



Appeal Decision

Site visit made on 14 January 2020

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 February 2020

Appeal Ref: **APP/H5390/W/19/3240042**

1 Shepherds Bush Road, London W6 7NA

- 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 Ms Shatha Khalil of Colet Estates against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2019/02491/VAR, dated 19 August 2019, was refused by notice dated 17 October 2019.
- The application sought planning permission for conversion of the property to use as 4 self-contained flats without complying with conditions attached to planning permission Ref 2017/00271/VAR, dated 15 March 2017.
- The conditions in dispute are Nos 6, 7 and 8 which state that:
 - 6) *No occupiers of the ground floor flat as indicated on the approved drawings 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.*
 - 7) *The ground floor 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 flat shall not be occupied otherwise than in accordance with the approved scheme unless prior written agreement is issued by the Council.*
 - 8) *The ground floor flat 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 flat. Such notification shall be to the council's Head of Development Management and shall quote the planning application number specified in this decision letter.*
- The reasons given for the conditions are:
 - 6) *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 DM A1, A9, J2 and J3 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011.*
 - 7) *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 and Policy DM J2 of the Development Management Local Plan 2013.*
 - 8) *In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the ground floor flat 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 DM A1, A9, J2 and J3 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal relates to conditions forming part of planning permission 2017/00271/VAR which was granted on 15 March 2017, and which I shall refer to as 'the amended permission'. This in turn related to conditions attached to permission reference 2016/03699/FUL ('the original permission'), granted on 30 November 2016. I have therefore referred to the original substantive development in my decision, so as to provide appropriate context for the appeal.
3. Since the original planning permission was granted, the 2018 Hammersmith & Fulham Local Plan (the LP) has been adopted. The policies contained within the LP replaced those in the 2011 Core Strategy and the 2013 Development Management Local Plan which were referred to in both the original and amended permissions. The 2018 Hammersmith & Fulham Planning Guidance Supplementary Planning Document (the SPD) has also replaced earlier supplementary planning documents. The LP policies were referred to in the Council's officer report and in the appellant's statement, and I have accordingly considered the appeal on the basis of the policies in the LP and the SPD.
4. The appeal property is a four-storey, end-of-terrace building and the original permission allowed its conversion into four self-contained flats. Conditions 6, 7 and 8 attached to that permission essentially sought to prevent the occupiers of the four flats from applying for or holding permits for on-street car parking. The amended permission granted in March 2017 varied conditions 6, 7 and 8 of the original permission so that the restrictions on parking permits only applied to the occupiers of the ground floor flat. This was approved by the Council on the basis that the property had previously been in use as three flats.
5. Taken together, the reason for the imposition of the three conditions in both permissions was to ensure that the development did not lead to an increase in demand for car parking, or cause harm to the amenities of neighbouring residents by increasing parking stress. The appellant now seeks to have the three conditions removed.

Main Issues

6. Accordingly, the main issues are:
 - Whether a mechanism to promote the use of sustainable modes of transport and to reduce the likelihood of parking stress is necessary to make the development acceptable in planning terms; and
 - If so, do the disputed conditions provide such a mechanism which complies with the tests for conditions set out in Paragraph 55 of the National Planning Policy Framework (the Framework).

Reasons

The need for a mechanism to promote the use of sustainable modes of transport

7. The appeal site is situated on Shepherds Bush Road, an 'A' road connecting Shepherds Bush town centre which lies a short distance north of the site with Hammersmith to the south. The immediate surrounding area is predominantly residential with a mix of accommodation ranging from terraced houses, some of which have been converted to flats, to large purpose-built blocks of flats.
8. The appeal property, like most of the properties in the area, has no off-street parking of its own. Shepherds Bush Road immediately in front of the appeal property is subject to single yellow line parking restrictions operating from 08.00 to 18.30 from Monday to Saturday, with similar restrictions elsewhere along its length. There is also a bus stop with 'no stopping at any time' restrictions for other vehicles to the north and in front of the appeal property. On-street parking in the area is generally controlled by a residents' permit scheme, with the nearest bays to the appeal property being around the corner to the south on Minford Gardens.
9. LP Policy T4 states that the Council will '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'. The supporting text indicates that the Council will only consider the issuing of permits for on-street parking in locations where the Public Transport Accessibility Level (PTAL) is 2 or lower, and this is reinforced by advice in Key Principle TR3 of the SPD. LP Policy HO2 states that where streets have less than 10% night-time free space the number of additional dwellings created by conversions may be restricted or conditioned to allow no additional on-street parking. The combined intent and effect of these policies is to encourage the use of sustainable modes of transport rather than the private car, and to use every effort to ensure that demand for parking spaces does not excessively outstrip supply.
10. There are bus routes including 24-hour services stopping immediately outside the appeal site and serving Shepherds Bush Green a short distance to the north, a London Underground station close by at Goldhawk Road, and London Underground and Overground services from Shepherds Bush station. It is not disputed that the PTAL of the appeal site is 6b, and by any standards the appeal site is in an area which is well-served by a range of public transport. The provision of LP Policy T4 requiring car parking permit free measures is therefore engaged.
11. Turning to the use of and demand for on-street parking, and while I recognise that it only represents a snapshot, at the time of my site visit most of the residents' parking bays in Minford Gardens were occupied, with the few available spaces generally some distance from Shepherds Bush Road and the appeal property. The pattern was similar in Westwick Gardens further south, and on Sulgrave Road across Shepherds Bush Road from the appeal site.
12. The Council has provided average 'parking stress' figures for Minford Gardens which, from the Council Highways team's response to the planning application I understand to represent the average percentage of a street's capacity used overnight on weekdays. The figures in 2016, 2017 and 2018 were 81%, 90% and 84% respectively, with a level of 80% being considered very high, so there can be no doubt that the existing parking is well used. The appellant contends

that these figures do not in themselves illustrate a high level of parking stress at the times of residents' greatest need. Indeed, while the figures suggest that the 'less than 10% free space' threshold set out in LP Policy HO2 is not being reached as a matter of course, it is clearly very close to the tipping point where a small number of additional vehicles would have a significant effect on the ability of local residents to find a parking place. In that light, even the additional parking demand arising from a single one-bedroom flat would contribute to parking stress and bring the 'tipping point' closer.

13. In my view, the combination of the site's excellent access to public transport and the very limited capacity of nearby streets to absorb any further car parking is a justification for seeking to control the supply and use of parking permits. In the absence of such controls the development would clearly be in conflict with the aims of the development plan to promote the use of public transport and other sustainable modes of transport, and to prevent unacceptable increases in parking stress.
14. There is therefore a planning purpose to the disputed conditions, as the control of parking is necessary. Without them, the development would not accord with LP Policy T4 and SPD Key Principle TR3 which seek to ensure that development in areas with good access to public transport remains car-free. On the basis of the evidence before me it is less clear that the development conflicts with LP Policy HO2 which seeks to ensure that existing parking stress is not increased. Nonetheless, the policies are not interdependent, and a lack of conflict with Policy HO2 does not mitigate the conflict with Policy T4 and Key Principle TR3.

The disputed conditions' compliance with the Framework tests

15. Paragraph 55 of the Framework sets out six tests for the use of planning conditions, namely that they should be necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and, reasonable in all other respects.
16. The appellant has drawn my attention to three previous appeals dealing with similarly or identically worded conditions within the same borough which were allowed and where, as a consequence, the conditions were removed¹. The Council has also drawn my attention to an appeal against similar conditions which was dismissed². These decisions are relevant considerations in this case, which I have taken account of in reaching my decision.
17. In the three appeal decisions which were allowed, the Inspectors first assessed the disputed conditions against the Framework tests rather than the underlying need for controls. The Inspector in the fourth appeal addressed the underlying need for a mechanism to control parking first, and then whether the conditions met the tests. In view of my conclusion in relation to the location of the site and the need for control of parking, I consider that the latter approach is appropriate in this case.
18. In the case before me, Condition 6 states that, with certain exceptions, occupiers of the ground floor flat shall not apply for or be permitted to retain a parking permit, and if they acquire such a permit it should be surrendered to the Council following a written demand.

¹ References APP/H5390/W/16/3167706, APP/H5390/W/18/3212200, and APP/H5390/W/19/3224611

² Reference APP/H5390/W/3222710

19. Condition 7 requires agreement of a scheme before the occupation of the property in order to prevent occupiers of the flat, subject to certain exceptions, from being entitled to parking permits from the Council. It also seeks to ensure that occupiers are informed, prior to occupation, of such a restriction.
20. Condition 8 requires that the ground floor flat shall not be occupied until the Council's Head of Development Management has been notified in writing (and has acknowledged such notification) of the full postal address of the flat. This would enable the Council to update its records and to ensure that parking permits are not issued to the occupants of the flat.
21. The Council is relying on the disputed conditions to achieve its strategic objectives in relation to promoting the use of sustainable transport, addressing traffic congestion and limiting the impact of car parking on the local environment. Planning permission and any conditions that are imposed on it run with the land or building. A planning condition may restrict what an individual can do with the land or building, or prevent certain things taking place, until details have been agreed. Since being amended in July 2019, the PPG no longer restricts the use of negatively worded conditions to complex or strategically important schemes. However, I am not fully persuaded that this amounts to the exceptional circumstances envisaged by the PPG³.
22. Condition 6 seeks to place a restriction on the act of an individual person. Condition 7 is not sufficiently precise, in that it is not clear what 'a scheme' would require from the appellant, how such a control would be effective in the absence of a planning obligation, or how it could be enforced. It is also not clear that Condition 7 relates to a restriction on the site rather than on an individual undertaking an act. Condition 8 is not relevant to planning, nor without the other two disputed conditions would it achieve its intention of preventing the issuing of a parking permit.
23. Although I consider that a mechanism to limit the demand for and access to on-street parking is necessary, I agree with the Inspectors in the previous appeals that the three conditions take an unreasonable approach to achieving this. On the basis of the evidence before me, I therefore conclude that the three disputed conditions do not meet all of the tests set out in the Framework.

Conclusion

24. Notwithstanding my conclusion on the existing conditions' lack of compliance with the Framework tests, I have found a mechanism to control car parking to be essential for the development to comply with the development plan. The defects of the three disputed conditions could not be overcome by an alternative wording and there is no other means of control to secure their requirements. Issues relating to the extant permission are therefore matters for the parties to resolve outside this appeal. For this reason the appeal is dismissed.

M Cryan

Inspector

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