



Appeal Decision

Site visit made on 10 February 2020

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2020

Appeal Ref: APP/H5390/W/19/3241404

1-3 Wolverton Gardens, London W6 7DY

- 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 Birwari Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2019/02490/VAR, dated 19 August 2019, was refused by notice dated 28 October 2019.
- The application sought planning permission for erection of a rear roof extension, erection of a rear extension at second floor level, on top of the existing back addition, 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 a bay window to replace 2no windows at second floor level to the front elevation, provision of cycle and refuse storages at ground floor level to both properties at 1 and 3 Wolverton Gardens; conversion of 1 and 3 Wolverton Gardens to provide 8 x two bedroom and 2 x one bedroom self-contained flats, without complying with conditions attached to planning permission Ref 2015/02989/FUL, dated 11 September 2015.
- The conditions in dispute are Nos 8, 9 & 10 which state that:
 - 8) *The proposed flats 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 proposed new residential flat shall not be occupied otherwise than in accordance with the approved scheme unless prior written agreement is issued by the Council.*
 - 9) *The proposed new flats hereby permitted shall not be occupied until the Council has been notified in writing (and has acknowledged such notification) of their full postal addresses. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter.*
 - 10) *No occupiers of the proposed flats 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.*
- The reasons given for the conditions are:
 - 8) *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 T1 of the Core Strategy 2011 and Policy DM J2 of the Development Management Local Plan 2013.*
 - 9) *In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new flats 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 T1 of the Core Strategy 2011, Policy DM J2 of the Development Management Local Plan 2013.

10) 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 and Policy DM J2 of the Development Management Local Plan 2013.

Decision

1. The appeal is allowed and planning permission is granted for erection of a rear roof extension, erection of a rear extension at second floor level, on top of the existing back addition, 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 a bay window to replace 2no windows at second floor level to the front elevation, provision of cycle and refuse storages at ground floor level to both properties at 1 and 3 Wolverton Gardens; conversion of 1 and 3 Wolverton Gardens to provide 8 x two bedroom and 2 x one bedroom self-contained flats at 1-3 Wolverton Gardens, London W6 7DY in accordance with the application Ref 2019/02490/VAR dated 19 August 2019, without compliance with conditions 8, 9 and 10 previously imposed on planning permission Ref 2015/02989/FUL, dated 11 September 2015 and subject to the conditions set out in the schedule.

Procedural Matters

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 and with reference to relevant national policy and guidance.

Background and Main Issues

3. The disputed conditions, numbers 8, 9 and 10, together seek to prevent occupiers of the flats from obtaining a car parking permit from the Council. The appellant sought to remove these conditions on the grounds that they are not reasonable, necessary and relevant to planning.
4. The Council refused permission for this application on the grounds that removal of the conditions would be contrary to development plan policies for the area, which expect car parking permit free measures on developments in areas with good public transport accessibility.
5. In light of the above, the main issues are:
 - Whether conditions 8, 9 and 10 meet the tests for the use of conditions contained in the National Planning Policy Framework and in Planning Practice Guidance (PPG); and
 - if they do meet those tests, whether or not the conditions are reasonable and necessary having regard to the aims of promoting sustainable transport, and to ensure that the development does not harm the existing amenities of the occupiers of neighbouring residential properties by adding to on-street car parking stress in the area.

Reasons

Whether the conditions meet the tests of national policy and guidance

Condition 10

6. This condition prevents the occupiers of the flats from applying for or retaining parking permits, unless they are disabled blue badge holders.
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 a decision making body.
8. However, by preventing the occupiers of the property from obtaining a car parking permit, the condition places a restriction on the actions of an individual person 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 section 72 of the Town and Country Planning Act 1990. Nor is it clear how preventing an occupier from applying for a parking permit could be enforced. Thus, the condition is not reasonable, enforceable or relevant to planning and therefore, it does not meet all the relevant tests.

Condition 8

9. This condition requires the agreement of a scheme, prior to occupation of the flats, to ensure that occupiers other than blue badge holders, would have no entitlement to parking permits from the Council and that occupiers are informed of that restriction prior to occupation.
10. It is not sufficiently clear whether a 'scheme' would not still seek to prevent an individual undertaking an act, rather than relate to a restriction associated with a building. Moreover, it is a negatively worded condition, which the PPG¹ advises is only appropriate in exceptional circumstances, citing more complex and strategically important development, which the proposal does not constitute. Thus, the approach that the Council has taken in respect of this condition is unreasonable and it does not meet all the relevant tests.

Condition 9

11. This condition requires the Council to be notified in writing of the full postal address of the flats prior to occupation to enable the Council to update its records to ensure that parking permits are not issued to occupiers.
12. This condition is not relevant to planning. Moreover, given my findings in relation to conditions 8 and 10, it would cease to have any objective effect or purpose. Therefore, its retention would be unnecessary and would not meet the relevant tests.

The effect of removing the conditions on sustainable transport and parking

13. I am informed by the Council that the appeal site has a PTAL rating of 6b and therefore has excellent public transport accessibility. Collectively, Policy 6.13 of

¹ Paragraph: 010 Reference ID: 21a-010-20190723

the London Plan 2016, Policy T4 of the Hammersmith and Fulham Local Plan 2018, and Key Principle TR3 of the Hammersmith and Fulham Planning Guidance SPD 2018, require car parking permit free measures on all new development in areas of good public transport availability.

14. Whilst I acknowledge the objectives of the development plan policies, I have found that disputed conditions 8, 9 and 10 do not meet the tests for the use of conditions and are therefore not an appropriate mechanism to secure those objectives.
15. Accordingly, it is not necessary for me to go on to consider the effect of the removal of the conditions and the evidence put forward in relation to parking stress in Wolverton Gardens.

Other Matters

16. The parties drew my attention to various other appeal decisions in the Borough². I accept that those schemes are similar to this proposal given that the conditions subject to those appeals are substantively the same as those before me now. As such, whilst mindful that each appeal is judged on its own merits, they are relevant considerations to my assessment of the merits of this appeal and I have taken them into account in my reasoning. In doing so I have noted the different approach taken by the Inspector in the appeal extract quoted by the Council³, however, for the reasons set out above, it does not alter my decision, which is also consistent with other similar cases.
17. The appeal site is located within the Brook 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

18. 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 where relevant. 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.
19. The standard commencement and approved plans conditions are necessary in the interests of clarity and certainty. However, in accordance with Section 73(5) of the Act, I have amended the commencement condition to ensure it does not have the effect of extending the time within which a development must be started. A condition requiring the works to be undertaken as one operation before occupation is no longer relevant so is not imposed.
20. Conditions relating to drainage are necessary to ensure acceptable drainage arrangements are in place. Conditions relating to materials and the grille/railings to the lightwell are necessary to protect the character and

² Appeal Ref: APP/H5390/W/16/3167706, APP/H5390/W/18/3212200, APP/H5390/W/19/3224611 & LPA Ref:2018/02235/VAR

³ LPA Ref:2018/02235/VAR

appearance of the area. A condition concerning refuse storage is necessary to protect the character and appearance of the area and the living conditions of the occupants. A condition requiring cycle parking provision is necessary to encourage use of sustainable transport. A condition to carry out works in accordance with an arboricultural method statement is necessary to protect trees from damage during construction.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed and conditions 8, 9 and 10 should be deleted.

Adrian Caines

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from 11 September 2015.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P.01, P.02, P.03, P.04, P.05, P.06, P.07, Front Elevations P.06, Rear Elevations P.07.
- 3) The discharge of foul and surface water from the site shall be in accordance with details which have first been submitted to an approved in writing by the local planning authority.
- 4) Notwithstanding condition 3, a non-return valve or other suitable site drainage device to avoid backflow during storm conditions must be installed on site.
- 5) The extensions shall be constructed in London Stock brick and the roof extension shall be clad in slate to match the existing. Any alterations to the elevations of the existing building shall be carried out in matching materials to the elevation to which they relate.
- 6) The grille to the front lightwell hereby approved shall be fitted flush with the ground level and so maintained and no railings shall be erected around the front lightwell.
- 7) The development shall not be occupied until the refuse storage, as detailed on drawing P.02 has been installed on site and shall be permanently retained thereafter.
- 8) Notwithstanding the details in drawing P.02, the development shall not be occupied until details of 10 secure cycle parking spaces to be provided on the site have been submitted to and approved in writing by the local planning authority. The approved cycle parking shall be provided prior to occupation of the development and permanently retained thereafter.
- 9) The development shall be implemented in accordance with the recommendations in the Arboricultural Method Statement dated 10 March 2015.

End of conditions