



Appeal Decision

Site visit made on 17 February 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2022

Appeal Ref: APP/H5390/W/21/3282335

282 – 284 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 2021/02079/VAR dated 4 June 2021, was refused by notice dated 18 August 2021.
 - The application sought permission for the variation of condition 2 of planning permission ref: 2017/03514/FUL granted 6th November 2017 to allow amendments to the approved drawings to include modification to internal walls, re-location of the entrances, re-location of the ground floor windows, removal of external steps, lowering of the mezzanine floor level by 100mm and installation of new rooflights at roof level without complying with conditions attached to planning permission 2018/02517/VAR dated 10 September 2018.
 - The conditions in dispute are Nos. 10 and 11, which state that:
 - 10) No occupier of the three houses 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.*
 - 11) The three houses 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 houses 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 H01, H011, T1 and T4 of the Local Plan (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 H01, H011 and T4 of the Local Plan (2018).*
-

Decision

1. The appeal is allowed and planning permission is granted for the variation of condition 2 of planning permission ref: 2017/03514/FUL granted 6th November 2017 to allow amendments to the approved drawings to include modification to

internal walls, re-location of the entrances, re-location of the ground floor windows, removal of external steps, lowering of the mezzanine floor level by 100mm and installation of new rooflights at roof level at 280 – 284 Munster Road, London SW6 6BQ without complying with conditions 10 and 11 previously imposed on planning permission 2018/02517/VAR dated 10 September 2018 and subject to the conditions contained in the attached schedule.

Preliminary Matters

2. The application form refers to conditions 9, 10 and 11. However no reference is made to condition 9 throughout the remainder of the submissions, and the appeal form refers to conditions 10 and 11 only. I have considered the appeal accordingly. In addition, the site address has been taken from the appeal form and decision notice, which accurately refer to Nos. 282-284, aligning with the submitted plans.
3. I have also dealt with another appeal (Ref: APP/H5390/W/21/3281732) relating to No. 280 Munster Road. That appeal is the subject of a separate decision.

Main Issue

4. The main issue is 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 10 and 11 of planning permission 2018/02517/VAR require the dwellings to be occupied on a parking permit free basis, with condition 11 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 10 and 11 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 10 and 11 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, the likely implications from vehicle usage is limited by the scale of the development, with three single family dwellings unlikely to significantly harm air quality. In any event, as outlined above, due to placing of restrictions on the actions of individuals, conditions 10 and 11 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. 10 and 11 attached to planning permission 2018/02517/VAR 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 not be erected otherwise than in accordance with the drawings hereby approved.
2. 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 to be used on the external faces of the new building and all surface treatments, and of boundary walls, railings, gates and fences and no part of the development shall be used or occupied prior to the completion of the development in accordance with the approved details.
3. The development shall not commence prior to the submission and approval in writing by the Council of full details of the proposed landscaping of the site, including planting schedules and details of the species, height and maturity of existing and new trees and shrubs. The approved scheme shall be implemented in the next winter planting season following completion of the building works, or before the occupation and use of any part of the building, whichever is the earlier.
4. Any tree or shrub planted pursuant to condition 3 being removed or severely damaged, dying or becoming seriously diseased within 5 years of planting shall be replaced with a tree or shrub of similar size and species to that originally required to be planted.
5. Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of the sound insulation of the walls separating the dwellings from the commercial unit at 282-284 Munster Road at ground floor level. Details shall demonstrate that the sound insulation value $D_{nT,w}$ is sufficiently enhanced and, where necessary, additional mitigation measures are implemented to contain commercial noise within the commercial premises and to achieve the 'Good' criteria of BS8233:1999 within the dwellings/ noise sensitive premises. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained
6. Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of the sound insulation of the walls separating the approved dwellings. Details shall demonstrate that the sound insulation value $D_{nT,w}$ is sufficiently enhanced and, where necessary, additional mitigation measures implemented to contain commercial noise within the commercial premises and to achieve the 'Good' criteria of BS8233:1999 within the dwellings/ noise sensitive premises. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
7. No construction works shall commence prior to the submission and approval in writing by the Council of a construction management plan and a construction logistics plan for each operational phase of development (in accordance with Transport for London guidelines), which shall include details of the steps to be taken to re-use and recycle waste, details of site enclosure

throughout construction and details of the measures proposed to minimise the impact of the construction processes on the existing amenities of the occupiers of neighbouring properties, including monitoring and control measures for dust, noise, vibration, lighting and working hours, waste classification and secure off-street loading and drop off facilities, and the measures proposed to prevent the passage of mud and dirt onto the highway by vehicles entering and leaving the site in connection with the construction processes. The plan shall also investigate ways to use rail transport for bulk materials, particularly during demolition and construction phases. All construction works shall be carried out in accordance with the approved details.

8. The three new houses 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.
9. No part of the development hereby approved shall be occupied prior to the provision of the refuse storage enclosures, as indicated on the approved drawing 111-A1-P1-01.
10. No part of the development hereby approved shall be occupied prior to the provision of the cycle storage for the residential development hereby approved, as indicated on the approved drawing 111-A1-P1-01 and such storage facilities shall be permanently retained thereafter in accordance with the approved details.
11. The development shall be implemented in accordance with the recommended flood mitigation measures as proposed in the submitted Flood Risk Assessment and SUDS report otherwise agreed in writing by the local planning authority. In line with advice from Thames Water, a non-return valve or other suitable device shall be installed to avoid the risk of the sewerage network surcharging wastewater to basement/ground level during storm conditions. The recommended mitigation measures shall be permanently retained thereafter
12. Prior to the first occupation of the development hereby approved, details of external artificial lighting shall be submitted to and approved in writing by the Council. Details shall demonstrate that vertical illumination of neighbouring premises is a maximum of 10lux at ground floor and 5lux at first and higher floor levels. The recommendations of the Institution of Lighting Professionals in the 'Guidance Notes For The Reduction Of Light Pollution 2005' shall also be met with regard to glare and sky glow. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (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.

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order (Amendment) (No.2) (England) Order 2015 (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.
15. 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 hereby permitted.
16. The development hereby approved shall be carried out in accordance with the sustainability measures outlined in the Energy Statement prepared by Cudd Bentley Consulting dated 19/06/2014.
17. No development shall commence until a preliminary risk assessment report is submitted to and approved in writing by the Council. This report shall comprise: a 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. Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site.
18. 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. Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site.
19. 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: Model7 Page 7 2018/02517/VAR Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing. Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site.

20. 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. Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site.
21. 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. Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site.
22. 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. Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site.