



Appeal Decision

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2020

Appeal Ref: APP/H5390/W/20/3245993

78 Wandsworth Bridge Road, London SW6 2TF

- 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 78 WBR LLP against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2019/03450/VAR, dated 4 November 2019, was refused by notice dated 16 January 2020.
- The application sought planning permission for erection of front and rear roof extensions including extension over the back addition at third floor level; erection of side and rear extensions to the back addition at ground, first and second floor level; excavation of the front and rear garden to form lightwells in connection with the enlargement of the existing basement including external staircase from basement to ground floor level at the rear of the property; installation of new boundary treatments, meter enclosures, refuse storage and cycle storage at the front of the property; installation of cycle storage at the rear of the property; installation of new windows to replace the existing door and windows to the side of rear back additions at ground, first and second floor level; conversion of the existing dwellinghouse into 2 x 1 bedroom and 2 x 2 bedroom self-contained flats without complying with conditions attached to planning permission Ref 2018/02872/FUL, dated 7 November 2018.
- The conditions in dispute are Nos 18, 19 and 20 which state that:
Condition 18 – The four 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 four new flats (F1, F2, F3, F4) at 78 Wandsworth Bridge Road. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter.
Condition 19 – No occupier of the one-bedroom flat F1, and two-bedroom flats F3 and F4 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.
Condition 20 – The one-bedroom flat F1, and two-bedroom flats F3 and F4 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 new 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:
Condition 18 – In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of Flats F1, F3 and F4 hereby approved, and thus ensure 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 HO2 and T4 of the Local Plan 2018. Condition 19 – 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 HO2 and T4 of the Local Plan 2018.

Condition 20 – 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 proper management of parking, and to ensure that the development does not harm the existing amenities of 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 HO2 and T4 of the Local Plan 2018.

Decision

1. The appeal is allowed and planning permission is granted for erection of front and rear roof extensions including extension over the back addition at third floor level; erection of side and rear extensions to the back addition at ground, first and second floor level; excavation of the front and rear garden to form lightwells in connection with the enlargement of the existing basement including external staircase from basement to ground floor level at the rear of the property; installation of new boundary treatments, meter enclosures, refuse storage and cycle storage at the front of the property; installation of cycle storage at the rear of the property; installation of new windows to replace the existing door and windows to the side of rear back additions at ground, first and second floor level; conversion of the existing dwellinghouse into 2 x 1 bedroom and 2 x 2 bedroom self-contained flats at 78 Wandsworth Bridge Road, London SW6 2TF in accordance with the application Ref 2019/03450/VAR dated 4 November 2019, without compliance with condition numbers 18, 19 and 20 previously imposed on planning permission Ref 2018/02872/FUL dated 7 November 2018 and subject to the conditions in the attached schedule.

Procedural Matters

2. Following a review of the evidence presented in this case, I have decided that this appeal can be determined without the need for a physical site visit. Both the appellant and the Council have been asked for comments on this approach but neither have submitted any response. I have based my decision on the written submissions.
3. I am advised that the development has commenced, although none of the approved flats have been occupied. I have assessed the appeal on this basis.

Background and Main Issue

4. Following the grant of planning permission¹, the appellant sought to remove the disputed conditions. The Council has refused planning permission as it is concerned removing the conditions would generate additional roadside parking in an area which they argue already suffers from significant on-street parking stress. Also, as the site has good accessibility by public transport, the Council is concerned that the proposal would undermine the objectives of encouraging modal shift away from private vehicles and supporting sustainable forms of travel.

¹ Planning permission reference number 2018/02872/FUL

5. As well as disputing the Council's concerns, the appellant argues against the legality and reasonableness of the conditions. As such, the main issue is whether conditions 18, 19 and 20 of the above mentioned planning permission are reasonable, necessary and relevant to planning, having regard to the effect on roadside parking and accessibility to public transport.

Reasons

6. The appellant has referred to 4 previous appeal decisions relating to development in the London Borough of Hammersmith and Fulham². The Council has had the opportunity through the appeal process to make representations on these decisions, although no such comments have been received. These previous appeals were against the refusal to remove conditions attached to planning permissions which sought to prevent occupiers of approved development from applying for or holding an on-street parking permit. While each appeal is required to be determined on its merits, the conditions subject of these previous appeals are substantially the same as those subject of the current appeal, albeit that for some the reasons refer to an earlier local plan. As they are also relatively recent, these previous decisions are relevant considerations in the assessment of this appeal.

Condition 19

7. This condition prevents the occupiers of flats F1, F3 and F4 as approved from applying to the Council for a parking permit or retaining such a permit with the exception of disabled persons who are blue badge holders. The condition states that if such a permit is issued it must be surrendered on demand.
8. A planning permission and any attached conditions run with the land or building, and not with any individual. The prevention of an individual, or group of individuals, from such actions, in this case applying for a permit, is not a restriction on the land or buildings. I note that the Council has submitted no comments that contest the previous appeal Inspectors' findings in this regard.
9. Paragraph 55 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where, amongst other tests, they are relevant to planning and to the development to be permitted as well as reasonable in all other respects. I find that the approach taken with condition 19 is unreasonable in that it would restrict the actions of individuals that are unrelated to how the approved development is used. As such, I conclude that condition 19 would fail the tests for planning conditions of reasonableness and relevance as set out in the Framework.

Condition 20

10. This condition requires the approval of a scheme that ensures all occupiers of the appeal development, other than those who are blue badge holders, have no entitlement to parking permits from the Council. The scheme also needs to ensure that occupiers are informed of such a restriction prior to occupation.
11. From the information provided, I am uncertain as to the nature of a scheme that would ensure occupiers have no entitlement to parking permits other than through a mechanism that would prohibit the action of an individual from

² Appeal reference numbers APP/H5390/W/16/3167706, APP/H5390/W/18/3212200, APP/H5390/W/19/3224611 and APP/H5390/W/19/3232043.

applying for such a permit. For these reasons, such a restriction would be unreasonable and unrelated to planning and the approved development. Accordingly, I conclude that condition 20 fails to comply with the reasonableness and relevance tests of conditions as set out in the Framework.

Condition 18

12. This condition restricts occupation of the development until the Council has been notified of the full postal addresses of the four new flats. It is stated that this would enable the Council to update its records to ensure that parking permits are not issued to the occupiers of the flats.
13. While it may be helpful to the Council, the primary purpose of the condition is to assist in the administration of parking permit applications rather than to fulfil any planning policy objective. Also, there is no information before me that demonstrates that the only method of obtaining address information is through the imposition of a planning condition. As such, I conclude that the condition is unnecessary and irrelevant to planning and so fails to meet the tests of conditions as set out in the Framework.

Roadside parking and public transport accessibility

14. Policy HO2 of the Hammersmith and Fulham Local Plan 2018 (LP) permits the conversion of a dwelling into 2 or more dwellings where there is no adverse impact on roadside parking stress. Where there is less than 10% night-time free roadside parking space, the policy states developments may be conditioned to allow no additional on-street parking. Also, LP policy T1 sets out the Council aim to ensure traffic generated by new development does not add to parking pressures on local streets.
15. The appeal development includes no car parking facilities and so it is likely that car-driving occupiers and visitors would be reliant upon roadside parking spaces. While noting concerns from local residents that finding a parking space can sometimes be difficult, there is no substantive evidence before me that demonstrates the extent to which the development may affect demand for roadside parking or how it would exacerbate local on-street parking stress. Also, no evidence has been submitted that shows nearby streets have less than 10% night-time free parking space. As such, it has not been demonstrated that the disputed conditions are necessary to comply with LP policies HO2 and T1.
16. Key Principle TR3 of the Council's Planning Guidance Supplementary Planning Document 2018, expects development in areas well-connected to public transport to be car-free. The proposal would be consistent with Key Principle TR3 in that it includes no car parking facilities.
17. LP policy T4 requires development to conform with car parking standards and states that car parking permit free measures should be included on all new development unless there is a significant lack of public transport available. Car parking standards are set as maximums and therefore, in this scheme, with no parking provided, there cannot be said to be conflict with this policy in this regard although the removal of the disputed conditions means the proposal would not include car parking permit free measures.
18. However, for the reasons set out above, the disputed conditions are not relevant to planning and would impose unreasonable restrictions on the actions of future occupiers of the development. I have not been presented with

alternative conditions which would address the requirements of LP policy T4 and meet the tests of planning conditions as set out in the Framework.

Other Matter

19. The appeal site lies in Studdridge Street Conservation Area (CA). No concern is raised by any party that the removal of the disputed conditions or the appeal development would harm the significance of the CA and I have no reason to arrive at a different conclusion in this regard. As such, I find the proposal would preserve or enhance the character and appearance of the CA.

Conditions

20. The PPG states that, for the purpose of clarity, decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect. I have had regard to all the planning conditions attached to the original planning permission reference number 2018/02872/FUL, although I have no information about the status of these conditions. As such, I have imposed those that I consider remain relevant and meet the tests of conditions as set out at paragraph 55 of the Framework. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
21. As construction works on the appeal development have started, there is no need to impose a condition setting a time limit to commence development. For reasons of clarity and to ensure the development is carried out as approved, I have included a condition that lists the approved plans and accompanying documents. As such, further conditions specifically requiring the front lightwell and side and rear extensions to be constructed in accordance with the approved plans would be superfluous and so have not been restated.
22. To ensure the proposed building works are of a satisfactory appearance I have restated planning conditions requiring the use of matching materials and brickwork as well as the use of grey/black slates. For the same reason, I have restated conditions limiting the height and projection of party walls, preventing the installation of tanks and structures on flat roof elements and specifying the design of new windows and openings at basement level. Also, to protect the living conditions of the occupiers of adjoining residences, I have restated conditions restricting the position of railings and other structures to balconies and flat roof elements, requiring obscure glazing to windows in the side elevations and requiring development to be carried out in accordance with the submitted construction management and logistics details.
23. Condition 14 attached to the original planning permission requires the development to be used as residential units falling in Class C3 of the Town and Country Planning (Use Classes) Order 1987 and prevents its use as housing in multiple occupation (HMO) falling within Class C4. While I note some inconsistency in the reference to Class C4 and the Town and Country Planning (Use Classes)(Amendment)(England) Order 2015, there is no dispute over this condition and I have insufficient evidence before me to conclude that it would be unreasonable or unnecessary. I have made the relevant correction in my decision.

24. A condition is necessary that requires the provision and retention of cycle storage facilities in order to promote sustainable forms of travel to and from the development. To avoid smell nuisance and to prevent harm to the appearance of the street scene a condition is imposed that requires approval and provision of waste bin storage facilities.
25. The condition requiring the construction of the proposal in accordance with sound insulation measures is restated to ensure satisfactory living conditions for the residents of the development. In the interests of air quality, conditions requiring approval of ventilation and boiler systems are also restated.
26. A condition requiring tree protection measures during construction is necessary to preserve the health and well-being of trees. To ensure the suitable disposal of foul water and surface water run-off, a condition requiring the implementation of flood risk measures is also imposed.

Conclusion

27. For these reasons, I conclude the appeal should be allowed as set out in the formal decision above.

Jonathan Edwards

INSPECTOR

Schedule of Planning Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Demolition & Construction Logistics Plan (October 2018); 0406-002-PP-GF; 0406-001-PP-BF, received 24/10/2018; Sound Insulation Guidance (Rev 01 – 29 October 2018), received 01/11/2018; 0406-013-PE-FR2, received 05/09/2018; Arboricultural Method Statement & Tree Protection Plan (Rev B – November 2018), received 06/11/2018; 0406-003-PP-1F; 0406-004-PP-2F; 0406-005-PP-3F; 0406-006-PP-RF; 0406-007-PS-AA; 0406-008-PS-BB; 0406-009-PS-CC; 0406-010-PS-DD; 0406-012-PE-RE; 0406-011-PE-FR; 0406-XP-001; Flood Risk Assessment; Construction Method Statement (dated September 2017); Root Excavation Report (dated 6 April 2018); Arboricultural Impact Assessment Report (Ref: JCA/78WBR/AIA/01, dated 20 September 2017, received 28/08/2018.
- 2) Any alterations to the elevations of the existing building (including works of making good) shall be carried out in the same materials as the existing elevation to which the alterations relate.
- 3) Unless where indicated on the approved drawings, the raised party walls of the front and rear roof extensions and second floor extension over the back addition, and the elevations of the extensions to the side and rear of the back addition at ground, first and second floor level hereby approved, shall be constructed with London stock brickwork to match existing.
- 4) The faces of the front and rear roof extensions, and the side and rear face of the third floor extension over the back addition, hereby approved, shall be clad in grey/black slates.

- 5) The party walls of the roof extensions and third floor extension over the back addition hereby approved shall not project more than 250 millimetres above or beyond the external faces of the main roof structures.
- 6) Unless otherwise indicated on the approved drawings, any new and/or replacement windows to the property hereby approved shall be timber double glazed sliding sash windows and painted white.
- 7) The openings to the front elevation at basement level shall be timber frame construction.
- 8) No water tanks, water tank enclosures or other structures shall be erected upon the flat roof forms of the extensions hereby permitted.
- 9) The railings/glazing to the Juliet balconies at first, second and third floor levels hereby approved shall not project more than 250 mm beyond the rear elevation of the back addition or rear plane of the rear roof extension respectively. No alterations shall be carried out to any of the flat roof forms of the side and rear extension or the remainder of the roof of the back addition to facilitate their conversion to use, all or in part, as a terrace or other amenity space. No railings or other means of enclosure shall be erected around the roofs and no alterations shall be carried out to the rear or side elevations of the application property to form an access onto the roofs.
- 10) Except for that opening within the side elevation of the back addition serving a bedroom to Flat 3 at first floor level, the development hereby permitted shall not be occupied until all other windows to the side elevation of the back addition at first and second floor level, and the new window to the side elevation of the third floor extension over the back addition have been fixed shut below the level of 1.7 metres and installed with obscured glazing. These windows shall thereafter be retained as such.
- 11) The conversion hereby approved shall only be used as residential units falling within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The resulting converted property shall not be used as housing in multiple occupancy falling within Class C4.
- 12) The development hereby approved shall be carried out in accordance with the construction management and logistics details included within the approved 'Demolition & Construction Logistics Plan (dated October 2018)'. These details shall be implemented throughout the project period.
- 13) No part of the development hereby approved shall be occupied prior to the provision of the cycle storage for the residential units as indicated on drawings 0406-001-PP-BF and 0406-002-PP-GF (received 24/10/2018), and such storage facilities shall be permanently retained thereafter in accordance with the approved details.
- 14) No part of the development hereby approved shall be occupied prior to the provision of adequate storage of refuse and recyclables for the occupiers of the residential units hereby approved, as indicated on the approved drawings, and such storage facilities shall be permanently retained thereafter in accordance with the approved details.

- 15) The development hereby approved shall be constructed in accordance with 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 and/or neighbouring dwellings, as detailed within the approved 'Sound Insulation Guidance – ref 87121/SIG (Rev 01 revised 29 October 2018)'. The details shall thereafter be permanently retained.
- 16) Prior to occupation of the development hereby permitted, a report for the C3 use shall be submitted to and approved in writing by the Council. The report shall demonstrate that the use avoids areas of exceedance above the annual mean objective APEC-B (38ug/m-3) criteria for NO₂ and include the following information:
 - a) Details of the air intake and extract locations at roof level on the rear elevations
 - b) Design details and locations of windows of all habitable rooms (Bedrooms and Living Rooms)
 - c) Details of the independently tested mechanical ventilation system with NO_x, PM_{2.5}, PM₁₀ filtration for C3 use. The NO₂ filtration system shall have a minimum efficiency of 90% in the removal of Nitrogen Oxides/Dioxides, PM_{2.5} and 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. 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.

- 17) Prior to the occupation of the development, details of the Ultra-Low NO_x Gas fired boilers to be provided for space heating and hot water shall be submitted to and agreed in writing by the Local Planning Authority. The Ultra Low NO_x Gas fired boilers 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, emission 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.
- 18) The development hereby approved shall be carried out in accordance with the tree protection measures detailed within the approved Arboricultural Method Statement & Tree Protection Plan (Rev B – November 2018), and with BS5837:2012, and with the recommendations in Chapter 6.3 of the Arboricultural Impact Assessment (JCA/78WBR/AIA/01 – September 2017). Further, the installation of the Tree Protection measures and the initial excavation along the outer edge of the front light well should be carried out by hand under the direct supervision of the project

arboriculturalist. The development shall be implemented in accordance with the approved tree protection details, which shall be retained throughout the project period.

- 19) The development hereby approved shall not be occupied until the flood risk measures identified in the Flood Risk Assessment referred to under condition number 1 have been carried out. The scheme shall thereafter be permanently maintained.

END OF CONDITIONS