



Appeal Decision

Site visit made on 15 March 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2022

Appeal Ref: APP/H5390/W/21/3285111

170 Wandsworth Bridge Road, London SW6 2UQ

- 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 Marston Properties Limited against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2021/01719/VAR, dated 20 May 2021, was refused by notice dated 15 July 2021.
- The application sought planning permission for the 'Erection of a rear roof extension; erection of a rear extension at second floor level over part of the existing back addition; erection of a single storey rear extension, to the side and rear of the existing back addition; installation of a new dormer window to replace the existing dormer in the front roofslope; installation of a new window at second floor level, replacement of existing door with a window at first floor level, installation of a high level window at ground floor level, installation of a boiler flue and removal of external staircase at the rear elevation; replacement of 2no windows with new windows to the side of rear back addition at first floor level; formation of refuse storage and bicycle storage in the rear garden; installation of a new shopfront; change of use of third, second, first and part of ground floor levels from a doctor's surgery (Class D1) into residential (Class C3); change of use of basement and part of ground floor level from a doctor's surgery (Class D1) into retail (Class A1); conversion of the third, second, first and part of ground floor levels into 1 x two bedroom, 1 x one bedroom and 1 x studio self-contained residential units.' without complying with conditions attached to planning permission Ref 2016/00134/FUL, dated 18 March 2016.
- The conditions in dispute are Nos 17 and 18 which state that:
'17) No occupiers of the three units 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.
18) The three units 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 flats 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:
'17) 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.
18) 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 'Erection of a rear roof extension; erection of a rear extension at second floor level over part of the existing back addition; erection of a single storey rear extension, to the side and rear of the existing back addition; installation of a new dormer window to replace the existing dormer in the front roofslope; installation of a new window at second floor level, replacement of existing door with a window at first floor level, installation of a high level window at ground floor level, installation of a boiler flue and removal of external staircase at the rear elevation; replacement of 2no windows with new windows to the side of rear back addition at first floor level; formation of refuse storage and bicycle storage in the rear garden; installation of a new shopfront; change of use of third, second, first and part of ground floor levels from a doctor's surgery (Class D1) into residential (Class C3); change of use of basement and part of ground floor level from a doctor's surgery (Class D1) into retail (Class A1); conversion of the third, second, first and part of ground floor levels into 1 x two bedroom, 1 x one bedroom and 1 x studio self-contained residential units.' at 170 Wandsworth Bridge Road, London SW6 2UQ in accordance with the application Ref 2021/01719/VAR dated 20 May 2021, without compliance with condition numbers 17 and 18 previously imposed on planning permission Ref 2016/00134/FUL dated 18 March 2016 and subject to the conditions set out in the attached schedule.

Background and Main Issue

2. Planning permission¹ was granted in 2016 to convert the appeal property into a retail unit and three residential apartments. The appellant confirms the development was completed in November 2017. The permission was subject to 27 conditions. Of those conditions 17 and 18 sought to prevent occupants of the residential units from applying for or retaining an on-street parking permit. The principal reasons given for the imposition of the conditions relates to the high level of demand for on-street car parking in the area and the avoidance of harm to residential amenities of neighbouring residential occupiers.
3. Planning Practice Guidance² (PPG) confirms that in deciding an application under section 73, only the disputed conditions that are the subject of the application should be considered, it is not a complete re-consideration of the application. Nevertheless, it must be assessed against the current development plan policies in force, which have changed since the original grant of permission.
4. Therefore, the main issue is whether the conditions are necessary and reasonable having regard to the effect on on-street parking.

¹ Reference 2016/00134/FUL

² Paragraph: 031 Ref ID: 21a-031-20180615

Reasons

5. Paragraph 56 of the National Planning Policy Framework (the Framework) stipulates that planning conditions should be kept to a minimum and only imposed, where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Applying the test of necessity in this instance would mean that the development plan policies require the occupiers of the three residential units to be denied on-street parking permits.
6. Policy T6 of The London Plan, March 2021 (LP) states that car parking should be restricted in line with levels of existing and future public transport accessibility and connectivity. It goes on to say that car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport. It seeks to restrict car parking as part of a wider strategy to encourage a modal shift away from reliance on the car as a means of transport in the city.
7. This approach generally aligns with the transport targets and vehicle parking standards contained in policies T1 and T4 of the Hammersmith and Fulham Local Plan, February 2018 (HFLP). In particular, policy T4 sets out a requirement for car parking permit free measures on all new development unless evidence is provided to show that there is a significant lack of public transport available.
8. Paragraph 14.19 of the HFLP explains the Council's approach in this regard and states that it will only consider the issuing of permits for on street parking in locations where Transport for London's Public Transport Accessibility Level (PTAL) is considered 2 or lower. It expressly states that the PTAL calculator represents the best available tool for calculating public transport accessibility and is therefore, the primary method for determining car permit free developments. However, it also states that the levels of local parking stress must be considered when assessing the impact of additional on street parking.
9. This approach is further reinforced by Key Principle TR3 in the Hammersmith and Fulham Planning Guidance, Supplementary Planning Document, February 2018 (SPD). It reiterates that development in areas well connected by public transport will be expected to be car-free, with no parking provided, other than for disabled people. However, proposals for residential development in areas of PTAL 1-2 may be issued residential parking permits subject to a case by case assessment to ensure that the resulting level of on-street overnight parking does not result in parking stress. It goes on to set out the methodology for calculating on-street overnight parking capacity and states that the level of on-street overnight parking availability/stress can be identified by expressing the number of vehicles parked (ascertained through surveys) as a percentage of the notional capacity.
10. However, the SPD stops short of stating what the threshold for unacceptable parking stress would be. Nevertheless, policy HO2c) of the HFLP that concerns residential conversions gives an indication in this respect. It supports residential conversions in streets where there is less than 10% night-time free space but states that the number of additional dwellings may be restricted or conditioned to allow no additional on-street parking. It would generally follow that if there were more than 10% night-time free space available such

restrictions would not be imposed. Given the nature of the appeal proposal, which includes residential conversions, this criterion is of particular relevance.

11. There is no dispute that the appeal site lies within an area with a PTAL rating of 2. The PTAL forecasting reports³ suggest that this is likely to continue. Hence, the best available tool for calculating public transport accessibility indicates there is relatively poor accessibility. This amounts to evidence that there is a significant lack of public transport available for the purposes of policy T4 of the HFLP. Given that the PTAL rating is advocated as the primary method for determining car permit free developments within the HFLP, and that the policy justification and SPD identify PTAL 1-2 areas as those where parking permits may be considered, it would be unreasonable to expect the appellant to provide additional other evidence to demonstrate poor accessibility.
12. Furthermore, although the Council points out the proximity to other higher rated PTAL areas, this does not detract from the lower PTAL 2 rating of the appeal site. Neither the supporting text for policy T4 of the HFLP nor key principle TR3 of the SPD seek to go behind or add further qualifications to the PTAL methodology. To do as the Council suggests would undermine the stated primary method for determining car permit free developments. My view on this would be broadly consistent with the approach of the Council in a recent decision allowing the removal of similar conditions at 306 Wandsworth Bridge Road⁴. That property is relatively close to the appeal site and is also within a similarly rated PTAL area and therefore carries limited weight in favour of the proposal.
13. Key principle TR3 of the SPD encourages an assessment of whether the overnight on-street parking likely to be generated by the development would result in parking stress. Based on policy HO2 of the HFLP, I have taken an unacceptable level of stress to be 90% or more on the surrounding streets which would leave less than 10% night-parking space availability. This would also be consistent with the Council's approach in relation to 306 Wandsworth Bridge Road.
14. There are a series of residential roads leading off Wandsworth Bridge Road in reasonable proximity to the appeal site. The information provided in relation to the existing on-street overnight parking capacity is limited, but the Council states that parking stress in surrounding streets is above 80%⁵. If it had exceeded 90% then presumably the Council would have said so. It is therefore reasonable to suppose based on the available evidence, that there is presently more than 10% night-time free space available in the vicinity of the appeal site. Moreover, the three residential units comprise two bedroom, one bedroom and studio accommodation respectively. This is likely to constrain the number of occupants and the consequent demand upon on-street parking. Overall, the proposal would be unlikely to leave less than 10% night-time free space.
15. The Council suggest that the proposal would conflict with the maximum car parking standards for residential development set out in policy T6.1 of the LP. However, there is nothing before me to suggest that the proposal provides on-site car parking as part of the development. The removal of the disputed

³ Appendices 2 & 3, Appellant's Appeal Statement

⁴ Reference 2020/02866/VAR, paragraph 4.5 Council's delegated report, Appendix 4, Appellant's Appeal Statement

⁵ Paragraph 5.7, Council's delegated report

conditions would not alter that. Accordingly, I am not persuaded there would be any conflict with this policy.

16. Reference is also made to policy CC10 of the HFLP on the decision notice. This policy sets out the general means by which the Council will seek to reduce the potential adverse air quality impacts of new developments. There is a borough wide Air Quality Management Area as road traffic emissions contribute to poor air quality. The Council contends that the removal of the conditions could potentially increase private motor vehicle usage with a resultant worsening of air quality. However, irrespective of the proposal before me, the existing permission has already introduced new receptors into an area of poor air quality with concentrations of pollutants which the Council suggests fails the WHO Air Quality Guidelines values. Moreover, the appeal site is within the Ultra-Low Emissions Zone for London which includes financial penalties if ultra-low emission vehicles are not used. Although there undoubtedly is a general correlation between vehicle emissions and air quality, there is no specific assessment evidence before me to demonstrate that the disputed conditions are necessary to avoid a notable worsening of local air quality and the modest scale of the proposal would suggest otherwise. Therefore, I am not assured the conditions are necessary in this case to make the development acceptable in this regard.
17. In coming to my findings, I have had regard to the representations that object to the proposal. However, having applied the relevant development plan policies, I have found that the disputed conditions would not be necessary to make the development acceptable and there is nothing in the content of the objections that would lead me to find otherwise.
18. Therefore, in this case I find that by applying key principle TR3 of the SPD, the proposal would not have an unacceptable effect on on-street parking. As such there would be no conflict with policy T6 of the LP, nor policies T1 or T4 of the HFLP. Hence, it would not be necessary to impose conditions 17 or 18 to make the proposal acceptable in planning terms. Therefore, to impose them in these circumstances would be unreasonable.
19. Planning conditions should meet all the tests listed to accord with paragraph 56 of the Framework. Therefore, having found that both conditions would fail the tests of necessity and reasonableness, there is no further need for me to consider whether they would meet the remaining tests, as this would not alter the outcome of my determination.

Other conditions

20. PPG makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The Council have reviewed the 27 conditions on the original permission and confirmed that details for pre-commencement conditions numbered 19, 20 and 24 have been discharged. Furthermore, due to subsequent legislative changes, use class A1 referred to in condition 23 is now class E.
21. Moreover, the appellant has confirmed that the development has been implemented and completed⁶ some years ago and the Council have not

⁶ Paragraph 2.3, Appellant's Appeal Statement

disputed this. It follows there is little point in imposing a time period for commencement, nor re-stating pre-commencement conditions or those that concerned construction or the specific details of how the physical development ought to have been carried out. On that basis I have not replicated such conditions. In other instances, I have adjusted the wording to reflect that development has taken place or to avoid duplication.

22. Furthermore, given my findings in relation to the main issue it follows that there would be little purpose in restating condition 16 as this requires the Council to be notified of the full postal address of the flats prior to their occupation to update parking permit records.
23. Condition 23 on the original permission ostensibly sought to restrict the hours of operation of the retail unit. However, the wording of part of the condition makes little practical sense as it refers to not operating during the 'hours of 20:00 Mondays to Saturdays' rather than giving a range. On that basis I have omitted this part of the condition but retained the wording to prevent opening on Sundays and bank holidays.

Conclusion

24. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions and restating or modifying those undisputed conditions that are still subsisting and capable of taking effect.

Helen O'Connor

Inspector

Schedule of conditions

- 1) The roof of the ground floor extension and the remainder of the roof of the back addition shall not be converted into or used as a terrace or other open amenity space. No railings or other means of enclosure shall be erected around the roof and no alterations shall be carried out to the rear elevation of the application property to form an access onto the roof.
- 2) No water tanks, water tank enclosures or other structures shall be erected upon the flat roof of the extensions hereby permitted.
- 3) No plumbing, extract flues or pipes, other than rainwater pipes, may be fixed on the front elevation of the building.
- 4) No part of the development hereby approved shall be occupied prior to the provision of the secure cycle parking spaces as shown on the approved plans. Thereafter these shall be permanently retained for such use.
- 5) No part of the development hereby approved shall be occupied prior to the provision of the refuse storage facilities at ground floor level, as indicated on approved drawings. All refuse generated by the development hereby permitted shall be stored within these enclosures and not stored on the pavement or street. The refuse storage facilities shall be permanently retained for these purposes.
- 6) The development shall accord with the sound insulation details approved under reference 2016/03218/DET dated 15/08/2016 at all times.
- 7) No deliveries nor collections/ loading nor unloading shall occur at the development hereby approved other than between the hours of 08:00 to 19:00 on Monday to Friday, 09:00 to 18:00 on Saturdays and at no time on Sundays and Public/Bank Holidays.
- 8) The use of the Class E premises shall not be permitted at any time on Sundays and Public/Bank Holidays.
- 9) No alterations shall be carried out to the external appearance of the building, including the installation of air-conditioning units, ventilation fans or extraction equipment not shown on the plans.
- 10) The replacement doors and windows shall be retained as timber frame construction with the windows painted white.