



Appeal Decision

Site Visit made on 20 October 2020

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 2nd November 2020

Appeal Ref: APP/H5390/W/20/3253959
103-105 Lillie Road, London, SW6 7SX

- 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 Chris Jaehme, Charlton House against the decision of the Council of London Borough of Hammersmith and Fulham.
- The application Ref 2019/02756/VAR, dated 17 September 2019, was approved on 6 January 2020 and planning permission was granted subject to conditions.
- The development permitted is Variation of Condition 2 (approved drawings) of planning permission reference: 2016/02771/FUL dated 15/05/2019 for the "Removal of the existing advertisement hoarding to the front of the site, and demolition of the existing retail storage (Class A1) and car wash buildings (Sui generis) to the rear, and redevelopment of the site to include the erection of a three storey building on the Lillie Road frontage, to provide 2 no. retail units (Class A1) at ground floor and 6 no. self-contained flats (2 x studio and 4 x 2 bed) at first and second floor levels, and the erection of a three storey building to the rear of the site to provide 3 no. self-contained flats (3 x 2 bed), together with 3 no. off-street car parking spaces (including 1 disabled space), and associated amenity spaces." Amendments sought are alterations to the approved drawings including a three-storey extension to the side of Block 2; insertion of a new lift to Block 2 and subsequent alterations to the internal layout of flats 1, 2 and 6 and associated fenestration.
- The conditions in dispute are Nos 24, 25 and 26 which state that:
 - The nine dwellings 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 dwellings. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter;
 - No occupiers of nine dwellings 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 receipt; and
 - The nine dwellings 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 reasons given for the conditions are:
 - In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new flats hereby approved, with an exception of the family unit (flat 9), 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 HO1, HO11, T1 and T4 of the Local Plan (2018) and Key Principle TR3 of the Planning Guidance Supplementary Planning Document (SPD) (2018);

- 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 HO1, HO11 and T4 of the Local Plan (2018) and Key Principle TR3 of the Planning Guidance Supplementary Planning Document (SPD) (2018); and
 - In order that the prospective occupiers of the residential unit 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, HO11, T4 and T5 of the Local Plan (2018) and Key Principles TR3 and TR6 of the Planning Guidance Supplementary Planning Document (SPD) (2018).
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Decision

1. The appeal is allowed and the planning permission Ref 2019/02756/VAR for Variation of Condition 2 (approved drawings) of planning permission reference: 2016/02771/FUL dated 15/05/2019 for the "Removal of the existing advertisement hoarding to the front of the site, and demolition of the existing retail storage (Class A1) and car wash buildings (Sui generis) to the rear, and redevelopment of the site to include the erection of a three storey building on the Lillie Road frontage, to provide 2 no. retail units (Class A1) at ground floor and 6no. self-contained flats (2 x studio and 4 x 2 bed) at first and second floor levels, and the erection of a three storey building to the rear of the site to provide 3 no. self-contained flats (3 x 2 bed), together with 3 no. off-street car parking spaces (including 1 disabled space), and associated amenity spaces." Amendments sought are alterations to the approved drawings including a three-storey extension to the side of Block 2; insertion of a new lift to Block 2 and subsequent alterations to the internal layout of flats 1, 2 and 6 and associated fenestration at 103-105 Lillie Road, London, SW6 7SX granted on 6 January 2020 by the Council of the London Borough of Hammersmith and Fulham, is varied by deleting conditions 24, 25 and 26.

Main Issue

2. The main issue is whether or not conditions 24, 25 and 26 of the planning permission Ref 2019/02756/VAR (the 2019 permission) are necessary and reasonable having regard to on-street car parking which may have an effect on the living conditions of existing local residents.

Reasons

3. The appeal site is an irregular shaped site on the south side of Lille Road close to the junction with North End Road. Many of the nearby streets are subject to Traffic Regulation Orders such that parking is mainly either prohibited or requires a parking permit. Planning permission was granted for redevelopment

Ref 2016/02771/FUL. Subsequently the appellant sought changes to the proposal and a subsequent permission was granted for an amended scheme Ref 2019/02756/VAR: it is conditions 24, 25 and 26 attached to the 2019 permission that are the subject of this appeal.

4. There would be limited opportunity to park within the curtilage of the site. and the Council have imposed three conditions associated with residents' parking permits to restrict occupiers from applying to the Council for on-street permits and to notify the Council of the addresses of the occupiers. The reasons for the conditions are to prevent additional parking stress within the local streets due to the net increase of development on the site.
5. Paragraph 55 of the National Planning Policy Framework, (the Framework) advises that conditions should only be imposed where they are necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (the PPG) refers to this as the 'six tests'. It also emphasises that clear and precise reasons must be given for the imposition of every condition.
6. Condition 24 requires the postal address of the residential units to be submitted to the Council prior to their occupation. This condition is not relevant to planning as is not directly related to the use of land and buildings. It would not prevent the Council from issuing parking permits. There are also other mechanisms available for street naming and numbering. The condition does not meet the test of necessity and should be deleted.
7. Condition 25 prevents new occupiers from applying for parking permits unless they are a disabled badge holder, and if issued, for it to be surrendered within 7 days following demand. A planning permission and any conditions it is subject to, runs with the land or building, and not the individual. It is therefore not the role of the planning system to control the actions of individuals by preventing them from applying for parking permits. The wording of the condition fails to meet the test of reasonableness and is also not relevant to planning. The condition should be deleted.
8. Condition 26 requires a scheme to be submitted to the Council to inform occupiers they have no entitlement to apply for parking permits unless they are blue badge holders, and they are informed of this fact prior to occupation. The condition seeks to control the actions of a person rather than control the use of land, and the mechanism to secure compliance with this condition is undetermined. I therefore conclude that the condition does not meet all the relevant tests. The condition should be deleted.
9. I acknowledge there may be genuine on-street parking stress. However, I have determined the appeal based on the evidence before me and find the three disputed conditions fail one or more of the tests set out in Paragraph 55 of the Framework and the PPG and should be deleted.

Conclusion

10. I conclude that conditions Nos 24, 25 and 26 of the above mentioned planning permission are not necessary and reasonable and do not meet the tests set out in the Framework and the PPG. The appeal is allowed and these conditions are deleted.

11. I have re-imposed the other conditions from the decision that is the subject of this appeal as I have no evidence before me to indicate that they are a matter of disagreement. For clarity I have added the plans referred to at the beginning of the planning permission notice to the condition which requires the development to be erected in accordance with those plans.

S Harley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans: 00012 Rev.A1; 00016 Rev.A; 00021 Rev.A1; 00022 Rev.A; 973-CYAAA-XX-DR-A-00013 Rev.A1; 00014 Rev.A1; 00023 Rev.A; Air Quality and Dust Management Plan (October 2019); Site Investigation Scheme (Ref: 527534/S1/R1); Proposed External Material Schedule; Secured by Design Statement; Noise Exposure Assessment (REF:14825-NEA-01 Rev. A); Acoustic Report by Clement Acoustics (Ref:14825-ADR-01); Demolition & Construction Management & Logistics Plan; Phase 1 Preliminary Risk Assessment (Ref: 527534/PRA/R1) Ground Gas Risk Assessment Addendum (Ref: 527534/GGA/R1); Drainage Design Report & Maintenance (Ref: 18334DDR); 19/471 09; 18334/300; 11 P5; Ventilation Review dated Nov. 2019 by Crofton Consulting; Remediation Method Statement (Ref: 527534/RMS/R2); Details of high obscure glazed screens to balconies to flats 5 9; 1 x glazed sample; 19/471 09; 18334/300; Energy Assessment, by Everwarm Energy Services Ltd; Design, Access & Sustainability Report, dated February 2017.
- 3) The development hereby permitted shall be implemented in accordance with the Demolition & Construction Management & Logistic Plan as approved under 2019/01878/DET. The approved details shall be implemented throughout the project period.
- 4) The development hereby permitted shall be implemented in accordance with the Demolition & Construction Management & Logistic Plan as approved under 2019/01878. Approved details shall be implemented throughout the project period.
- 5) The details of a typical bay of the Lillie Road elevation shall be carried out in accordance with the drawings as approved under 2019/02107/DET, and thereafter permanently retained in this form.
- 6) All new external materials to be used in the development including curtain walling, cladding and roofing materials shall be carried out in accordance with the approved materials under 2019/01878/DET, and permanently retained as such.
- 7) No plumbing, extract flues or pipes other than rainwater pipes shall be fixed on the Lillie Road elevation of the building(s) hereby approved.
- 8) No plant, water tanks, water tank enclosures or other structures, that are not shown on the approved plans, shall be erected upon the roofs of the building(s) hereby permitted.
- 9) No alterations shall be carried out to the external appearance of the buildings, including the installation of air-conditioning units, ventilation fans or extraction equipment not shown on the approved drawings, without planning permission first being obtained. Any such changes shall be carried out in accordance with the approved details.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no

aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any external part of the approved buildings, without planning permission first being obtained.

- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any order amending, revoking and re-enacting that Order) no extensions or other form of enlargement to the residential development hereby permitted, nor erection of porches, outbuildings, hardstandings, storage tanks, gates, fences, walls or other means of enclosure, shall take place without the prior written permission of the Council.
- 12) No advertisements shall be displayed on the development hereby approved without details of the advertisements having first been submitted to and approved in writing by the Council.
- 13) The glass installed for the retail frontages on the Lillie Road shall be clear and shall be permanently retained and not obscured in any way.
- 14) No external roller shutters shall be attached to the retail frontage to Lillie Road elevation.
- 15) All ground floor entrance doors hereby approved shall not be less than 1 metre wide and the threshold shall be at the same level as the adjoining ground level fronting the entrances.
- 16) A minimum of 10% of all dwellings hereby approved shall be capable of meeting the needs of wheelchair users and shall be designed and capable of adaptation, in accordance with the Council's Supplementary Planning Guidance.
- 17) The development hereby permitted shall be implemented in accordance with the details of Noise Exposure Assessment (Ref: 14825) as approved under 2019/01878/DET. The approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 18) The development hereby permitted shall be implemented in accordance with the details of Acoustic Report (Ref: 14825-ADR-01) as approved under 2019/01878/DET. The approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 19) The development hereby permitted shall be implemented in accordance with the details of Secured by Design Statement as approved under 2019/01878/DET. Approved details of the proposed measures shall be installed prior to occupation of the development and thereafter be permanently retained.
- 20) With the exception to the private balconies shown on the approved drawings 00013 Rev A1 and 00014 Rev A1 no part of the remainder of the flat roof hereby approved shall be used as a terrace or other accessible amenity space. No walls, fences, railings or other means of enclosure other than those shown on the approved drawings shall be erected around the roofs, and no alterations shall be carried out to the approved building to form access onto these roofs.
- 21) The balconies to Flats 5 and 9 shall be installed with 1.8m high obscure glazed screen as measured from the floor level. The use of the balconies

- shall not commence until the glazing, as approved under 2019/02107/DET has been installed and it shall be permanently retained as such thereafter.
- 22) The retail (Class A1) units hereby approved shall be provided in the form of 2 separate units that shall not be amalgamated or occupied as one larger unit.
- 23) No part of residential units hereby approved shall be occupied prior to setting out of 3 car parking spaces as identified on approved drawing 00012 Rev A1. These spaces must be clearly identified and marked out, including 1 space set aside for parking by Blue Badge Holder scheme residents. All such approved details shall be installed and maintained for the lifetime of the development.
- 24) Deleted
- 25) Deleted
- 26) Deleted
- 27) No part of the development hereby approved shall be occupied prior to the provision of the cycle storage for the residential and commercial development hereby approved, as indicated on the approved drawings and such storage facilities shall be permanently retained thereafter in accordance with the approved details.
- 28) All external entrance doors in the retail frontages hereby approved shall be designed and installed so that they only open inwards, and shall thereafter be retained in this form.
- 29) No part of the development hereby approved shall be occupied prior to the provision of the refuse storage enclosures, as indicated on the approved drawings.
- 30) Prior to occupation of the commercial units, a Servicing Management Plan shall be submitted to and approved in writing by the Council. Details shall include times and frequency of deliveries and collections, vehicle movements, silent reversing methods, location of loading bays and quiet loading/unloading measures. The measures/scheme shall be implemented in accordance with the approved details prior to occupation of the development hereby permitted, and thereafter permanently retained and maintained in line with the agreed plan.
- 31) The development shall be implemented in accordance with the recommended flood mitigation measures as proposed in Flood Risk Assessment, Project Ref: 28548/001, dated September 2013, by PBA otherwise agreed in writing by the local planning authority. In line with advice from Thames Water, a non-return valve or other suitable device shall be installed to avoid the risk of the sewerage network surcharging wastewater to basement/ground level during storm conditions. The recommended mitigation measures shall be permanently retained thereafter.
- 32) The development hereby permitted shall be implemented in accordance with the Sustainable Drainage Report & Maintenance (Ref: 18334ddr) as approved under 2019/02107/DET, and thereafter all SuDS measures shall be retained and maintained in accordance with the approved details.

- 33) The development hereby permitted shall not be occupied before implementation of the energy efficiency, low/zero carbon and renewable energy measures detailed in the submitted Energy Assessment, by Everwarm Energy Services Ltd. All details shall be implemented prior to occupation/use of the development hereby permitted, and thereafter be permanently retained.
- 34) The development hereby permitted shall not be occupied before implementation of the sustainable design and construction measures detailed in the submitted Design, Access & Sustainability Report, dated February 2017. All details shall be implemented prior to occupation/use of the development hereby permitted, and thereafter be permanently retained.
- 35) The development hereby permitted shall be implemented in accordance with the details within the Ventilation Review as approved under 2019/02191/DET. Approved details shall be fully implemented prior to the occupation/use of the residential development and thereafter permanently retained and maintained. 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. The development shall not be occupied until the scheme has been carried out in accordance with the approved details, and it shall thereafter be permanently retained as such.
- 36) The development hereby permitted shall be implemented in accordance with the details within the Air Quality & Dust Management Plan (October 2019) as approved under 2019/01878/DET). Developers must ensure that on-site contractors follow best practicable means to minimise dust and emissions at all times. The development shall not be occupied until the scheme has been carried out in accordance with the approved details, and it shall thereafter be permanently retained as such.
- 37) The development hereby permitted shall be implemented in accordance with the details within Ventilation Review dated Nov. 2019 as approved under 2019/02191/DET. Following installation, emissions certificates will need to be provided to the council to verify boiler emissions. The development shall not be occupied until the scheme has been carried out in accordance with the approved details, and it shall thereafter be permanently retained as such.
- 38) Prior to the occupation of the development a Low Emission Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Low Emission Strategy must detail the remedial action and mitigation measures that will be implemented to protect receptors (e.g. abatement technology for energy plant, design solutions). This Strategy must make a commitment to implement the mitigation measures (including NOx emissions standards for the chosen energy plant) that are required to reduce the exposure of future residents to poor air quality and to help mitigate the development's air pollution impacts, in particular the emissions of NOx and particulates from on-site transport during Demolition, Construction, and Operational phases e.g. use of Low Emission Vehicles, and energy generation sources. The strategy must re-assess air quality neutral in accordance with the Mayor of London SPG 'Sustainable Design and Construction' (April 2014) and Chapter 5 of

Land-Use Planning & Development Control: Planning for Air Quality, IAQM, January 2017 guidance. It must also identify mitigation measures as appropriate to reduce building emissions to below GLA benchmark levels.

- 39) The development hereby permitted shall be implemented in accordance with the details within Phase 1: Preliminary Risk Assessment (Ref: 527534/PRA/R1) as approved under 2019/01878/DET). 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.
- 40) The development hereby permitted shall be implemented in accordance with the details within the Site Investigation Scheme (Ref: 527534/S1/R1) as approved under 2019/01878/DET. 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.
- 41) The development hereby permitted shall be implemented in accordance with the details within the quantitative risk assessment report (Ground Gas Risk Assessment) as approved under 2019/01878/DET. 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.
- 42) The development hereby permitted shall be implemented in accordance with the details within the Remediation Method Statement (REF:527534/RMS/R2) as approved under 2019/02328/DET. 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.
- 43) 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.

- 44) 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.

End of Schedule