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## Appeal Decision

Site visit made on 18 November 2020

**by John Morrison BA (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> December 2020**

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**Appeal Ref: APP/F5540/W/20/3251085**

**12 Devonshire Road, Chiswick, London W4 2HD**

- 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 Vistauro Developments Ltd against the decision of the Council of the London Borough of Hounslow.
  - The application Ref 00354/12/P3, dated 18 February 2020, was refused by notice dated 14 April 2020.
  - The application sought planning permission for the erection of a mansard roof extension and single storey rear and side extension and conversion into two flats one retail unit at ground floor level without complying with a condition attached to planning permission Ref 00354/12/P2, dated 16 December 2019.
  - The condition in dispute is No 5 which states that: *The development shall not be occupied until arrangements have been agreed in writing with the local planning authority and put in place to ensure that, with the exception of disabled persons, no resident of the development shall obtain a resident's parking permit within any controlled parking zone which may be in force in the area at any time.*
  - The reason given for the condition is: *To secure a car-free development, and thereby protect the free flow and safety of traffic on nearby highways and support sustainable transport objectives in accordance with adopted local plan policy EC2. NOTE - this will require the submission of all agreed addresses at the development so that they can be recorded by the council.*
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### Decision

1. The appeal is allowed and the planning permission Ref 00354/12/P2 for the erection of a mansard roof extension and single storey rear and side extension and conversion into two flats one retail unit at ground floor level at 12 Devonshire Road, Chiswick, London W4 2HD, granted on 16 December 2019 by the London Borough of Hounslow, is varied by deleting condition 5 and substituting it for the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the approved plans reference 500, 1000, 1100, 2000(B) and 3000(B).
  - 3) No development shall take place until an updated Energy Strategy has been submitted to and approved in writing by the local planning authority which demonstrates how the proposed development would achieve the

necessary Carbon emission reductions as set out in Policy 5.2 of the London Plan 2016. Development shall be carried out in accordance with the approved details. Prior to the first occupation the development hereby permitted evidence of compliance with the approved Energy Strategy shall be submitted to and approved in writing by the local planning authority.

- 4) The materials to be used in the external elevations of the development hereby permitted shall match those of the existing building(s).
- 5) Prior to the first occupation of the development hereby permitted, details of the methods for the storage of waste and recyclable materials for collection shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), the retail premises hereby permitted shall be solely used for A1 (Retail) uses and for no other purpose (including any other purpose in Class A of the aforementioned Order).
- 7) The retail premises hereby permitted shall not operate outside of the hours of 08:00 and 18:00.

### **Main Issue**

2. The main issue is whether the condition is reasonable and necessary in the interests of promoting sustainable transport.

### **Reasons**

3. A planning permission granted, and by association any conditions that it may be subject to, runs with the land or building and not the individual. 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 between an individual and a decision making body.
4. However, condition 5 seeks to place a restriction on the act of an individual person. I.e. it is worded to restrict someone applying for an on street parking permit as an act. Whilst the wording of the condition refers to a scheme or arrangements to be agreed, the reasonable expectation in someone seeking to discharge that condition is to ensure a restriction is put in place to prevent them from applying for a parking permit, which is the act of an individual and not land use related. 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.
5. Taking this further, I am drawn to Planning Practice Guidance which states, amongst other things and in regard to conditions, that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. However, 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, where there is clear evidence that the delivery of the development

would otherwise be at serious risk (this may apply in the case of particularly complex development schemes)

6. I accept that the condition in this case is worded as being effective prior to occupation rather than development commencing but it nonetheless would require the submission of some form of agreement to achieve its aims, it thus being similarly delaying to the development being fully implemented as if it were worded prior to commencement. In addition, I am not satisfied that the circumstances of the development itself are exceptional nor is the appeal scheme particularly complex.
7. The Council have advanced that the reasons for the condition being imposed is to promote the use of sustainable transport in accordance with Policy EC2 of the Local Plan<sup>1</sup>. Be this as it may, EC2 does not read to me as a policy to make all developments car free. It seeks to encourage the use of public transport and I dare say the location of the appeal site and its high PTAL rating would ensure just that. It does suggest that the use of the car may be discouraged in favour of public transport but again does not rule its use out. In this context, I have not seen any evidence to suggest that the streets in the area around the appeal site are under high parking stress which may lean me more towards what EC2 is encouraging, rather than demanding. Policy 6.13 of the London Plan 2016 has similar aims.
8. The original approved development sought to extend and sub divide an existing dwelling into two separate residential units amongst other things. That dwelling, or rather occupants thereof, are not prevented from applying for a permit to park on the local streets. Should the development not come forward, that would remain the case. The carrying out of the approved development, and theoretical compliance with condition 5, would in actual fact remove some potential capacity from the street, reducing parked vehicles. Some capacity would therefore remain. This would be in a situation where a lack of capacity has not been demonstrated as I have said. Essentially, and taking into account the above, there is limited evidence before me to suggest that the effective addition of one more residential unit in net terms would have such an impact on demand for on street parking that it would be reasonable to restrict future occupiers from applying for a permit to do so.

## **Conditions**

9. I have not been advised that the development has been commenced and as such have imposed the following conditions. Making changes to the wording in the interests of clarity and enforceability.
10. I have attached the standard time condition for the commencement of works as well as setting out the approved plans to which the planning permission relates. In accordance with development plan requirements, I have set out that a revised energy strategy be submitted and approved as well as the provision of confirmative evidence this has been done. It is necessary to have the work on the statement submitted and approved prior to commencement but following details can be submitted prior to first occupation.
11. In the interests of an appropriate external appearance for the development I have required materials to match existing external appearances. I have not

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<sup>1</sup> London Borough of Hounslow Local Plan Volume One 2015-2030

required details of a new shop front or signage etc since these would require a separate application for express planning permission and advertisement consent respectively. For the purposes of the proper functioning of the development, I have attached a condition requiring details of methods for the storage of waste and recyclable materials for collection. It would be sufficient to require this detail prior to the first occupation of the development.

12. In the interests of the living conditions of neighbouring occupiers and to reflect the intentions of the development, I have restricted the use of the retail unit to purely A1 as well as the hours it can operate. I see no compelling reason to depart from the times specified by the Council in their original decision to which the appellant has clearly not objected.

### **Conclusion**

13. For the above reasons, and with specific regard to the wording of condition 5 and what it seeks to restrict in this particular case, it is unreasonable and therefore should be removed rather than its wording varied. With my other findings in mind, I am also content that the appeal scheme could still encourage the use of sustainable transport by virtue of its location and accessibility to services, thus ensuring that it could comply with what Policies 6.13 of the London Plan and EC2 of the Local Plan seek to achieve. The appeal is therefore allowed in the circumstances I have described above.

*John Morrison*

INSPECTOR