new unit have been submitted to and approved in writing by the local planning authority. The approved measures shall be implemented in accordance with the approved details prior to occupation of the development hereby permitted, and thereafter shall be permanently retained and maintained in line with the agreed details.

End of Schedule