The Planning Inspectorate

Appeal Decision

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2020

Appeal Ref: APP/H5390/W//20/3244598
13 Vera Road, London SW6 6RW

- 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 Mark Drysdale against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2019/03055/VAR, dated 3 October 2019, was refused by notice dated 12 December 2019.
- The application sought planning permission for erection of a rear roof extension and erection of dormer windows to the side roofslopes at third floor rear back addition in connection with the creation of 1 x two bedroom self-contained flat; installation of a new rooflight over main flat roof at roof level and 5no rooflights in the front roofslope without complying with conditions attached to planning permission Ref 2014/03743/FUL, dated 25 September 2014.
- The conditions in dispute are Nos 15, 16 and 17 which state that:
  15. The new two bedroom flat at third floor level hereby permitted shall not be occupied until the Council has been notified in writing (and has acknowledge 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.
  16. No occupier of the new two bedroom flat at third floor level 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.
  17. The new two bedroom flat at third floor level 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 a restriction. The flat 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:
  15. 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 T1 of the Core Strategy 2011 and policies DM A1, DM A9, DM J2 and DM J3 of the Development Management Local Plan 2013.
  16. 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 policies DM A1, DM A9, DM J2 and DM J3 of the Development Management Local Plan 2013.

17. In order that the prospective occupiers of the new flat concerned are made aware of the fact that they will not be entitled to an on-street car parking permit, in the interests of 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 policies DM A1, DM A9, DM J2 and DM J3 of the Development Management Local Plan 2013.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council were given an opportunity to provide comments on this approach and I have taken any responses into account.

3. The application form indicates that the development has been completed. However, as I cannot be sure that a breach of the conditions has occurred prior to the application being made, I have dealt with the appeal under Section 73 of the Town and Country Planning Act 1990.

4. The reason for imposing the original conditions in dispute were to ensure that the development did not harm the amenities of the occupiers of neighbouring residential properties by adding to on street car parking stress and to ensure proper management of parking. The Council's decision notice also refers to public transport accessibility.

5. Therefore, the main issue is the effect that removing the conditions would have on parking stress in the area having regard to development plan policies which seek to reduce car use and protect the amenities of local residents.

Reasons

6. Policy T4 of the Hammersmith and Fulham Local Plan (Local Plan) requires 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. HO2 of the Local Plan states that where streets have less than 10% night time free space on street parking may not be allowed. Policy T1 seeks to promote a modal shift away from private vehicles.

7. Key Principle TR3 of the Hammersmith and Fulham Planning Guidance Supplementary Planning Document February 2018 (SPD) similarly states that development in areas well connected by public transport will be expected to be car-free. Parking permits may be issued for residential development subject to them being within areas of Public Transport Accessibility Level (PTAL) 1-2.

8. The appeal site provides no off street parking and it is not disputed by the main parties that it falls within PTAL3. Even if I were to consider that PTAL3 gave only moderate access to public transport, this does not demonstrate that there is a significant lack of public transport.

9. The Council contend that parking stress in Vera Road is already at 90%. Full details of the Council's parking stress assessment have not been provided, including the timing of surveys. Moreover, I appreciate that parking demand will vary across different days and times of day. Nonetheless, there has been no detailed evidence or alternative parking survey put before me to the contrary of the Council's. In the absence of such evidence I cannot be sure that the potential additional parking that the scheme could generate could be accommodated on nearby streets.

10. It is necessary to achieve the purpose of the development plan policies to prevent occupiers of the appeal site being able to obtain a parking permit. This is to ensure that the development stays car-free in line with the policies above and encourage other modes of transport. Furthermore, it would prevent the unacceptable impacts on the living conditions of nearby residents that could otherwise arise from the increased parking stress were the conditions removed.

11. There is a planning purpose to the disputed conditions and control is necessary. The proposal would fail to accord with Policies HO2, T1 and T4 of the Local Plan and Key Principle TR3 of the SPD, insofar as they seek to ensure that development with sufficient access to public transport, and where there are existing car parking pressures, remain car free.

12. Condition 16 states that occupiers of the flat, subject to certain exceptions, would not be permitted to apply for or retain a parking permit. It continues by stating that if they gain such a permit, it must be surrendered to the Council following the receipt of a written demand.

13. 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. However, condition 16 seeks to place a restriction on the act of an individual person. Worded in this manner therefore, whilst it would achieve the objective of preventing an occupier from applying for a permit, it takes an unreasonable approach to do so.

14. Condition 17 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.

15. The Planning Practice Guidance advises that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. Given the scale of the scheme and absence of any detailed information otherwise, the proposal is not a complex or strategically important development. In addition, no exceptional circumstances have been demonstrated.

16. It is not clear what such a scheme as referred to in condition 17 would require from the appellant or how such a control would be effective in the absence of a planning obligation. Moreover, whatever the mechanism used, it is not clear how this would relate to a restriction on the site rather than on an individual undertaking an act. Therefore, the condition would fail the tests of precision,

reasonableness and be unrelated to the planning permission. It is also uncertain how such a condition would be enforced.

17. Condition 15 asks for the postal address of the flat and is not necessary in the absence of conditions 16 and 17.

18. A conditional control is necessary, but the conditions in question would fail others of the six legal tests set out by the National Planning Policy Framework. Notwithstanding this, their defects could not be overcome by an alternative wording and there is no other means of control to secure their requirements. Any matters relating to the extant planning permission that has been granted is a matter for the appellant and the Council away from this appeal.

Other Matters

19. My attention has been drawn to a number of appeal decisions where similar conditions have been considered[1]. Nonetheless, I have determined the appeal on the basis of the evidence before me on its own individual merits.

Conclusion

20. Therefore, for the above reasons, and having taken all matters raised into account, the appeal is dismissed.

Stuart Willis

INSPECTOR

[1] APP/H5390/W/16/3167706, APP/H5390/W/18/3212200, APP/H5390/W/19/3224611, APP/H5390/W/19/3232043