



Appeal Decision

Site visit made on 22 February 2021

by Michael J Muston BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2021.

Appeal Ref: APP/H5390/W/20/3257531

2 Lochaline Street, London W6 9SH

- 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 Brit de Vere against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2020/00354/VAR, dated 4 February 2020, was refused by notice dated 3 April 2020.
- The application sought planning permission for "*Conversion of dwellinghouse into two self-contained flats; erection of a ground and first floor rear extension; erection of a roof extension*" without complying with conditions attached to planning permission Ref 2014/00735, dated 22 April 2014.
- The conditions in dispute are Nos 11, 12 and 13, which state that:

"11) *The first and second floor maisonette 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 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.*

12) *No occupier of the first and second floor maisonette 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.*

13) *The first and second floor maisonette 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:

"11) *In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new 2 bed maisonette 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 T1 of the Core Strategy 2011.*

12) *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.*

13) *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 allowed and planning permission is granted for the conversion of dwellinghouse into two self-contained flats; erection of a ground and first floor rear extension; erection of a roof extension at 2 Lochaline Street, London W6 9SH in accordance with the application Ref 2020/00354/VAR, dated 4 February 2020, without compliance with conditions 11, 12 and 13 previously imposed on planning permission Ref 2014/00735, dated 22 April 2014 and subject to the conditions set out in the schedule.

Procedural Matters

2. The Hammersmith and Fulham Local Plan (LP) was adopted on 28 February 2018, thereby superseding the policies referred to in the original decision notice. I have determined the appeal on the basis of policies in this adopted plan, and with reference to relevant national policy and guidance.

Main Issue

3. The main issue is whether or not conditions 11, 12 and 13 are reasonable, necessary and relevant to planning, having regard to on street car parking provision in the area, and the impact on air quality.

Reasons

4. The appellant has referred to eight previous appeal decisions relating to development in the London Borough of Hammersmith and Fulham¹. The Council has had the opportunity through the appeal process to make representations on these decisions, but 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 the subject of these previous appeals are substantially the same as those the subject of the current appeal. As they are also relatively recent, these previous decisions are relevant considerations in the assessment of this appeal.
5. The appeal before me seeks to remove three conditions imposed on the same planning permission. Together, they seek to achieve the same objective, which is to effectively prevent residents of the maisonette that was created by the permission from applying for an on street parking permit. For completeness however, I shall address each separately.

Condition 12

6. Condition 12 prevents the occupiers of the first and second floor maisonette created by the permission from applying to the Council for a parking permit, or

¹ Appeal reference numbers APP/H5390/W/16/3167706, APP/H5390/W/18/3212200, APP/H5390/W/19/3224611, APP/H5390/W/19/3232043, APP/H5390/W/19/3239068, APP/H5390/W/19/3241404, APP/H5390/W/20/3245993, and one other appeal with an incorrect reference number.

from 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. 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 findings of any of the previous Inspectors in this regard.

7. 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. The approach taken by condition 12 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 to planning, as set out in the Framework.

Condition 13

8. Condition 13 requires the approval of a scheme to ensure that all occupiers of the maisonette, 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. From the evidence before me, it appears that, whatever the mechanism that may be used, it would seek to restrict the rights of an individual or individuals to undertake an act rather than a restriction that would be associated with the building that is the subject of the planning permission granted.
9. The approach that the Council has taken in respect of this condition is therefore unreasonable and not relevant to planning. I therefore conclude that it does not meet all the relevant tests as set out in the Framework.

Condition 11

10. Condition 11 requires the Council to be notified of the postal address of the new residential units. This is to enable the Council to update its records, and since it would also be the Council issuing any parking permit, to ensure that parking permits are not issued to the occupiers of the maisonette.
11. This condition is not relevant to planning. Indeed, it would only be of purpose in conjunction with the conditions that follow it, i.e. conditions 12 and 13, as without them it would not have the effect of restricting the issuing of a parking permit, even though the Council would be aware of the full postal address.
12. While it may be helpful to the Council, the primary purpose of this 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 both unnecessary and irrelevant to planning, and so fails to meet the tests of conditions as set out in the Framework.

The effect of removing the conditions

13. Policy T4 of the LP, and key principle TR3 of the Hammersmith and Fulham Planning Guidance Supplementary Planning Document (2018) (SPD), require, amongst other things, car parking permit free measures on all new development in areas of good public transport availability. The Council tells me that the appeal site has a PTAL rating of 6a and therefore has excellent public transport accessibility.
14. Policies T1 and HO2 of the LP seek to ensure that traffic generated by new development is minimised, so that it does not add to parking pressures on local streets, and say that, in streets where there is less than 10% night-time free space, the number of additional dwellings may be restricted or conditioned to allow no additional on street parking.
15. Policy CC10 of the LP seeks to reduce the potential adverse air quality impacts of new development and requires mitigation measures to be implemented to reduce emissions.
16. Whilst I acknowledge the objectives of the development plan policies, I have found that disputed conditions 11, 12 and 13 do not meet the tests for the use of conditions and are therefore not an appropriate mechanism to secure those objectives.
17. Accordingly, it is not necessary for me to go on to consider the effect of the removal of the conditions and the issues in relation to the encouragement of sustainable transport, parking stress, or air quality in Lochaline Street.

Other matters

18. The appeal site is within the Crabtree Conservation Area. Neither party has suggested that there would be any impact on the character or appearance of the conservation area as a result of the appeal proposal, and I agree.

Other Conditions

19. The PPG makes clear that decision notices for the grant of planning permission under section 73 of the Act should also repeat the relevant conditions from the original planning permission where relevant. The appellant tells me that the permission was implemented in 2014. This means that the standard time condition, a condition requiring the development to be carried out and completed in accordance with the approved plans, any pre-commencement conditions, and conditions requiring the development to be constructed in a particular way (but not retained as such) are no longer relevant. I shall impose all those that I consider remain relevant, making changes to the wording where required in the interests of clarity and enforceability, to ensure that they meet the relevant tests.
20. A condition requiring compliance with the approved Flood Risk Assessment is necessary, to ensure that the risk of flooding is not increased. Conditions preventing the installation of water tanks and plant on external elevations are required, in the interest of the character and appearance of the area. A condition preventing use of the roofs of the extensions as a terrace or amenity space is necessary, to ensure no unacceptable impact on the living conditions of neighbouring occupiers. Finally, a condition requiring the retention of the

approved cycle storage is required, in the interests of encouraging sustainable transport.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed, subject to the conditions set out in the schedule below.

Michael J Muston

INSPECTOR

Schedule of Conditions

1. All flood prevention and mitigation measures should be installed as outlined in the approved Flood Risk Assessment.
2. No plumbing, extract flues or pipes, other than rainwater pipes, may be fixed on the front elevation of the building.
3. Neither the roof of the approved extensions, nor the remainder of the back addition, shall be used as a terrace or other amenity space. No railings or other means of enclosure shall be erected on or around the roof, and no alterations shall be carried out to the rear elevation of the application property to form access onto the roof.
4. No water tanks, water tank enclosures or other structures shall be erected upon the approved flat roof of the extension.
5. The approved cycle storage, as indicated on approved drawing 0281/B-04A, shall be permanently retained in accordance with the approved details.