



Appeal Decision

Site visit made on 17 February 2022

Decision by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2022

Appeal Ref: APP/H5390/W/21/3281732

280 Munster Road, London SW6 6BQ

- 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 Jalal A Yeganeh against the decision of the Council of the London Borough of Hammersmith and Fulham.
- The application Ref 2021/02078/VAR dated 4 June 2021, was refused by notice dated 18 August 2021.
- The application sought permission for Erection of a part two and part three storey single family dwellinghouse; erection of a new front boundary wall without complying with conditions attached to planning permission 2018/02661/FUL dated 20 September 2018.
- The conditions in dispute are Nos. 11 and 12, which state that:
 - 11) No occupier of the new 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 demand.*
 - 12) The new residential dwelling 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 dwellings 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 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 Policies HO1, HO11, T1 and T4 of the Local Plan (2018) and Key Principle TR3 of the Planning Guidance Supplementary Planning Document (SPD) (2018).*
 - 12) 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 Policies HO1, HO11 and T4 and T5 of the Local Plan (2018) and Key Principles TR3 and TR6 of the Planning Guidance Supplementary Planning Document (SPD) (2018).*

Decision

1. The appeal is allowed and planning permission is granted for the erection of a part two and part three storey single family dwellinghouse; erection of a new front boundary wall level at 280 Munster Road, London SW6 6BQ without complying with conditions 11 and 12 previously imposed on planning

permission 2018/02661/FUL dated 20 September 2018 and subject to the conditions contained in the attached schedule.

Preliminary Matters

2. The application form refers to conditions 10, 11 and 12. However no reference is made to condition 10 throughout the remainder of the submissions, and the appeal form refers to conditions 11 and 12 only. I have considered the appeal accordingly.
3. I have also dealt with another appeal (Ref: APP/H5390/W/21/3282335) relating to No. 282 - 284 Munster Road. That appeal is the subject of a separate decision.

Main Issues

4. The main issues are whether the disputed conditions are reasonable, necessary and relevant to planning, having regard to on-street car parking provision in the area and air quality.

Reasons

On-street car parking provision

5. Conditions 11 and 12 of planning permission 2018/02661/FUL require the dwellings to be occupied on a parking permit free basis, with condition 12 requiring agreement of a related scheme. Policy T4 of the Local Plan is clear that the Council will require permit free measures unless a significant lack of public transport availability is evidenced, with supporting text that the Council will only consider issuing permits in locations with a PTAL of 2 or lower. Given that the appeal site is in a location with a PTAL of 3, it is suggested that the area is one which benefits from good public transport links and for which the Council would not ordinarily issue permits. While the appellant has referred to guidance suggesting that the train and tube links are inadequate, a copy of this has not been provided.
6. However, notwithstanding the above policies the National Planning Policy Framework and Planning Practice Guidance (PPG) is clear that conditions attached to planning permission should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. In this regard I agree with the appellant that in removing the rights of occupiers to apply for a parking permit, conditions 11 and 12 restrict the actions of an individual, rather than applying to the land to which the planning permission relates. As such, while these conditions may seek to alleviate car parking stress within the surrounding area, due to the restrictions they place on individuals rather than the land of the appeal site, they do not meet the test of being either reasonable or relevant to planning.

Air Quality

7. The appeal site is located within an AQMA and the Council cites Policy CC10 of the Local Plan, which allows for mitigation measures to reduce emissions and exposure and for resisting development proposals which would materially increase exceedances of local air pollutants.
8. While the Council states that the removal of conditions 11 and 12 would result in additional private motor vehicle usage contributing to increased harmful

emissions and harm to air quality, no substantive evidence has been provided in this regard. In addition, I consider that the likely implications from vehicle usage is limited by the scale of the development, with one single family dwelling unlikely to significantly harm air quality. In any event, as outlined above, due to placing of restrictions on the actions of individuals, conditions 11 and 12 do not meet the test of being either reasonable or relevant to planning.

Conditions

9. The PPG is clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
10. The appellant states that the site is currently under development, such that is reasonable to assume on the information before me that the development has commenced. The Council has not queried this position. As such, a time limit condition is not necessary. However, I have no information before me about the status of the other conditions imposed on the original planning permission. As such, I impose all those that I consider remain relevant. In the event that some of these have been discharged, that is a matter which can be addressed by the parties.

Conclusion

11. For the reasons given above, conditions No. 11 and 12 attached to planning permission 2018/02661/FUL are not reasonable or relevant to planning, having regard to on street parking in the area or air quality. The appeal should therefore be allowed, subject to the conditions set out in the attached schedule.

C Rafferty

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development shall be implemented and completed only in accordance with the approved drawings. The site coverage of the proposed new dwellinghouse hereby permitted shall not exceed those shown on the approved drawing (No. 112-A3-P1-01 Rev.03).
2. Prior to the commencement of the development, a Construction Logistics Plan shall be submitted to, and approved in writing by, the Council. The details shall include the numbers, size and routes of construction vehicles, provisions within the site to ensure that all vehicles associated with the construction works are properly washed and cleaned to prevent the passage of mud and dirt onto the highway, and other matters relating to traffic management to be agreed. Approved details shall be implemented throughout the project period.
3. Other than any demolition works, ground and subterranean works (including construction of basement), site preparation or remediation, the development hereby permitted shall not commence prior to the submission and approval in writing by the Council of details and samples of all materials (including brick work, roof tiling, timber fencing and window frames) to be used on the external faces of the new building and all surface treatments and no part of the development shall be used or occupied prior to the completion of the development in accordance with the approved details
4. No plumbing, extract flues or pipes other than rainwater pipes shall be fixed on the front elevations of the building(s) hereby approved.
5. No parts the flat roof areas provided by the development hereby approved shall be used as a terrace or other accessible amenity space. No walls, fences, railings or other means of enclosure other than those shown on the approved drawings shall be erected around the roofs, and no alterations shall be carried out to the approved building to form access onto these roofs.
6. The residential unit hereby permitted shall not be occupied until full details of refuse storage, including provision for the storage of recyclable materials, have been submitted to, and approved in writing by, the Council. Such details as approved shall be implemented prior to occupation of the residential development, and thereafter be permanently retained.
7. 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 7 and shall not be stored on the pavement or street.
8. The residential unit hereby permitted shall not be occupied until full details of 2 x cycle storage spaces, have been submitted to, and approved in writing by, the Council. Such details as approved shall be implemented prior to occupation of the residential development, and thereafter be permanently retained.
9. The new residential dwelling 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 dwelling. Such notification shall be to the council's Head of Development Management and shall quote the planning application number specified in this decision letter
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that

- Order with or without modification), no aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any external part of the approved buildings, without planning permission first being obtained.
11. No plant, water tanks, water tank enclosures or other structures, that are not shown on the approved plans, shall be erected upon the roofs of the building(s) hereby permitted.
 12. Prior to commencement of the development , a noise assessment shall be submitted to the Council for approval of external noise levels incl. reflected and re-radiated noise and details of the sound insulation of the building envelope, orientation of habitable rooms away from major noise sources and of acoustically attenuated mechanical ventilation as necessary to achieve internal room- and (if provided) external amenity noise standards in accordance with the criteria of BS8233:2014. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
 13. No development shall commence until a preliminary risk assessment report is submitted to and approved in writing by the Council. This report shall comprise: desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses; a site reconnaissance; and a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
 14. No development shall commence until a site investigation scheme is submitted to and approved in writing by the Council. This scheme shall be based upon and target the risks identified in the approved preliminary risk assessment and shall provide provisions for, where relevant, the sampling of soil, soil vapour, ground gas, surface and groundwater . All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
 15. Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until, following a site investigation undertaken in compliance with the approved site investigation scheme, a quantitative risk assessment report is submitted to and approved in writing by the Council. This report shall: assess the degree and nature of any contamination identified on the site through the site investigation; include a revised conceptual site model from the preliminary risk assessment based on the information gathered through the site investigation to confirm the existence of any remaining pollutant linkages and determine the risks posed by any contamination to human health, controlled waters and the wider environment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures

for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

16. Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until, a remediation method statement is submitted to and approved in writing by the Council. This statement shall detail any required remediation works and shall be designed to mitigate any remaining risks identified in the approved quantitative risk assessment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
17. Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until the approved remediation method statement has been carried out in full and a verification report confirming these works has been submitted to, and approved in writing, by the Council. This report shall include: details of the remediation works carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all waste management documentation showing the classification of waste, its treatment, movement and disposal; and the validation of gas membrane placement. If, during development, contamination not previously identified is found to be present at the site, the Council is to be informed immediately and no further development (unless otherwise agreed in writing by the Council) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the Council. Any required remediation shall be detailed in an amendment to the remediation statement and verification of these works included in the verification report. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing
18. Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until an onward long-term monitoring methodology report is submitted to and approved in writing by the Council where further monitoring is required past the completion of development works to verify the success of the remediation undertaken. A verification report of these monitoring works shall then be submitted to and approved in writing by the Council when it may be demonstrated that no residual adverse risks exist. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing
19. Prior to commencement of the development, (excluding site clearance and demolition) a report including detailed information on the proposed mechanical ventilation system with NO_x, PM_{2.5}, PM₁₀ filtration shall be submitted to and approved in writing by the Council. This report shall specify air intake locations at roof level on the rear elevation and the design details and locations of windows of all habitable rooms (Bedrooms and Living Rooms) to demonstrate that they avoid areas of exceedance of the WHO Air Quality Guideline values for NO₂, PM_{2.5} and PM₁₀ on Munster Road (A3219). The whole system shall be

designed to prevent summer overheating and minimise energy usage. Chimney/boiler flues and ventilation extracts shall be positioned a suitable distance away from ventilation intakes, openable windows, balconies, roof gardens, terraces and receptors. 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

20. Prior to occupation of the development, details of the Ultra-Low NO_x Gas fired boilers to be provided for space heating and hot water, details must be submitted to and agreed in writing by the Local Planning Authority. The Ultra Low NO_x Gas fired boilers shall have dry NO_x emissions not exceeding 30 mg/kWh (at 0% O₂). Where any installations do not meet this emissions standard, it should not be operated without the fitting of suitable NO_x abatement equipment or technology as determined by a specialist to ensure comparable emissions. Following installation, emissions certificates will need to be provided to the council to verify boiler emissions. The approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained
21. The balustrade to the Juliet balcony at first floor level hereby permitted shall be fixed flush with the rear elevation of the building. The doors to the Juliet balcony shall open inwards only.
22. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order (Amendment) (No.2) (England) Order 1995 (or any order amending, revoking and re-enacting that Order) no extensions or other form of enlargement to the residential development hereby permitted, nor erection of porches, outbuildings, hardstandings, storage tanks, gates, fences, walls or other means of enclosure, shall take place without the prior written permission of the Council. Due to the limited size of the site, proximity to neighbouring properties and proposed design of the proposed single family dwellings on the site, the Council would wish to exercise future control over development which may affect residential amenity or appearance of the area, in accordance with Policies DC1, DC4, HO4, HO5 and HO11 of the Local Plan (2018).