



Appeal Decision

Site visit made on 21 January 2020

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2020

Appeal Ref: APP/H5390/W/19/3239657 243-245 Dawes Road, London SW6 7RD

- 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 prior approval was granted.
- The appeal is made by Mr Jonathan Wright against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2019/02492/VAR, dated 5 August 2019, was refused by notice dated 11 October 2019.
- The application sought prior approval for the change of use of the basement and ground floor level from storage (Use Class B8) into 2 x 2 bedroom self-contained flats (Class C3) without complying with conditions attached to approval reference 2018/01873/PD56 dated 31 July 2018.
- The conditions in dispute are Nos 2, 3 and 4 which state that:
 - 2) *The new residential units 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 residential units. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter.*
 - 3) *No occupiers of the new residential units 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 receipt.*
 - 4) *The new residential units 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 residential units 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:
 - 2) *In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the residential units 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 level of on-street car parking stress in the area, in accordance with Policy T4 of the Local Plan (2018).*
 - 3) *In order to ensure that the development does not harm the existing amenities of the occupiers of neighbouring residential properties by adding to the level of on-street car parking stress in the area, in accordance with Policy T4 of the Local Plan (2018).*
 - 4) *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 level of on-street car parking stress in the area, in accordance with Policy T4 of the Local Plan (2018).*

Decision

1. The appeal is allowed and the prior approval Ref 2018/01873/PD56 for a change of use of the basement and ground floor level from storage (Use Class B8) into 2 x 2 bedroom self-contained flats (Class C3) at 243 - 245 Dawes Road, London SW6 7RD granted on 31 July 2018 by the Council of the London Borough of Hammersmith & Fulham, is varied by deleting conditions 2, 3 and 4.

Background and Main Issue

2. This appeal relates to a previous application to remove three conditions, which together seek to prevent future residents of the appeal properties from applying for on-street parking permits in an area that is said to have significant on-street parking stress.
3. Following the grant of prior approval subject to conditions, the appellant has sought to remove conditions 2, 3 and 4. The main issue therefore is whether they meet the six tests for the use of conditions contained in the National Planning Policy Framework and in Planning Practice Guidance¹. Each test needs to be satisfied for every condition applied.

Reasons

4. The appellant has drawn my attention to three previous appeal decisions² within the London Borough of Hammersmith and Fulham. Those appeals were against refusals to remove three conditions attached to planning permissions for residential development, which sought to restrict the ability of future occupants to possess on-street-parking permits. Each appeal should be determined on its individual merits, but the conditions subject to the appeals cited are substantively the same as those before me now. As such, they form a relevant consideration. Accordingly, I have taken them into account when considering this appeal.

Condition 3

5. This condition states that no occupiers of any of the residential units, except for disabled persons who are blue badge holders, may apply to the Council for an on-street parking permit or retain such a permit. If they were to gain such a permit, the condition requires them to surrender it within seven days.
6. An approval 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 the Council. However, condition 3 encumbers the actions of a group of individuals. The wording imposed seeks to restrict any of the occupiers from applying for an on-street parking permit and whilst it would have the effect of preventing an occupant from applying for a permit, it takes an unreasonable approach in doing so, as it impedes the actions of a person and is not a restriction on land or buildings. I therefore conclude that it is not relevant to planning and does not meet all the required tests.

¹ Planning Practice Guidance Paragraph: 003 Reference ID: 21a-003-2019072

² APP/H5390/W/16/2167706, APP/H5390/W/18/3212200 & APP/H5390/W/19/3224611

Condition 4

7. This condition seeks the agreement of a scheme, prior to the occupation of the new residential units, to ensure that all occupants, other than disabled persons who are blue badge holders, have no entitlement to parking permits from the Council and to ensure that occupants are informed, prior to occupation, of such restriction.
8. The condition would seek to restrict the rights of an individual or individuals to undertake an act rather than a restriction that would be associated with the building that is the subject of the planning permission granted. The approach that the Council has taken in respect of this condition is therefore unreasonable and not relevant to planning. I therefore conclude that it does not meet all the required tests.

Condition 2

9. This condition requires the Council to be notified of the postal address of the new residential units. This would be to enable the Council to update its records, and since it would also be the Council issuing any parking permit, to ensure that parking permits are not issued to the occupants of the new residential units.
10. This condition is not relevant to planning. Further, it would only be of purpose in conjunction with the conditions that follow it, i.e. conditions 3 and 4. Without them it would not have the effect of restricting the issuing of a parking permit even though the Council would be aware of the full postal address. Therefore, its retention would only have any effect if I had concluded that conditions 3 and 4 met the required tests.

Other Matters

11. Given that I have concluded that conditions 3 and 4 do not meet the required tests and condition 2 would have no purpose in the absence of the above conditions it is not necessary for me to go on to consider whether issues relating to parking stress necessitate such conditions.

Conditions

12. The guidance in the PPG makes clear that decisions under Section 73 of the Town and Country Planning Act 1990 (as amended), which I will refer to as the 'the Act' should also repeat the relevant conditions from the original approval, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original approval, I shall impose all those that I consider remain relevant. The conditions have their own timing restrictions and I have therefore removed condition 1 which is not necessary as it would result in duplication.
13. If some have in fact been discharged, that is a matter which can be addressed between the parties. Whilst the appellants have not specified their written consent for pre-commencement conditions, likewise their submissions do not raise any issue with those other conditions. In accordance with the Planning Practice Guidance I shall reimpose them unchanged save for minor amendments to their wording where typographical errors have previously occurred.

14. Section 73(5) of the Act states that permission must not be granted under this section for the development of land in England to the extent that it has an effect to change a condition subject to which a previous planning permission was granted by extending the time within which a development must be started. In line with the requirements of Schedule 2, Part 3, Class P, subsection P.1, paragraph k, development is not permitted if it is not completed within a period of 3 years starting with the original prior approval date, which was 31 July 2018.
15. The Framework sets out that conditions should be kept to a minimum and only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In this case they must also be reasonably related to the subject matter of the prior approval. I have no evidence before me to indicate that the remaining conditions have been found to be unnecessary, unreasonable or are not reasonably related to the subject matter of the prior approval and have included them on this basis.

Conclusion

16. For the reasons set out above and having taken into account all other relevant matters, the appeal is allowed subject to the attached schedule of conditions.

T J Burnham

INSPECTOR

Schedule of Conditions

- 1) No part of the development hereby approved shall be occupied until details of 2 secure cycle parking spaces to be provided in connection with each of the proposed residential dwellings (4 in total) have been submitted to, and approved in writing by, the Council, and such details as are approved shall be implemented prior to the occupation or use of the flat and permanently retained thereafter for such use.
- 2) The noise level in rooms at the development hereby approved shall meet the noise standard specified in BS8233:2014 for internal rooms and external amenity areas.
- 3) 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.
- 4) 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.
- 5) 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.
- 6) 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.

- 7) 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 included in the verification report. 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.
- 8) 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.
- 9) Prior to commencement of the development, (excluding site clearance and demolition) a report including detailed information on the proposed mechanical ventilation system with NO_x and PM_{2.5} filtration shall be submitted to and approved in writing by the Council. This report shall specify air intake locations on the rear elevation and the design details and locations of windows of all habitable rooms (Bedrooms and Living Rooms) to demonstrate that they avoid areas of NO₂ or PM exceedance e.g. Dawes Road (A3219). The whole system shall be designed to prevent summer overheating and minimise energy usage. Chimney/boiler flues and ventilation extracts shall be positioned a suitable distance away from ventilation intakes, openable windows, balconies, roof gardens, terraces and receptors. The maintenance and cleaning of the systems shall be undertaken

regularly in accordance with manufacturer specifications, and shall be the responsibility of the primary owner of the property. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

- 10) Prior to implementation/use of the development hereby approved, 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.
- 11) The development hereby permitted shall only be carried out in accordance with the submitted Flood Risk Assessment, including the implementation of the identified flood resilient design measures it contains.