



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: 16 March 2020

Appeal Ref: APP/H5390/W/19/3240162

1 Edith Villas, London W14 8UP

- 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 Colet Estates Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2019/02489/VAR, dated 19 August 2019, was refused by notice dated 17 October 2019.
- The application sought planning permission for the conversion of the first, second and loft floors from four self-contained flats to seven self-contained flats without complying with conditions attached to planning permission Ref 2017/03915/VAR, dated 6 December 2017.
- The conditions in dispute are Nos 5 and 6 which state that:
 - 5) *The proposed 7 flats located at first/second/third floor level flats hereby approved shall not be occupied until the Council has been notified in writing (and has acknowledged such notification) of its full postal address. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter.*
 - 6) *Only the occupiers of flat 1 & 4 shall be able to apply for a maximum of 1 parking permit per flat. No occupiers of the other five flats, 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 receipt.*
- The reasons given for the conditions are:
 - 5) *In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new 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 TI of the Core Strategy (2011) and Policy DM J2 of the Development Management Local Plan (2013).*
 - 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 TI of the Core Strategy (2011) and Policy DM J2 of the Development Management Local Plan (2013).*

Decision

1. The appeal is dismissed.

Preliminary matters

2. This appeal relates to conditions forming part of planning permission 2017/03915/VAR which was granted on 6 December 2017, and which I shall refer to as 'the amended permission'. This in turn related to conditions attached to permission reference 2016/02062/FUL ('the original permission'), granted on 24 August 2017. 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 an end of terrace building of four floors plus basement, the ground floor and basement of which are in use as a coffee shop and restaurant. The original permission allowed the conversion of the first, second and loft floors from four to seven self-contained flats. Conditions 5 and 6 attached to that permission essentially sought to prevent the occupiers of the flats applying for or holding permits for on-street car parking. The amended permission varied condition 6 so that the restriction on applying for or holding a parking permit only applied to five of the seven flats. This was approved by the Council on the basis that occupiers of two of the four flats prior to the approval of the conversion held parking permits.
5. Taken together, the reason for the imposition of the two 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 two conditions removed.

Main Issues

6. Accordingly, the main issues are:
 - Whether a mechanism to prevent the exacerbation of parking stress and to promote the use of sustainable modes of transport 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 prevent the exacerbation of parking stress and to promote the use of sustainable modes of transport

7. The appeal site is situated at the corner of Edith Villas, a no-through-road serving a number of houses and flats, and North End Road, which is part of the

B317 connecting West Kensington and Fulham. Although the surrounding area includes some commercial uses, it is primarily residential comprising densely-built houses and flats.

8. The appeal property, like most of the properties in the area, has no off-street parking of its own, and on-street parking in the area is generally controlled by a residents' permit scheme. There are a variety of single and double yellow line parking restrictions immediately outside the appeal site, although there are residents' parking bays on Edith Villas itself very close to the appeal property, on North End Crescent a short distance around the corner, and a short way to the north on North End Road. There are also residents' parking bays on Edith Road to the west, although these appear to be within a different permit zone to the streets on the east side of North End Road.
9. 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. 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. The combined intent and effect of these policies and guidance is to use every effort to ensure that demand for parking spaces does not excessively outstrip supply, and to encourage the use of sustainable modes of transport rather than the private car.
10. While I recognise that it only represents a snapshot, at the time of my site visit there were very few available residents' parking bays in Edith Villas and on North End Crescent and Mornington Avenue. These observations were made early on a Tuesday afternoon and, as the appellant indicates, demand for resident parking is likely to be greatest in the evening and overnight.
11. The Council has provided average 'parking stress' figures for Edith Villas which I understand to represent the average percentage of a street's capacity used overnight on weekdays. The figures in 2016, 2017 and 2018 were 82%, 107% and 102% respectively, with a level of 80% being considered very high. For the two most recent years for which this information is provided Edith Villas is evidently a street where the demand for car parking outstrips supply, and the 'parking stress' threshold in LP Policy HO2 is exceeded. Consequently, the additional parking demand arising from any increase in the number of dwellings as a result of residential conversions will exacerbate the existing parking stress.
12. Turning to the availability of public transport, there are bus routes including a 24-hour service stopping a short way north of the appeal site on North End Road, while West Kensington Underground Station is close by to the south. It is not disputed that the PTAL of the appeal site is 5, and it 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.
13. The combination of the very limited capacity of nearby streets to absorb any further car parking and the site's very good access to public transport 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 prevent the exacerbation of parking stress and to promote the use of sustainable modes of transport.

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 HO2 which seeks to ensure that existing parking stress is not exacerbated, nor 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.

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 5 requires that the seven flats 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 those occupants who would not be entitled to hold one.
19. Condition 6 states that the occupiers of flats 1 and 4 shall only be allowed to apply for a maximum of one parking permit per flat and, with certain exceptions, occupiers of the other flats 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.
20. 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, Planning Practice Guidance (the PPG) no longer restricts the use of negatively

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

² Reference APP/H5390/W/3222710

worded conditions to complex or strategically important schemes, although in any event I am not persuaded that this case amounts to the exceptional circumstances envisaged by the PPG³.

21. Condition 5 is not in itself relevant to planning, and without the other disputed condition it would not in any case achieve its intention of preventing the issuing of a parking permit. Condition 6 seeks to place a restriction on the act of an individual person.
22. 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 two conditions take an unreasonable approach to achieving this. On the basis of the evidence before me, I therefore conclude that the two disputed conditions do not meet all of the tests set out in the Framework.

Conclusion

23. 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 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