



Appeal Decision

Site visit made on 31 March 2021

by O S Woodward BA(Hons.) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2021

Appeal A, Ref: APP/H5390/W/20/3256297 George House, Brecon Road, London W6 8PY

- 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 Mr George Morrill against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2020/00616/FUL, dated 12 February 2020, was approved on 27 April 2020 subject to conditions.
- The development permitted is the change of use of the first floor from office (Class B1) into a two-bedroom self-contained flat (Class C3).
- The conditions in dispute are Nos 11, 12 and 13, which state that:
 - Condition 11 - The new flat 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 residential unit. 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 12 - No occupiers of the flat 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 receipt.
 - Condition 13 - The flat 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 residential unit 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 11 - In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the flat and thus ensure that the development does not harm the existing amenities of the occupiers of neighbouring residential properties by adding to the level of on-street car parking stress in the area, in accordance with Policy T4 of the Local Plan (2018).
 - Condition 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 level of on-street car parking stress in the area, in accordance with Policy T4 of the Local Plan (2018).
 - Condition 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 level of on-street car parking stress in the area, in accordance with Policy T4 of the Local Plan (2018).

Appeal B, Ref: APP/H5390/W/21/3266818
George House, Brecon Road, London W6 8PY

- 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 Mr George Morrill against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2020/02889/FUL, dated 22 October 2020, was approved on 17 December 2020 subject to conditions.
- The development permitted is the change of use of the second floor from office (Class E) into a two-bedroom self-contained flat (Class C3).
- The conditions in dispute are Nos 8, 9 and 10, which state that:
 - Condition 8 - The new flat 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 residential unit. 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 9 - No occupiers of the flat 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 receipt.
 - Condition 10 - The flat 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 residential unit 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 8 - In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the flat and thus ensure that the development does not harm the existing amenities of the occupiers of neighbouring residential properties by adding to the level of on-street car parking stress in the area, in accordance with Policy T4 of the Local Plan (2018).
 - Condition 9 - In order to ensure that the development does not harm the existing amenities of the occupiers of neighbouring residential properties by adding to the level of on-street car parking stress in the area, in accordance with Policy T4 of the Local Plan (2018).
 - Condition 10 - 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 level of on-street car parking stress in the area, in accordance with Policy T4 of the Local Plan (2018).

Decisions

1. Appeal A is allowed and planning permission is granted for the change of use of the first floor from office (Class B1) into a two-bedroom self-contained flat (Class C3) at George House, Brecon Road, London W6 8PY in accordance with the application Ref 2020/00616/FUL, dated 27 April 2020, without compliance with condition numbers 11, 12 and 13, and subject to the conditions in the attached Annex A.
2. Appeal B is allowed and planning permission is granted for the change of use of the second floor from office (Class E) into a two-bedroom self-contained flat

(Class C3) at George House, Brecon Road, London W6 8PY in accordance with the application Ref 2020/02889/FUL, dated 22 October 2020, without compliance with condition numbers 8, 9 and 10, and subject to the conditions in the attached Annex B.

Main Issue

3. The main issue for both appeals is whether the conditions are reasonable and necessary to meet the aim of ensuring that the developments do not harm the amenities of occupiers of nearby residential properties by adding to the levels of on-street parking stress.

Reasons

4. The appeal site is an office building. The appeals are for the change of use of different parts of the building to create two flats. The three conditions being contested for both appeals are identical and relate to the control of the proposed residential units so that future occupiers cannot apply for on-street parking permits.
5. The conditions are negatively worded. The Planning Practice Guidance sets out that negatively worded conditions should only be used in exceptional circumstances and even then the six tests set out in paragraph 55 of the National Planning Policy Framework (the Framework) must still be met¹.
6. Policy T4 of the Hammersmith & Fulham Local Plan 2018 states, amongst other criteria, that the Council will require permit free measures on all new development unless evidence is provided to show that there is a significant lack of public transport available. The supporting text, at paragraph 14.19, states that the Council will only consider the issuing of permits for on-street parking in locations where the Public Transport Accessibility Level (PTAL) is 2 or lower.
7. The PTAL level of the site is 3. No evidence has been provided of a significant lack of public transport. However, the Council does not expand further on either the levels of parking stress in the immediate area or the amenities that are of concern. The Council has not provided robust, locally specific evidence that the issuing of parking permits would unduly exacerbate local on-street parking stress or harm the amenities of occupiers of nearby residential properties. The Council has not therefore presented any exceptional circumstances to demonstrate the necessity for the imposition of the conditions, and so fails to meet the test of necessity.
8. In addition, a planning permission and any attached conditions run with the land or building, and not with any individual. The prevention of an individual from such actions, in this case applying for a permit, is not a restriction on the land or buildings. I therefore find that the approach taken with conditions 12/9 and 13/10 is also unreasonable and so fails to meet the test of reasonableness.
9. As a result of my conclusions in relation to conditions 12/9 and 13/10, the notification requirement imposed by conditions 11/8 would serve no purpose alone. They would not, therefore, be reasonable or necessary conditions.

¹ Paragraph: 010 Reference ID: 21a-010-20190723

Conclusion

10. For the reasons above, I conclude that both appeals be allowed.
11. For Appeal A, I have re-imposed the conditions from the decision that is the subject of this appeal (with the exception of conditions 11, 12 and 13 on the original decision notice) as I have no evidence before me to indicate that they are a matter of disagreement.
12. For Appeal B, I have re-imposed the conditions from the decision that is the subject of this appeal (with the exception of conditions 8, 9 and 10 on the original decision notice) as I have no evidence before me to indicate that they are a matter of disagreement.

O S Woodward

INSPECTOR

Annex A: Condition Schedule Appeal A, Ref APP/H5390/W/20/3256297

1. The development hereby permitted shall not commence later than the expiration of 3 years beginning with the date of this planning permission.
2. The development shall not be carried out otherwise than in accordance with the details shown in the approved drawings as stated on this decision notice.
3. The noise level in rooms at the development hereby approved shall meet the noise standard specified in BS8233:2014 for internal rooms and external amenity.
4. Prior to the occupation of the development, details shall be submitted to and approved in writing by the Council for two cycle storage space for the development. This shall include the location, size, design, materials and appearance of the cycle storage. The details, as approved, shall be implemented prior to use of the new residential units and thereafter be permanently retained.
5. The development shall not be occupied until details of adequate storage of refuse and recyclables for the occupiers of the new residential flat, hereby approved, have been submitted to, and approved in writing by, the Local Planning Authority and approved in writing by the Council, and no part of the residential units shall be occupied or used until the waste storage arrangements have been provided in accordance with the approved details.
6. Prior to commencement of above ground works in the development a Ventilation Strategy Report for C3 use class to mitigate the impact of air pollution shall be submitted to and approved in writing by the Local Planning Authority. The report shall include the following information:
 - a) Details and locations of the air ventilation intake locations on the rear elevations;
 - b) Details of non-openable windows (except for emergency purge ventilation) for habitable rooms (Bedrooms, Living Rooms) on front elevations with Humbolt Road and Brecon Road;
 - c) Details and locations of ventilation extracts, to demonstrate that they are located a minimum of 2 metres away from the air ventilation intakes, openable windows, terraces; and
 - d) Details of the independently tested mechanical ventilation system with Nitrogen Dioxide (NO₂) and Particulate Matter (PM_{2.5}, PM₁₀) filtration with air intakes on the rear elevation to remove airborne pollutants. The filtration system shall have a minimum efficiency of 75% in the removal of Nitrogen Oxides/Dioxides, Particulate Matter (PM_{2.5}, 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. 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

7. Prior to occupation of the development, details of a post installation report of the approved ventilation strategy to mitigate the impact of air pollution shall be submitted to and approved in writing by the Local Planning Authority. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.
8. Prior to occupation of the development, details of the installation of the Zero Emission Air Source Heat Pumps or Electric Boilers to be provided for space heating and hot water shall be submitted to and approved in writing by the Local Planning Authority. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.
9. Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of 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 dwellings. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
10. Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of the sound insulation of the floor/ ceiling/ walls separating the commercial part(s) of the premises from dwellings. Details shall demonstrate that the sound insulation value $D_{nT,w}$ and $L'_{nT,w}$ is enhanced by at least 10dB above the Building Regulations value and, where necessary, additional mitigation measures are implemented to contain commercial noise within the commercial premises and to achieve the criteria of BS8233:2014 within the dwellings/ noise sensitive premises. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

END OF SCHEDULE

Annex B: Condition Schedule Appeal B, Ref APP/H5390/W/21/3266818

1. The development hereby permitted shall not commence later than the expiration of 3 years beginning with the date of this planning permission.
2. The development shall not be carried out otherwise than in accordance with the details shown in the approved drawings as stated on this decision notice.
3. Prior to the occupation of the development, details shall be submitted to and approved in writing by the Council for two cycle storage space for the development. This shall include the location, size, design, materials and appearance of the cycle storage. The details, as approved, shall be implemented prior to use of the new residential units and thereafter be permanently retained.
4. The development shall not be occupied until details of adequate storage of refuse and recyclables for the occupiers of the new residential flat, hereby approved, have been submitted to, and approved in writing by, the Local Planning Authority and approved in writing by the Council, and no part of the residential units shall be occupied or used until the waste storage arrangements have been provided in accordance with the approved details.
5. Prior to commencement of above ground works in the development a Ventilation Strategy Report for C3 use class to mitigate the impact of air pollution shall be submitted to and approved in writing by the Local Planning Authority. The report shall include the following information:
 - e) Details and locations of the air ventilation intake locations on the rear elevations;
 - f) Details of non-openable windows (except for emergency purge ventilation) for habitable rooms (Bedrooms, Living Rooms) on front elevations with Humbolt Road and Brecon Road;
 - g) Details and locations of ventilation extracts, to demonstrate that they are located a minimum of 2 metres away from the air ventilation intakes, openable windows, terraces; and
 - h) Details of the independently tested mechanical ventilation system with Nitrogen Dioxide (NO₂) and Particulate Matter (PM_{2.5}, PM₁₀) filtration with air intakes on the rear elevation to remove airborne pollutants. The filtration system shall have a minimum efficiency of 75% in the removal of Nitrogen Oxides/Dioxides, Particulate Matter (PM_{2.5}, 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. 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
6. Prior to occupation of the development, details of a post installation report of the approved ventilation strategy to mitigate the impact of air pollution shall be submitted to and approved in writing by the Local Planning Authority.

Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

7. Prior to occupation of the development, details of the installation of the Zero Emission Air Source Heat Pumps or Electric Boilers to be provided for space heating and hot water shall be submitted to and approved in writing by the Local Planning Authority. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

END OF SCHEDULE