



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: 20 December 2019

Appeal Ref: APP/H5390/W/19/3236037
58 Boscombe Road, London W12 9HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by BMR London Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 019/01682/FUL, dated 31 May 2019, was refused by notice dated 9 August 2019.
 - The development proposed is the erection of an additional floor with roof terrace at roof level in connection with the creation of 1no. self-contained two bedroom flat at second and third floor level; erection of a two storey rear extension at first and second floor level to the side of and above the existing back addition in connection with the conversion of the existing maisonette at first and second floor level into 1no. self-contained one bedroom flat at first floor level.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of the development, as set out above, from the decision notice and the appeal form as this is a more accurate and detailed description of the proposal. I am satisfied that no party has been prejudiced by the use of this description.
3. I am aware of the other proposal on this site which is the subject of a separate decision¹.
4. The site lies in a location with a PTAL² of 3, where in accordance with the Hammersmith and Fulham Local Plan (February 2018) (the Local Plan) the additional unit of accommodation should be car parking permit free housing. In line with standard practice the Council has provided, on a without prejudice basis, draft planning conditions, such that if I was minded to allow the appeal they could be considered in any approval. Three conditions are proposed to seek to enable the additional unit of accommodation to be car free by not allowing occupants to apply for or hold a local parking permit.
5. I have sought the views of the main parties as to whether these conditions would meet the tests for conditions set out in paragraph 55 of the National Planning Policy Framework (the Framework) and the National Planning Guidance, and if not, the consequences for the appeal.

¹ APP/H5390/W/19/3229967

² Public Transport Access Level

6. I have taken into account the responses and therefore I consider that no party would be prejudiced by my consideration of this matter as a further main issue in this appeal.

Main Issues

7. The main issues are:

- whether there is an effective mechanism to secure the additional unit of accommodation as car parking permit free housing, and
- the effect of the development on the character and appearance of the area.

Reasons

Whether there is an appropriate mechanism to secure the additional unit of accommodation as car parking permit free housing

8. Within the PTAL of 3-6 zone, the approach of the development plan is to secure car free housing. In this case, the site is located in an area with a PTAL of 3 and the surrounding roads are within a controlled parking zone. I have no substantive information that leads me to conclude that the area is not in some form of parking stress and therefore that the additional unit should require car parking permit free housing in accordance with the development plan. Consequently, if permission were to be granted it is necessary to ensure that there is an appropriate mechanism to secure the additional unit as car free housing.
9. The Council has suggested 3 conditions to seek to meet this requirement and they seek to secure car parking permit free housing by preventing an occupier from applying for or holding a car parking permit.
10. One of the conditions is drafted to prevent the occupier of the first floor flat 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.
11. 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.
12. A second complementary condition requires, in summary, before occupation of the first floor unit, 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.

13. The Guidance³ 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.
14. 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.
15. The third 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 flat 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 in any approval, this proposed condition would cease to have an effect of restricting the issue of a parking permit. Consequently, this condition would not meet the test of necessity.
16. I therefore find that the three conditions set out in the event that I was minded to allow the appeal would not meet all the 6 tests for conditions set out in the Framework and the Guidance. I have not been provided with, or aware of, alternative worded conditions that would satisfactorily address this matter.
17. In terms of alternatives to planning conditions in this case, I have no obligation before me under Section 106 of the Town and Country Planning Act 1990 (as amended) or any legal document referencing the provisions of s16 of the Greater London Council (General Powers) Act 1974.
18. In the light of the above, I conclude I have no effective mechanism to secure the additional unit of accommodation as car parking permit free housing. This would, on the limited information I have before me, in all likelihood add to parking stress in the locality causing harm to the existing amenities of the occupiers of properties in the area. This would be contrary to Policies T1 and T4 of the Local Plan and Key Principle TR3 of the Hammersmith and Fulham Supplementary Planning Document (February 2018) which seeks, amongst other things, to require 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.

Character and appearance

19. The building forms the end property in a terrace. Because of the angle of the adjoining road, the rear of the property is open to public view. Other properties in this terrace have mansard roof extensions and various rear additions, some

³ Paragraph: 010 Reference ID: 21a-010-20190723

- of which are 3 storey and others which in-fill some of the spaces between other additions.
20. On the other side of Boscombe Road, there is a similar terrace and these properties, with the exception of the end of terrace property, have mansard roof extensions.
 21. The proposed mansard roof extension would be designed acceptably, it would sit comfortably on the space adjoining the boundary wall with the neighbour and would not look out of place with the other mansard roofs in the vicinity. The dormer windows would be an addition that complemented the design.
 22. The 3 storey addition to the rear extensions would be similar to others at the rear of the terrace and the roof amenity space would not be overly dominant because of the parapet wall. The infill section at first floor would not be at odds with the appearance of the rear elevation and would retain space above so that there was some relief to the building. The ground floor open space, below the first floor extension, would be a little awkward in terms of the overall design, but it would be largely screened by the boundary to the rear area and, at ground floor, would not be a unduly prominent or harmful feature. While most other parts of the extensions would be clearly visible from public vantage points, both individually and cumulatively, the additions would complement the building and could be absorbed acceptably within the terrace and the wider street scene without harm.
 23. In the light of the above analysis, I conclude that the proposal would not harm the character and appearance of the area, and therefore would comply with Policies DC1 and DC4 of the Local Plan which seek, amongst other things, to ensure a high standard of design in all alterations and extensions to existing buildings.

Conclusion

24. The proposal would provide an additional unit of residential accommodation on an existing developed site in a location with a PTAL of 3. There would be related social and economic benefits from the extra flat and in a form that would not cause an adverse impact to the character and appearance of the area. As only one additional unit would be provided I attribute these benefits limited weight.
25. I have also found that there is not an effective mechanism before me to secure the additional unit as car free housing. This would conflict with the policies of the development plan in this respect and, in all likelihood, add to any parking stress in the locality causing harm to the existing amenities of the occupiers of properties in the area. I afford this harm moderate weight and it would not be outweighed by the benefits of the scheme.
26. For the reasons given above, the scheme does not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR