



Appeal Decision

Site visit made on 4 November 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2019

Appeal Ref: APP/H5390/W/19/3229138

Maisonette 1, 18 Harwood Road, London SW6 4PH

- 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 Carlo Scotto against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2019/00705/VAR, dated 8 March 2019, was refused by notice dated 14 May 2019.
 - The application sought planning permission for conversion of property to use as two self contained maisonettes; erection of a part single/part two storey rear extension at ground and first floor level, on top of the existing back addition; erection of a single storey conservatory extension, to the side of the existing back addition at lower ground floor level without complying with a condition attached to planning permission Ref 2006/02657/FUL, dated 30 November 2006.
 - The condition in dispute is No 3 which states that: No occupiers of the new maisonette hereby approved at lower ground and ground floor level (as indicated on the approved drawing: H5717SW/268/004 Rev A, Revised 22nd November 2006) shall be entitled to a car parking permit from the Council to park upon the public highway within the local controlled parking zone.
 - The reason given for the condition is: 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 Policies H03 and TN15 and standards S8.2, S18.1 and S18.2 of the Unitary Development Plan.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of property to use as two self-contained maisonettes; erection of a part single/part two storey rear extension at ground and first floor level, on top of the existing back addition; erection of a single storey conservatory extension, to the side of the existing back addition at lower ground floor level at Maisonette 1, 18 Harwood Road, London SW6 4PH in accordance with the application Ref 2019/00705/VAR dated 8 March 2019, without compliance with condition number 3 previously imposed on planning permission Ref 2006/02657/FUL dated 30 November 2006 and subject to the conditions set out in the schedule.

Procedural Matter

2. The Hammersmith and Fulham Local Plan (LP) was adopted on 28 February 2018, thereby superseding the policies referred to in the original decision notice. I have determined the appeal on this basis.

Main Issues

3. The main issues are:

- whether condition 3 of the planning permission referred to above meets the six tests for the use of conditions contained in the National Planning Policy Framework and in Planning Practice Guidance (PPG); and
- if it does meet those tests, whether or not the condition is 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 car parking stress in the area.

Reasons

Condition 3

4. Harwood Road and other surrounding streets are in controlled parking zones. The disputed condition essentially prevents the occupiers of the appeal property from obtaining a car parking permit from the Council.
5. 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 a decision making body.
6. However, by preventing the occupiers of the property from obtaining a car parking permit, condition 3 encumbers the right of an individual to undertake an act rather than a restriction that would be associated with the building that was the subject of the planning permission granted. Accordingly, the condition does not seek to regulate the development or use of land, as referred to in s.72 of the Town and Country Planning Act 1990 (the Act).
7. Therefore, whilst I acknowledge that LP Policy T4 requires new development in this location to be car parking permit free, for the reasons set out above, the disputed condition is not reasonable or relevant to planning.
8. I conclude that condition 3 does not meet all the relevant tests and should therefore be deleted. As such, it is not necessary for me to go on to consider the effect of the removal of the condition.

Other Matters

9. The appeal site is located within the Walham Green Conservation Area (CA). The effect of the development on the CA has not been raised as a concern by the Council. I can see no reason why the proposal would adversely affect the significance of the CA. As such, I conclude that its character and appearance would be preserved.

Other Conditions

10. The PPG makes clear that decision notices for the grant of planning permission under section 73 of the Act should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I shall impose all those that I consider remain relevant, making changes to the wording where required in the interests of clarity and enforceability to ensure that they meet the relevant tests. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
11. In accordance with Section 73(5) of the Act, I have amended the standard commencement condition to ensure it does not have the effect of extending the time within which a development must be started.
12. It is necessary to add an approved plans condition in the interests of clarity and certainty.
13. My decision means that a condition requiring address notification to prevent issue of parking permits, and a condition which requires any prospective occupiers to be informed that they will not be entitled to a parking permit, would cease to have any objective effect or purpose and are therefore no longer necessary, so they are removed.
14. In the interests of ensuring an appropriate external appearance, it is necessary for the external materials and finishes, including new windows, to match the existing building.
15. In the interests of protecting the privacy of neighbouring properties, it is necessary to restrict the use of the roof as a terrace, and for the first floor window in the north west elevation to be non-opening and obscure glazed.
16. The approved plans condition means that a condition controlling the height of the party walls of the extension would be superfluous, so it is removed.
17. A condition concerning refuse storage arrangements would be necessary in the interests of visual amenity and the living conditions of future occupants, but it is not necessary for it to be a pre commencement condition.

Conclusion

18. For the reasons given above, I conclude that the appeal should be allowed.

Adrian Caines

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from 30 November 2006.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: H5717SW/268004A; 005B and 006B (Revised 22 November 2006).
- 3) The extensions hereby approved and any alterations to the elevations of the existing building, shall be carried out in second hand London Stock brickwork to match the colour, texture, pointing and bonding of the existing facing brickwork.
- 4) Any openings formed in the external faces of the building shall be supported by brick arches or brick faced lintels.
- 5) The first floor side (north west) elevation window hereby approved shall be non-openable and obscure glazed, and retained as such.
- 6) The roofs of the extensions hereby approved shall not 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 building to form access onto these roofs.
- 7) The windows shall be timber sliding sash painted white and fitted with external glazing bars to match the existing windows in size, position and style.
- 8) The development hereby approved shall not be occupied prior to the provision of refuse storage arrangements which have first been submitted to and approved in writing by the Council. The refuse storage arrangements shall thereafter be retained for the lifetime of the development.

End of conditions