



Appeal Decision

Site visit made on 4 November 2019

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2019

Appeal Ref: APP/H5390/W/19/3232043

28 Dancer Road, London SW6 4DX

- 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 T G Dale Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2019/01122/VAR, dated 8 April 2019, was refused by notice dated 4 June 2019.
- The application sought planning permission for the erection of an additional floor at roof level; formation of a roof terrace at third floor level to the rear elevation; erection of a single storey rear extension to the side and rear of the existing back addition; excavation of the front and rear garden to form lightwells in connection with the enlargement of the existing basement; installation of French doors with a Juliet balcony to replace the existing window at second floor level to the rear elevation; installation of 4no. windows to replace 1 no. window at second floor level and 2no. windows to replace 1 no. window at first floor level to the front elevation; conversion of the existing dwellinghouse into 1 no. four bedroom self-contained maisonette, 1 no. three bedroom self-contained maisonette, 1 no. one bedroom self-contained flat and 1 no. self-contained studio flat without complying with conditions attached to planning permission Ref 2018/01953/FUL, dated 13 August 2018.
- The conditions in dispute are Nos 31, 32 and 33 which state that:
Condition 31 - The new 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 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.
Condition 32 - No occupier of the new flats at ground and first floors (1 x studio and 1 x one-bedroom flats), and second and third floor levels (1 x 3-bedroom flat) 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.
Condition 33 - The new flats at ground and first floors (1 x studio and 1 x one-bedroom flats), and second and third floor levels (1 x 3-bedroom flat) 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 flats 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:
31 - In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the flats hereby approved with an exception of the basement and ground floor flat, 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 HO2 and T4 of the Local Plan 2018.

32 - 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 HO2 and T4 of the Local Plan 2018.

33 - 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 Policies HO2 and T4 of the Local Plan 2018.

Decision

1. The appeal is allowed and planning permission is granted for the erection of an additional floor at roof level; formation of a roof terrace at third floor level to the rear elevation; erection of a single storey rear extension to the side and rear of the existing back addition; excavation of the front and rear garden to form lightwells in connection with the enlargement of the existing basement; installation of French doors with a Juliet balcony to replace the existing window at second floor level to the rear elevation; installation of 4no. windows to replace 1 no. window at second floor level and 2no. windows to replace 1 no. window at first floor level to the front elevation; conversion of the existing dwellinghouse into 1 no. four bedroom self-contained maisonette, 1 no. three bedroom self-contained maisonette, 1 no. one bedroom self-contained flat and 1 no. self-contained studio flat at 28 Dancer Road, London SW6 4DX in accordance with the application 2019/01122/VAR dated 8 April 2019, without compliance with conditions Nos 31, 32, and 33 previously imposed on planning permission 2018/01953/FUL dated 13 August 2018 and subject to the conditions set out in the attached schedule.

Preliminary Matters and Main Issue

2. Permission¹ was granted for the conversion with extensions and alterations of the dwelling to 4 separate units of accommodation. The permission was subject to the 3 conditions in dispute which sought to ensure that the additional units were car parking permit free housing. An application to delete the conditions, on the basis that they were unreasonable, unnecessary and not relevant to planning, and that there was sufficient on-street car parking available, was refused by the Council.
3. The Council Planning Report did not address in detail the issue as to whether the conditions met the six tests contained in the National Planning Policy Framework² (the Framework) and in the Planning Practice Guidance³ (the Guidance). However, it was concluded that by removing the conditions demand for on-street car parking in the vicinity of the site would increase in an area said to be suffering from significant on-street car parking stress and that occupants of the appeal building would have good public transport accessibility.

¹ Application 2018/01953/FUL

² Paragraph 55

³ Paragraph: 003 Reference ID: 21a-003-20190723

4. In the light of the above, the main issue is whether the conditions 31, 32 and 33 are reasonable, necessary and relevant to planning having regard to on-street car parking provision in the area.

Reasons

5. In support of this appeal, my attention has been drawn to two appeal decisions⁴, also in the London Borough of Hammersmith and Fulham. Both these appeals were against the refusal to remove three conditions, attached to approvals for residential development, which sought to restrict the ability of future occupants to apply for and hold a parking permit. The Council have had the opportunity through the appeal process to make representations in respect of these appeals and their relevance to this appeal, although I have no detailed comments before me from the Council on this matter. While each appeal is required to be determined on its merits, as the conditions subject of these earlier appeals are substantially the same as those before me now, and that those decisions were reasonably recent, albeit that the reasons refer to an earlier Local Plan, I attach these other appeal decisions substantial weight in my considerations.
6. The appeal seeks to remove three conditions, which together seek to prevent occupiers of the appeal property from applying for an on-street car parking permit and I will examine each condition separately.

Condition 32

7. This condition is drafted to prevent the occupier of the specified units from applying or retaining a permit. Any planning permission that may be granted, and by association any conditions that it may be subject to, runs with the land or building and not an individual. A planning condition may restrict what an individual can do with the land or building, or prevent certain things from taking place until details have been agreed between an individual and a decision maker.
8. However, this condition seeks to place a restriction on the actions of an individual person. It is worded to prevent someone from undertaking an administrative procedure with the Council, namely the ability to apply or hold an on-street parking permit. The condition would achieve the objective of preventing the occupier from applying for an on-street parking permit, however, the wording takes an unreasonable approach and therefore would fail the test of reasonableness that is required to be met by all conditions. Accordingly, I conclude that the condition should be removed.

Condition 33

9. This second complementary condition requires, in summary, before occupation of the specified units, that a scheme be submitted to and be approved by the local planning authority to ensure that all occupiers have no entitlement to parking permits and to ensure occupiers are informed, prior to occupation of such a restriction.

⁴ Appeal Ref APP/H5390/W/16/3167706 – 104 Munster Road, London SW6 5RD dated 22 May 2017 and Appeal Ref APP/H5390/W/18/3212200 – 668 Fulham Road, London SW6 5RX dated 12 March 2019

10. The Guidance⁵ makes it clear that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). In this case, in my view, the scheme is not complex and no exceptional circumstances have been demonstrated to justify a negatively worded condition in respect of the requirement for an obligation or other agreement.
11. I am also not clear from the wording what mechanism would be used to secure compliance with the condition. In any case, the condition seeks to control the actions of a person rather than control the use of land. As a consequence, I find that the proposed condition is worded unreasonably and would not meet with the tests for conditions. Accordingly, I conclude that the removal of the condition should be allowed.

Condition 31

12. This condition seeks that the development shall not be occupied until the Council has been notified of the full postal address of the residential units. This would enable the Council to update its records to ensure that the occupants of the additional units did not apply for a parking permit. While this may be administratively helpful it is not directly related to the use of land and buildings. As I am not satisfied that it would be appropriate to attach the earlier two conditions, this proposed condition would cease to have an effect of restricting the issue of a parking permit. Consequently, I conclude that this condition would not meet the test of necessity and therefore I allow the removal of the condition.

Conditions

13. I noted at my site visit that works were taking place at the site. However, I have no details whether the works are pursuant to the permission that is sought to be varied by this appeal or an earlier permission approved on this site.
14. The effect of a grant of permission under section 73 is to create a new permission. The 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 limited 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.
15. I have therefore considered all the other conditions attached to application 2018/01953/FUL having regard to the advice in the Guidance. The 3 year time limit is required to run from the date of the original permission⁶ and a condition listing the approved plans is necessary in the interests of certainty.

⁵ Paragraph: 010 Reference ID: 21a-010-20190723

⁶ Paragraph: 015 Reference ID: 17a-015-20140306

16. Conditions are necessary to provide cycle storage facilities thereby promoting sustainable transport and the provision of storage facilities for waste to protect the amenities of occupiers and local residents. A condition ensuring that sound insulation details is necessary to protect the living conditions of occupiers in accordance with development plan policies. In the interests of consistency, I have used the same wording from the original permission.
17. Conditions requiring agreement and implementation of a construction management plan and construction logistics plan is necessary given the location and the need to protect the amenities of the area.
18. Given the requirements of Policy CC10 of the Hammersmith and Fulham Local Plan (2018) (the Local Plan) a condition is necessary regarding the boilers in the interests of air quality. Condition 9 is required to ensure that the recommended flood risk measures are implemented.
19. It is not necessary to attach a condition restricting occupation to a residential unit as this is what has been applied for or to restrict the flats from being used as a house in multiple occupation given the modest size and nature of the units proposed. To ensure a high quality finish in the interests of the visual amenities of the area, conditions 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 21 are necessary.
20. A condition is not necessary to limit the extent of the basement area as this is shown on the approved plans and the formation of a separate unit of accommodation in this area would require a separate grant of planning permission. A condition restricting the addition of water tanks and similar structures is not necessary as this would require the grant of a separate permission.
21. A condition restricting the use of the flat roofs is necessary to prevent overlooking thereby protecting the living conditions of adjoining occupiers. The series of conditions ensuring that any land contamination is investigated and addressed is necessary in the interests of the health and well-being of future occupants of the building.
22. Conditions 3, 4, 5, 6, 7, 8, 22, 23, 24, 25, 26 and 27 are required to be pre-commencement conditions. It is important that these matters are resolved before works start. In the case of potential contamination this needs to be resolved before other works take place, construction management and logistics implemented from the outset to protect the amenities of local residents and in the case of cycle storage, waste storage, sound insulation and boiler design these matters need to be comprehensively integrated into the scheme.

Other Matters

23. I have noted the concerns from local residents, including potential overlooking, impacts of the basement extension, air pollution, noise and disruption, and car parking. I have examined the car parking issues elsewhere and in respect of the other matters, there is no material difference with the present scheme to that already permitted by the Council. In terms of the effect on the amenities of neighbours during the construction process, the recommended conditions should as far as reasonable assist in reducing the impact while the works take place.

Conclusion

24. Dancer Road and the surrounding streets are subject to parking restrictions. I have limited information before me regarding the detailed parking circumstances. Nevertheless, given the location and general situation, I can appreciate the concerns of the Council and local residents that there are issues with resident parking and related parking stress. The Local Plan and the accompanying Hammersmith and Fulham Supplementary Planning Document (2018) require, in a location such as this that new units of accommodation provide car free housing. Further on-street parking that may result from the development may well exacerbate the parking situation locally.
25. Whilst this is clear and understood, for the reasons explained, the Council has not advanced a suitably robust, reasonable or necessary parking mechanism to be able to secure a restriction on the allocation of parking permits through the planning permission concerned. I have not been presented with, or are aware of, alternative conditions which would address this matter in accordance with the tests for planning conditions. I therefore conclude that the appeal should be allowed and a new planning permission granted with the conditions set out in the schedule.

David Wyborn

INSPECTOR

Appeal Ref: APP/H5390/W/19/3232043
28 Dancer Road, London SW6 4DX
Schedule of Conditions

- 1) The development hereby permitted shall not commence later than 3 years from 13 August 2018.
- 2) The development shall be carried out in accordance with the following plans: 215-04 Rev.D; 215-05 Rev.D; 215-06 Rev.D; 215-07 Rev.D; Flood Risk Assessment; Site Location Plan.
- 3) The development shall not commence until details of 6 safe and secure cycle parking spaces for the occupiers of the flats hereby approved have been submitted to and approved in writing by the Council, and no part of the property shall be occupied or used until the cycle storage arrangements have been implemented in accordance with the approved details. The cycle storage arrangements shall thereafter be retained.
- 4) The development shall not commence until details of adequate storage of refuse and recyclables for the occupiers of the new residential flats hereby approved, have been submitted to and approved in writing by the Council. Details shall include height, design and materials of the refuse storage area. No part of the residential units shall be occupied or used until the waste storage arrangements have been implemented in accordance with the approved details and shall thereafter be retained.
- 5) 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. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 6) Prior to commencement of the development hereby approved, a construction management plan shall be submitted to and approved in writing by the Council. Details shall include control measures for dust, noise, vibration, lighting, delivery locations, restriction of hours of work and all associated activities audible beyond the site boundary to 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. Approved details shall be implemented throughout the project period.
- 7) Prior to commencement of the development hereby approved, a Construction Logistics Plan shall be submitted to and approved in writing by the Council. The details shall include delivery locations, numbers, size and routing of construction, vehicles where the construction material and plants will be stored and how the vehicles will be managed during construction stage. Approved details shall be implemented throughout the project period.
- 8) 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 NOx 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 NOx 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 NOx 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. The approved details shall be fully implemented prior to the occupation/use of the residential development and thereafter permanently retained and maintained.

9) The development hereby approved shall not be occupied until the flood risk measures identified in the Flood Risk Assessment received on 11 June 2018 have been carried out. The scheme shall thereafter be permanently retained.

10) 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.

11) The raised party walls of the additional floor hereby approved shall be constructed in second hand London stock brickwork.

12) The party walls of the additional floor hereby approved shall not project more than 250 millimetres above or beyond the external faces of the main roof structures.

13) The front and rear elevation of the additional floor hereby approved shall be clad in slates or artificial slates.

14) The ground floor rear extension hereby approved shall be erected in second hand London stock brickwork to match the existing building.

15) The new and replacement openings at ground, first, second and third floor levels hereby approved shall be of timber frame construction and painted white.

16) Where openings are to be formed in the external faces of the development, the parts of the structure above such openings shall be supported by brick arches or brick faced lintels.

17) The windows in the front elevation at basement level hereby approved shall be timber frame construction and painted white and thereafter retained in this form.

18) No part of the extended basement shall be occupied or used until the proposed metal grille is installed over the approved front and rear lightwells, and the grilles shall be permanently retained in place. At no time shall railings or any other vertical element be constructed around the lightwells.

19) The form and dimensions of the front and rear lightwells, at basement and ground floor level, shall not exceed those shown on the approved drawings.

20) With the exception of the terrace approved to the rear elevation at third floor level, the flat roof of the ground floor rear/side extension hereby approved, and the remainder of the roof of the back addition at second floor level, shall not be used as a roof terrace or other form of open amenity space. No alterations shall be carried out; nor planters or other chattels placed on the roof of the rear extension at ground floor level and the remainder of the roof of the back addition hereby approved in connection with its use as a roof terrace or other form of open amenity space. No railings or other means of enclosure shall be erected on the roofs, and no alterations shall be carried out to the rear elevation of the application property,

including the second floor rear extension hereby approved, to form access onto these roofs.

21) No plumbing, extract flues or pipes, other than rainwater pipes, may be fixed on the front elevation of the building.

22) 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.

23) 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.

24) 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.

25) 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.

26) 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

27) 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.