



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/21/3284933

20 Filmer Road, London SW6 7BW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval 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 prior approval was granted.
- The appeal is made by Mr T Skibinski against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2021/02669/VAR, dated 12 August 2021, was refused by notice dated 8 October 2021.
- The application sought approval for the change of use of the lower ground and ground floor from office (Class B1) into a dwelling house Class (C3) without complying with conditions attached to prior approval Ref 2017/03552/PD56, dated 9 November 2017. The conditions in dispute are Nos 4, 5 and 6 which state that:
 - '4) The new residential unit 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.*
 - 5) No occupier of the residential unit 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.*
 - 6) No occupier of the residenital [sic] unit 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:
 - '4) In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new residential unit 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 T1 of the Core Strategy (2011), Policy DM J2 and J3 of the Development Management Local Plan (2013), and SPD Transport Policies of the Planning Guidance Supplementary Planning Document (2013).*
 - 5) 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 T1 of the Core Strategy (2011) and with Policy DM A1, A9, J2 and J3 of the Development Management Local Plan (2013).*
 - 6) 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 T1 of the Core Strategy (2011) and with Policy DM A1, A9, J2 and J3 of the Development Management Local Plan (2013).'

Decision

1. The appeal is allowed and approval is granted for the change of use of the lower ground and ground floor from office (Class B1) into a dwelling house Class (C3) at 20 Filmer Road, London SW6 7BW in accordance with the application Ref 2021/02669/VAR dated 12 August 2021, without compliance with condition numbers 4, 5 and 6 previously imposed on prior approval Ref 2017/03552/PD56 dated 9 November 2017.

Procedural Matters and Background

2. The appeal relates to development permitted under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the Order). Subject to specified limitations, Class O of the Order allows the change of use of a building from offices to dwellinghouses. However, the permission granted in the Order is subject to the developer first applying to the local planning authority for a determination as to whether prior approval of the authority will be required as to certain specified matters before the permitted development can proceed. In relation to the appeal property, this was undertaken in 2017. At that time, there were four specified elements that were subject to the prior approval procedure, namely the transport and highways impacts of the development, contamination risks on the site, flooding risks and the impacts of noise from commercial premises on the intended occupiers of the development. Planning Practice Guidance (PPG)¹ confirms that a local planning authority cannot consider any other matters when determining a prior approval application. Prior approval (reference 2017/03552/PD56) was granted in relation to those matters on 9 November 2017.
3. Prior approval is not the same as a planning permission. In this case, permission for the permitted development is founded in the national grant of planning permission contained in the Order. The Order imposes conditions on planning permissions granted under certain Parts and Classes but does not provide any general authority for doing so as part of the prior approval process. However, in relation to prior approvals granted under Schedule 2, Part 3 of the Order, paragraph W(13) gives specific authority for the local planning authority to grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. 14 conditions feature on the prior approval granted in this case.
4. My determination has been made mindful of the procedural circumstances outlined. In many respects it is analogous to the situation where conditions have been imposed by a local planning authority on a planning permission. On that basis, the tests for planning conditions set out in paragraph 56 of the National Planning Policy Framework (the Framework) are relevant. Nevertheless, there are some notable differences. Firstly, the Order specifies

¹ Paragraph: 026 Reference ID: 13-026-20140306

that the subject matter of conditions imposed on a prior approval must be reasonably related to the matters specified for prior approval in the Order. Hence, the scope and reasons for imposing conditions is limited.

5. In addition, prior approvals are not determined based on s38(6) of the Planning and Compulsory Purchase Act 2004. So, whilst regard may be given to relevant development plan policies in making planning judgements, there is no statutory requirement to determine prior approval matters in accordance with those policies unless material considerations indicate otherwise.
6. In broad terms, conditions 4, 5 and 6 together seek to control the residential unit so that future occupiers cannot apply for on-street parking permits. The applicant seeks to remove the conditions.

Main Issue

7. The main issue is whether the conditions are necessary, relevant and reasonable having regard to on-street parking provision and the impact on air quality.

Reasons

8. Ostensibly as conditions 4, 5 and 6 seek to exert control regarding on-street parking demand arising from the permitted change of use, they could be related to the transport and highway impacts of the development which is one of the subjects of the prior approval process under Class O of the Order.
9. However, there is no substantive evidence presented to suggest that the permitted development would have a harmful impact on highway safety. Moreover, none of the reasons given for the conditions in the prior approval decision refer to highway safety concerns or harm arising from means of transport. Rather the recurring reason given is to avoid harming the existing amenities of the occupiers of neighbouring residential properties. Therefore, it appears that it was the potential frustration caused to other residents due to increased competition for nearby on-street parking that was the principal reason for imposing the conditions rather than a directly harmful impact on transport and highway matters.
10. The Council have subsequently² reiterated their concerns regarding the impact on the amenities of residents. Nevertheless, little specific evidence has been provided regarding the levels of parking stress in the immediate area or the extent of the asserted detrimental consequences for residents nearby. Neither is it clearly shown that parking demand arising from the change of use of offices to the one dwelling approved in this case would exacerbate on-street parking to such an extent that it is necessary to impose restrictions regarding on-street parking permits. Therefore, based on the evidence before me, I am not persuaded that the conditions pass the test of necessity.
11. I have had regard to the Council's objectives in the development plan that seek to encourage a modal shift away from the car as a means of transport. Part of that approach includes policies³ and guidance⁴ which seek to ensure that new

² Refusal reasons on decision notice reference 2021/02669/VAR

³ This includes: policy T6, The London Plan, March 2021; policies HO2, T1 and T4 of the Hammersmith and Fulham Local Plan, February 2018.

⁴ Key principle TR3, Hammersmith and Fulham Planning Guidance, Supplementary Planning Document, February 2018

developments in areas well served by public transport are car-parking permit free. However, such development plan policies are not directly applicable to prior approval applications. Therefore, in the absence of specific evidence to show why such an approach would be justified in this instance to prevent an unacceptable transport and highway impact, they do not lead me to a different view.

12. The Council also considers that in the absence of conditions 4, 5 and 6 the proposal would have an unacceptable impact on air quality contrary to policy CC10 of the Hammersmith and Fulham Local Plan, February 2018. Nevertheless, the likely impact on air quality is not one of the specified matters under consideration as part of the prior approval process under Condition O.2, Part 3 of the Order. As paragraph W(13) of the Order only authorises conditions to be imposed on prior approval consents that reasonably relate to the subject matter of the prior approval, it is not shown that any authority exists to impose conditions for this reason. Hence, in these procedural circumstances, it follows that conditions pertaining to it cannot be reasonably justified.
13. Moreover, I have concerns regarding the wording of condition 5 and the wording of the trigger for condition 6 makes little sense. Condition 5 stipulates that save for blue badge holders, no occupiers of the residential unit shall apply for, or retain a parking permit. Rather than securing changes to the eligibility criteria of the Council's resident's parking permit scheme, the wording of the condition primarily seeks to impose restrictions on the actions of an individual. As such, I am not convinced that the condition would directly regulate the development or use of land under the control of the developer. My concerns in this respect are reinforced by the recent findings of other Inspectors⁵ that similarly worded conditions fail to meet the test of reasonableness.
14. The Council refers to an appeal decision⁶ in August 2020 where a proposed variation to remove broadly similar conditions was dismissed. I accept that there are some similarities with the case before me and therefore it carries some weight in favour of dismissing the appeal. However, a considerable number of relevant appeal decisions⁷ suggesting the contrary have also been brought to my attention. I have attributed greater weight to the more recent decisions made since the decision highlighted by the Council. However, as none of the cases cited appear to relate to conditions on a prior approval, they carry no more than limited weight.
15. Accordingly, I find that conditions 4, 5 and 6 are not necessary to make those matters subject to prior approval under Class O, Part 3, Schedule 2 of the Order acceptable. Furthermore, in other respects the wording of conditions 5 and 6 is unreasonable, and the issue of air quality is not one of the matters subject to prior approval. Therefore, conditions 4, 5 and 6 do not meet all of the tests specified in paragraph 56 of the Framework and hence, should not be imposed.

⁵ Appeals referenced APP/H5390/W/20/3256297; APP/H5390/W/20/3257537 & APP/H5390/W/3257531

⁶ Reference APP/H5390/W/19/3242157

⁷ Pages 4-5, Appellant's Grounds of Appeal

Other conditions

16. PPG⁸ states that for the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect. However, as already mentioned, this case concerns conditions imposed on an earlier grant of prior approval, and the PPG does not make specific reference as to how best to proceed in these circumstances. My determination could not purport to be a new planning permission, as this remains contained in the national grant of permission given in the Order. In the absence of specific procedural guidance, I consider it would best assist clarity in this case simply to vary the original prior approval by removing the conditions. On this basis, the original prior approval and this decision should be read together.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed. I will vary the prior approval by deleting conditions 4, 5 and 6.

Helen O'Connor

Inspector

⁸ Paragraph: 040 Reference ID: 21a-040-20190723