



Appeal Decision

Site visit made on 9 November 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th December 2021

Appeal Ref: APP/H5390/W/21/3277054

54 Shorrolds Road, Fulham, London SW6 7TP

- 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 Thomas Riis-Bristow against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2020/03334/VAR, dated 17 December 2020, was refused by notice dated 9 March 2021.
 - The application sought planning permission for erection of a rear roof extension; installation of 2no rooflights to replace the existing rooflight in the front roofslope; erection of a single storey rear extension to the side of the existing back addition following the removal of external steps at the rear of the building; conversion of the existing dwellinghouse into 2 x two bedroom and 1 x studio self-contained flats without complying with conditions 14 and 15 attached to planning permission Ref 2016/01559/FUL, dated 7 June 2016.
 - The conditions in dispute are Nos 14 and 15 which state that:
 - 14) No occupier of the new residential units (Flat 1 and Flat 2) 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.
 - 15) The new residential units (Flat 1 and Flat 2) 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 dwelling 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:
 - 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.
 - In order that the prospective occupiers of the residential units 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.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a rear roof extension; installation of 2 no rooflights to replace the existing rooflight in the front roofslope; erection of a single storey rear extension to the side of the existing back addition following the removal of external steps at the rear of the building; conversion of the existing dwellinghouse into 2 x two bedroom and 1 x studio self-contained flats at 54 Shorrolds Road, Fulham, London SW6 7TP without compliance with conditions 14 and 15 previously imposed on planning permission Ref 2016/01559/FUL dated 7 June 2016 subject to the conditions set out in the attached schedule.

Background and Main Issues

2. The evidence indicates that the two on street car parking permits associated with 54 Shorrolds Road (No.54) were placed with Flat 3 upon conversion of the dwellinghouse to flats.
3. The proposal seeks the removal of conditions 14 and 15 which seek to prevent the occupiers of flats 1 and 2 applying for/obtaining parking permits to allow the occupiers of both flats 1 and 2 to apply to the Council for one single street parking permit each. This would result in the provision of two additional parking permits for No.54. Alternative proposals to redistribute parking permits between the flats, some solutions which do not involve a net increase of parking permit provision for No.54, are proposed.
4. The main issue is whether the conditions meet the six tests for the use of conditions contained in the National Planning Policy Framework and in Planning Practice Guidance. Each test needs to be satisfied for every condition applied.

Reasons

Condition 14

5. This condition states that no occupiers of Flat 1 or Flat 2, except for disabled persons who are blue badge holders, may apply to the Council for a parking permit or retain such a permit. If they were to gain such a permit, the condition requires them to surrender it within seven days.
6. An approval that is granted, and by association any condition that it may be subject to, runs with the land or building and not with an individual. A planning condition may restrict what an individual can do with the land or building, or it can prevent certain things from taking place until specific details have been agreed between an individual and the Council.
7. However, condition 14 encumbers the actions of a group of individuals. The wording imposed seeks to restrict any of the occupiers from applying for an on-street parking permit and whilst it would have the effect of preventing an occupant from applying for a permit, it takes an unreasonable approach in doing so, as it impedes the actions of a person and is not a restriction on land or buildings. I therefore conclude that it is not relevant to planning and does not meet all the required tests.

Condition 15

8. This condition seeks the agreement of a scheme, prior to the occupation of Flat 1 or Flat 2, to ensure that all occupants, other than disabled persons who are

blue badge holders, have no entitlement to parking permits from the Council and to ensure that occupants are informed, prior to occupation, of such restriction.

9. The condition 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. 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 required tests.

Other Matters

10. Given that I have concluded that conditions 14 and 15 do not meet the required tests it is not necessary for me to go on to consider whether issues relating to parking stress necessitate such conditions.
11. An appeal Ref APP/H5390/W/20/3244349 has been brought to my attention in support of the case of the Council. However, only very limited details have been supplied and there is nothing to indicate that the circumstances around that decision match those before me. I therefore afford that matter limited weight.

Conditions

12. The guidance in the PPG makes clear that decisions under Section 73 of the Town and Country Planning Act 1990 (as amended) (the act), should also repeat the relevant conditions from the original approval unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original approval, I shall impose all those that I consider remain relevant. If some have in fact been discharged, that is a matter which can be addressed between the parties.
13. Whilst the appellants have not specified their written consent for pre-commencement conditions, likewise their submissions do not raise any issue with those other conditions. In accordance with Section 73(5) of the Act, I have amended the commencement condition to ensure it does not have the effect of extending the time within which a development must be started.

Conclusion

14. For the reasons set out above the appeal should be allowed and conditions 14 and 15 should be removed.

T J Burnham

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than 3 years from 7 June 2016.
2. The development shall be carried out and completed only in accordance with the detailed drawings hereby approved Drawing Nos: 6117-04 D; 6117-05 B.
3. Any alterations to the elevations of the existing building shall be carried out in the same materials as the existing elevation to which the alterations relate.
4. All new openings hereby approved shall be of a timber construction and painted white.
5. The party walls of the rear roof extension hereby approved shall be constructed in second hand London stock brickwork to match the existing building.
6. The party walls of the rear roof extension shall not project more than 250 millimetres above or beyond the external faces of the main roof structures.
7. The face of the rear roof extension hereby approved shall be clad in slates or artificial slates.
8. The roof of the extension or the roof of the extension of the existing back addition at third floor level hereby approved shall not be used as a terrace or other amenity space. No railings or other means of enclosure shall be erected on or around the roofs, and no alterations shall be carried out to the rear elevation of the application property to form access onto the roofs.
9. No water tanks, water tank enclosures or other structures shall be erected upon the flat roof of the extension hereby permitted.
10. The residential units hereby permitted shall not be occupied until details of 3 secure cycle parking spaces to be provided in connection with the proposed residential dwellings have been submitted to and approved in writing by the Council, and such details as are approved shall be implemented prior to the occupation or use of the flats and permanently retained thereafter for such use.
11. The development shall not commence until details of adequate storage of refuse and recyclables for the occupiers of the flats hereby approved have been submitted to 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. The waste storage arrangements shall thereafter be retained.
12. Any refuse/recycling generated by the residential units hereby approved shall be stored in the refuse stores forming part of the details approved pursuant to Condition 11 and shall not be stored on the pavement or street.
13. The new residential 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.

14. No plumbing, extract flues or pipes, other than rainwater pipes, may be fixed on the front elevation of the building.
15. The development shall be implemented in accordance with the recommended flood mitigation measures as proposed in the submitted Flood Risk Assessment, unless otherwise agreed in writing by the local planning authority. The recommended mitigation measures shall be permanently retained thereafter.
16. The development hereby permitted shall not commence until details of installing water efficient appliances to help minimise water use and foulwater flows in the new unit have been submitted to and approved in writing by the council. The approved measures 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.
17. The conversion hereby approved shall only be used as a residential unit falling within Class C3 of the Town & Country Planning (Use Classes) Order 1987 (as amended). The resulting converted property shall not be used as housing in multiple occupation falling within Class C4 of the Town & Country Planning (Use Classes) Order 1987 (as amended).