
Appeal Decision

Site visit made on 9 January 2020

by Mr D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 23 April 2020

Appeal Ref: APP/H5390/W/19/3239068
314 Fulham Palace Road, London SE6 6HS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mrs Kathrine Dabell against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2019/02222/FUL, dated 22 July 2019, was approved on 25 September 2019 and planning permission was granted subject to conditions.
- The development permitted is amendments to previously approved planning permission 2017/02927, FUL granted 13th October 2017 to include the installation of French doors with Juliette balconies to replace the existing window at first floor level to the rear elevation and installation of Z\10 roof lights in the side roof slope of the first floor rear back addition, in connection with the conversion of first and second floor levels into 2 No studio flats and 1 No maisonette 2 x bedroom flat.
- The conditions in dispute are numbers 13, 14 and 15 which states that:
 - (13) The flats 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 flats. Such notification shall be to the council's Head of Development Management and shall quote the planning application number specified in this decision letter.
 - (14) No occupiers of the proposed first floor studio 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.
 - (15) The proposed first floor studio 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 the prospective occupiers, other than those with disabilities who are blue badge holders, have no entitlement to parking permits from the council and are informed, prior to occupation, of such restriction. The flats 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:
 - (13) In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the proposed new first floor studio 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 Policies H01, H011, T1 and T4 of the Local Plan (2018).
 - (14) 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 Policies H01, H011, T1 and T4 of the Local Plan (2018).

(15) 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 Policies HO1, HO1, T1 and T4 of the Local Plan (2018).

Decision

1. The appeal is allowed and planning permission is granted for amendments to previously approved planning permission 2017/02927, 'FUL granted 13th October 2017 to include the installation of French doors with Juliette balconies to replace the existing window at first floor level to the rear elevation and installation of Z\10 roof lights in the side roof slope of the first floor rear back addition, in connection with the conversion of first and second floor levels into 2 No studio flats and 1 No maisonette 2x bedroom flat, without compliance with condition numbers 13, 14 and 15 previously imposed on Ref 2019/02222/FUL dated 22 July 2019 and subject to the conditions in the attached schedule.

Main Issue

2. The main issue is whether conditions 13, 14 and 15 are reasonable and necessary to meet the aim of ensuring that the development does not harm the amenities of occupiers of nearby residential properties by adding to the levels of on street parking stress.

Reasons

3. Taken together, conditions 14 and 15 seeks to prevent future occupiers of the 2 units that would be created by the proposed development from applying for or retaining an on-street parking permit. The requirement for permit free measures is set out in Policy T4 of the Hammersmith and Fulham Local Plan. Whilst not explicit, it is established practice that such a requirement would need to be achieved through a planning obligation under S106 Town and Country Planning Act 1990. As such, the 'scheme' referred to in the conditions is understood by the appellant to be the completion of a planning obligation. This interpretation is not disputed by the Council.
4. I am mindful of advice in the Planning Practice Guidance that negatively worded conditions of the type imposed in this case (i.e. limiting development until an obligation is entered into) are unlikely to be appropriate in the majority of cases, other than in exceptional circumstances. More broadly conditions should meet the tests set out in Paragraph 55 of the National Planning Policy Framework (the Framework) and, in particular, should be necessary and reasonable.
5. The reasons given in the decision notice for imposing conditions 14 and 15 relates to harm to the amenities of occupiers of neighbouring properties as a result of the additional parking demands put on a local area that already experiences a high level of parking stress.

6. The report that accompanies the decision notice does not expand further on either the levels of parking stress in the immediate area or the amenities that are of concern. Reference is made to public transport accessibility levels, which can be a helpful tool to understand demand for car ownership in an area but does not alone identify more detailed areas of parking stress.
7. As such, the evidence on local parking stress and amenity presented by the Council to justify using conditions 14 and 15 is generic and not locally specific enough to demonstrate that exceptional circumstances exist for their use or more broadly that the conditions are reasonable and necessary and meet the tests set out in the Framework.
8. I accept that the conditions seek to fulfil the policy requirement in T4, however this does not remove the need to ensure that appropriate locally specific justification and consideration of a proposal is provided, especially as the requirements of Policy T4 seek to impose a blanket requirement over a large geographical area where there may be variations in the approach that needs to be taken.
9. As a result of my conclusions in relation to conditions 14 and 15, the notification requirement imposed by condition 13 would serve no purpose alone.
10. A number of previous appeal decisions for what is said to be similar development in the London Borough of Hammersmith and Fulham are drawn to my attention by the appellant. These decisions are noted, however as each appeal should be determined on its own merits I have given them limited weight in reaching a conclusion on this appeal.
11. For the reasons set out above, on the basis of the evidence before me, I conclude that conditions 13, 14, and 15 are not reasonable and necessary to meet the aim of ensuring that the development does not harm the amenities of occupiers of nearby residential properties by adding to the levels of on street parking stress.

Conclusion

12. For the above reasons and taking account of all other matters raised in the appeal, the appeal is allowed subject to the attached schedule of conditions.
13. I have re-imposed the conditions from the decision that is the subject of this appeal (with the exception of conditions 13, 14, and 15 on the original decision notice) as I have no evidence before me to indicate that they are a matter of disagreement. The appellant has agreed to the re-imposition of pre-commencement conditions.

D.R. McCreery

INSPECTOR

Schedule of conditions

1. The development hereby permitted shall not commence later than the expiration of 3 years beginning with the date of this planning permission.
2. The development shall be erected in accordance with the detailed drawings which have been hereby approved.
3. Any alterations to the elevations of the existing building shall be carried out in the same materials as the existing elevation to which the alterations relate.
4. The rear face of the extension to the main roof, and the side and rear faces of the extension at second floor level hereby approved shall be clad in black or grey slate/artificial slate.
5. The party/flank wall of the roof extensions shall not project more than 250 millimetres above or beyond the external faces of the main roof structures.
6. The party wall of the main roof extension and extension at second floor level hereby approved shall be constructed in second hand London Stock brickwork to match the colour, texture and bonding of the existing facing brickwork.
7. The development hereby permitted shall not commence until details and samples of the obscure glazed screening around the roof terrace have been submitted to, and approved in writing by the Council. The terrace shall not be occupied until the 1.7m high obscurely glazed screen as approved (measured from the floor level of the terrace) has been installed in accordance with the approved details and it shall be permanently retained as such thereafter.
8. The extent of the terrace at second floor level shall not exceed that indicated on approved drawings: BJ/2017/45/13, 15A and 16A, and the roof terrace shall not be subsequently enlarged prior to the submission and approval in writing of a further planning application. The roof of the remainder of the back addition hereby approved shall not be used as a terrace or other amenity space. No railings or other means of enclosure shall be erected on or around the roof, and no alterations shall be carried out to the rear elevation of the application property to form access onto the roof.
9. No water tanks, water tank enclosures or other structures shall be erected upon the extensions hereby permitted.
10. No plumbing, extract flues or pipes, other than rainwater pipes, may be fixed on the front elevation of the building.
11. The residential units hereby permitted shall not be occupied until details of a minimum of four secure cycle parking spaces to be provided in connection with the proposed residential dwellings 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 flats and permanently retained thereafter for such use.

12. No part of the development hereby approved shall be occupied prior to submission of details of refuse and recycling storage, which shall be submitted to and approved in writing by the Council. All refuse generated by the development hereby permitted shall be stored within these enclosures and shall be permanently retained for these purposes.
13. Prior to commencement of above ground works in the development a Ventilation Strategy Report to mitigate the impact of air pollution for the C3 class use shall be submitted to and approved in writing by the Council. The report shall include the following information:
- a) Details and locations of the clean air ventilation intake locations at rear roof level
 - b) Details of non-openable windows for habitable rooms (bedrooms, living rooms) on front elevations
 - c) Details and locations of ventilation extracts, chimney/boiler flues, to demonstrate that they are located a minimum of 2 metres away from the fresh air ventilation intakes, openable windows, balconies, roof gardens, terraces.
 - d) Details of the independently tested mechanical ventilation system with Nitrogen Dioxide (NO₂) and Particulate Matter (PM_{2.5}, PM₁₀) filtration for C3 use to remove airborne pollutants. The filtration system shall have a minimum efficiency of 75% in the removal of Nitrogen Oxides/Dioxides, Particulate Matter (PM_{2.5}, PM₁₀) in accordance with BS EN ISO 10121-1:2014 and BS EN ISO 16890:2016.

The whole system shall be designed to prevent summer overheating and minimise energy usage. 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. A post Installation certificate of the approved ventilation strategy shall be submitted to the Council prior to the occupation/use of the development. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

14. Prior to occupation of the development, details of the Ultra-Low NO_x Gas fired boilers to mitigate air pollution shall be submitted to and agreed in writing by the council. The Ultra Low NO_x Gas fired boilers to be provided for space heating and hot water shall have dry NO_x 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 NO_x 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 development and thereafter permanently retained and maintained.

15. Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of an enhanced sound insulation value $D_{nT,w}$ and $L'_{nT,w}$ of at least 5dB above the Building Regulations value, for the floor/ceiling/wall structures separating different types of rooms/ uses in adjoining dwellings, namely Flats A & B. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.