



Appeal Decision

Site visit made on 5 August 2020

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal Ref: APP/H5390/W/20/3250298

7 Dancer Road, London SW6 4DU

- 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 Mr Tom Dale against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2019/03833/VAR, dated 19 December 2019, was refused by notice dated 18 February 2020.
- The application sought conversion from a single dwelling home to 1 x one bed and 2 x three bed flats; installation of a glass balustrade over flat roof at rear third floor, in connection with its use as a roof terrace; erection of a single storey ground floor extension to the side of the existing back addition; excavation to front and rear gardens to form lightwells in connection with the enlargement of the basement without complying with conditions attached to planning permission Ref 2013/03699/FUL, dated 19 December 2013.
- The conditions in dispute are Nos 10, 13 and 14 which state that:
 - 10) The three 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.
 - 13) No occupier of the two upper floor 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.
 - 14) The two upper floor 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 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 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:
 - 10) In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new 1 bed flat at first floor level 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 DM A1, A9, J2 and J3 of the Development Management Local Plan 2013 and Policy TI of the Core Strategy 2011.
 - 13) 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 DM A1, A9, J2 and

J3 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011.

14) 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 Policy DM A1, A9, J2 and J3 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. 7 Dancer Road is a terraced property situated on a residential street. In 2013 planning permission was granted, subject to conditions, for the sub-division of the property into three flats¹. Three of these conditions sought to restrict occupiers from applying for car parking permits and it is these which are in dispute.
3. Consequently, the main issue is:
 - whether conditions 10, 13 and 14 are necessary having regard to local planning policy.

Reasons

4. Dancer Road, a turning off of Fulham Road, comprises a number of fairly tightly knit residential properties. The appeal site is located in an area with a Public Transport Accessibility Level (PTAL) rating of 4 (PTAL is assessed on a scale of 1 to 6b with 6b representing excellent access to public transport). The site is also in close proximity to local services and facilities. The appellant does not dispute these facts.
5. Policy T4 of the Hammersmith and Fulham Local Plan (LP) sets out that car parking permit free measures will be required on all new development unless evidence is provided to show that there is a significant lack of public transport available. The supporting text to this policy states that the Council will only consider the issuing of permits where the PTAL level is considered 2 or lower.
6. Furthermore, Policy T1 of the LP also sets out the Council's aim to encourage a modal shift away from private vehicles, and Key Principle TR3 of the Planning Guidance Supplementary Planning Document 2018 (SPD) states that development in areas well connected by public transport will be expected to be car free. Car parking permit free measures are therefore necessary to accord with Policies T4 and T1.
7. In addition to the above, I observed during my visit that Dancer Road was heavily parked with only a very limited number of on-street parking spaces available. Whilst I accept this was only a snapshot of on-street parking conditions, it is reasonable to assume this would be worse in the evenings and at weekends. I also observed that other nearby streets were equally heavily parked or subject to parking restrictions.

¹ Ref 2013/03699/FUL

8. Permitting the sub-division of the property without car parking permit free measures would therefore result in additional on-street parking demand in an area which already has limited available parking. Whilst there is no firm evidence in terms of parking stress beyond my own observations, this does not alter my view in terms of the necessity of such measures when having regard to the development plan.
9. It may be true that the three-bedroom flat created by the conversion would attract a family, who arguably could have a greater need for use of a private vehicle. This does not, however, outweigh my findings above.
10. Taking the above points together I find that it is necessary that car parking permit free measures, which these conditions seek to achieve, are applied to the permission to grant the sub-division of 7 Dancer Road into three flats.

Other Matters

11. The National Planning Policy Framework sets out six tests which must be met in order for a planning condition to be imposed. These are that they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
12. I accept that the conditions do not meet all of the six tests, and the appeal decisions I have been referred to similarly agree that the conditions in dispute are flawed. Not least because, as set out in the Planning Practice Guidance, conditions requiring car free development should only be used in exceptional circumstances. Car free housing is normally secured through a planning obligation. I have not been provided with sufficient evidence to demonstrate that there are any exceptional circumstances in this case which would justify the imposition of such a condition. Therefore, I do not consider that it is reasonable for the Council to use conditions in this manner. Condition 14 also lacks precision as it is not clear what the required 'scheme' would consist of.
13. However, the conditions before me are not severable as they cannot be removed without causing unacceptable harm. Conflict with the development plan is such harm along with increased pressure for on-street parking. The defects with the conditions cannot be rectified by re-drafting as no alternative wording has been provided. Nor can the essential control required by Policy T4 be secured by non-planning powers; there is no S106 agreement before me. Consequently, I must dismiss the appeal. Issues relating to the extant permission are for the appellant and Council to deal with separately.
14. I am aware that in the other cases referred to me the various Inspectors, having found the conditions to be flawed, have removed them and allowed the appeals. Nevertheless, I am confident that in this instance my approach is correct having regard to the severability of the conditions in this case.

Conclusion

15. For the reasons given above I dismiss the appeal.

L J O'Brien

INSPECTOR