



Appeal Decision

Site visit made on 12 July 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th July 2022

Appeal Ref: APP/H5390/W/22/3294364
267 Fulham Palace Road, London SW6 6TP

- 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 B Desaur against the decision of the Council of the London Borough of Hammersmith and Fulham.
- The application Ref 2021/04147/VAR, dated 24 December 2021, was refused by notice dated 1 March 2022.
- The application sought planning permission for erection of a rear roof extension; erection of rear extensions at ground, first and second floor level; alterations to the roof and rear fenestration of ground floor back addition; replacement of existing window with a new window at first floor level to the rear elevation; installation of 4no rooflights in the front roofslope; conversion of the first and second floor level into 1 x 1 bedroom and 1 x 2 bedroom self-contained flats without complying with conditions attached to planning permission Ref 2021/00700/FUL, dated 25 May 2021.
- The conditions in dispute are Nos 13, 17 and 18 which state that:
Condition 13 – The new flat 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 new 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.
Condition 17 – No occupier of the newly created 1 bedroom flat, 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.
Condition 18 – The new 1 bedroom flat, 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 new residential unit 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:
Condition 13 – In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new flat hereby approved, and thus ensure that the development does not harm the local air quality or 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 HO2, CC3, CC10, CC13 and T4 of the Local Plan 2018.
Condition 17 – In order to ensure that the development does not harm the local air quality or 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 HO2, CC3, CC10, CC13 and T4 of the Local Plan 2018.

Condition 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 local air quality or existing amenities of the occupiers of neighbouring residential properties by adding to the already high level of onstreet car parking stress in the area, in accordance with Policies HO2, CC3, CC10, CC13 and T4 of the Local Plan 2018.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a rear roof extension; erection of rear extensions at ground, first and second floor level; alterations to the roof and rear fenestration of ground floor back addition; replacement of existing window with a new window at first floor level to the rear elevation; installation of 4no rooflights in the front roofslope; conversion of the first and second floor level into 1 x 1 bedroom and 1 x 2 bedroom self-contained flats at 267 Fulham Palace Road, London SW6 6TP in accordance with the application Ref 2021/04147/VAR dated 24 December 2021 without compliance with condition Nos 13, 17 and 18 previously imposed on planning permission Ref 2021/00700/FUL dated 25 May 2021, but otherwise subject to the conditions on the attached schedule.

Background and Main Issue

2. The upper floor of the appeal property was granted permission for an extension and conversion from a two bedroom flat into a one bedroom flat and a two bedroom flat (permission reference 2021/00700/FUL). The permission was granted subject to three conditions which collectively seek to restrict occupiers of the one bedroom flat from being eligible for a parking permit, to ensure that the development does not harm the local air quality or 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.
3. The appellant wishes to remove these conditions, on the basis that there is a lack of evidence to justify them, and they do not meet the tests for conditions set out in the National Planning Policy Framework (the Framework).
4. The main issues are therefore:
 - whether or not a mechanism to control parking is necessary to protect the area from parking stress and to limit congestion and harm to air quality; and
 - if so, whether or not the disputed conditions provide such a mechanism.

Reasons

Need for a Mechanism to Control Parking

5. Policy T4 of the Hammersmith and Fulham Local Plan, 2018 (the Local Plan) requires that all new development has car parking permit free measures, unless evidence is provided to show that there is a significant lack of public transport available. The supporting text to this policy states that the Council will only consider the issuing of permits for on street parking in locations where the Public Transport Accessibility Level (PTAL) is considered 2 or lower. Key Principle TR3 of the Council's 2018 Planning Guidance Supplementary Planning Document (the SPD) advises 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. It also provides guidance on the assessment required for a residential parking permit in areas of PTAL 1-2.

6. Policy T6 of the London Plan, 2021, states that car-free development should be the starting point in all places that are (or are planned to be) well-connected by public transport. Policy T6.1 states that new residential development should not exceed the maximum specified parking standards, which in this case would be up to 0.25 spaces based on the requirements in associated Table 10.3.
7. The Council identifies that the property lies within an area where the PTAL is 3 (moderate). I note the appellant's position that a PTAL of 3 does not indicate good access to public transport. However, during my site visit I observed that there is a bus stop beside the property and opposite with a number of services operating during the day and at night, and that the appellant identifies that the nearest underground station is around 1.2km away. On this basis, I am satisfied that there is not a significant lack of public transport available.
8. There is no site-specific information before me regarding parking pressure, for example a parking survey, to demonstrate whether the surrounding roads could accommodate the resulting parking demand, which I acknowledge would be limited. Nevertheless, the property lies within a controlled parking zone (CPZ) and several roads in the vicinity, including Kingwood Road, Atalanta Street and Harbord Street, are also subject to a CPZ.
9. In addition, the reason for controlling car parking is not just to protect areas from parking stress. As well as seeking to ensure that traffic generated by new development is minimised so that it does not add to parking pressures on local streets, Policy T1 of the Local Plan also promotes and supports the continued development of initiatives designed to encourage modal shift away from private vehicles, in order to improve congestion and air quality within the borough. Policy CC10 of the Local Plan seeks to reduce the potential adverse air quality impacts of new developments. In addition, paragraph 10.6.1 of the London Plan states that the dominance of vehicles on the streets is a significant barrier to walking and cycling, reduces the appeal of streets as public places and has an impact on the reliability and journey times of bus services.
10. Accordingly, I conclude that a mechanism to control parking to ensure that the new flat created by the development is permit free is reasonable and necessary, having regard to the requirements of Policies T1, T4 and CC10 of the Local Plan, Policies T6 and T6.1 of the London Plan, and the advice in Key Principle TR3 of the SPD.

Disputed Conditions

11. To meet the requirements of car parking permit free measures, the development was permitted on the basis that the occupants of the one bedroom flat would not be eligible for a resident parking permit. The issue of permits is the responsibility of the highway authority and are subject to Traffic Management Orders (TMOs).
12. A planning permission and any attached conditions run with the land or building, and not with an individual. The prevention of an individual, or group of individuals, from applying for a resident's permit would not be a restriction

on the land or buildings. On this basis, conditions 17 and 18 as written are unlikely to meet the tests for conditions in the Framework.

13. However, to deliver car parking permit free measures in line with Policy T4 of the Local Plan, a mechanism would be required to ensure that occupiers, other than a Blue Badge holder, would not be eligible to apply for a resident parking permit. The mechanism must make a clear connection to the land/property. A requirement to provide precise details of the property's address would have a link to the land/property and would give the Council what it needs to make an appropriate amendment to the TMO. Condition 13 would therefore be necessary, to enable the development to provide car parking permit free measures. Minor modifications to the condition would be required to clarify which residential unit and permission it relates to.
14. Based on the information that is before me, this appeal has similarities with a number of the appeal decisions brought to my attention. As noted above, I have also concluded that two of the disputed conditions would not meet the tests in the Framework. However, what is not clear from the information before me is whether these previous appeal decisions also concluded that the development should be car parking permit free in order to be acceptable in planning terms, which is the case here.
15. I therefore conclude that conditions 17 and 18 would not meet the tests for the use of conditions and are therefore not an appropriate mechanism to secure a car parking permit free development. However, requiring that the one bedroom flat has car parking permit free measures is justified having regard to the requirements of the development plan, and condition 13 is necessary to provide a mechanism for this.

Conditions

16. The guidance in the Planning Practice Guidance makes 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 provided confirmation on whether the conditions requiring the submission and approval of further details have been discharged. Accordingly, I shall impose all those conditions that I consider remain relevant.
17. I have amended the wording of condition 2 to reference the plans in the original permission in the interests of certainty. I have also added a more specific reference to the flood risk assessment in condition 18 (condition 20 of permission reference 21/00700/FUL).

Conclusion

18. For the reasons given above, I conclude that condition 13 is necessary albeit in a revised form. I also conclude that conditions 17 and 18 were not reasonably imposed and should therefore be deleted. The effect of my decision leads me to conclude that the appeal should be allowed.

F Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall not commence later than the expiration of 3 years from 25 May 2021.
- 2) The development shall be carried out and completed only in accordance with the following approved plans: D/FP 21 4 17; D/FP 21 4 20; D/FP 21 4 21 A; D/FP 21 3 15 B; D/FP 21 3 13 B; D/FP 21 3 14 A; D/FP 21 3 16 B; D/FP 21 3 12 A; FRA.
- 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) Prior to the occupation of the development hereby approved the Juliet balconies at first and second floor level shall be fixed flush to the rear elevation of the back addition and the french doors shall only open inwards. No part of any flat roofs hereby approved, or the roof of the remaining back addition, unless otherwise stated shall be used as a roof terrace or other form of open amenity space. No alterations shall be carried out; nor planters or other chattels placed on the roofs. No railings or other means of enclosure shall be erected on the roofs, and no alterations shall be carried out to any elevation of the application property to form access onto the roofs.
- 5) The rear roof extension and second floor rear extensions hereby approved shall be clad in natural slates or artificial slates to match the appearance of the existing roof.
- 6) The party walls of the rear roof and roof extension over the top of the back addition and walls of the ground floor extension to the side of the existing back addition and first floor rear extension hereby approved shall be constructed with stock brick to match the existing building.
- 7) The party walls of the rear roof extension and the second floor extension hereby permitted shall be constructed from brick to match the main dwelling, shall follow the profile of the extensions and shall not project more than 250 millimetres above or beyond the external faces of the roof structure.
- 8) The single storey rear extension shall not exceed a height of 2 metres on the party boundary with No 259 Fulham Palace Road, measured from the existing ground level at No 259 Fulham Palace Road immediately adjoining the extension, as indicated on approved drawings.
- 9) No water tanks, water tank enclosures or other structures shall be erected upon the roofs of the extensions hereby permitted.
- 10) The refuse storage area located within the front garden area as shown on approved drawings shall be kept clear and permanently retained thereafter for such use.
- 11) Any refuse/recycling generated by the residential units hereby approved shall be stored in the designated refuse area within the front garden area and shall not be stored on the pavement or street other than for the purposes of collection.

- 12) The residential units hereby permitted shall not be occupied until the x 3 secure cycle parking spaces within the front garden, indicated on approved drawings have been installed. The cycle space shall be permanently retained thereafter for such use.
- 13) The 1 bedroom self-contained flat 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 new flat. Such notification shall be to the Council's Head of Development Management and shall quote planning application Ref 2021/04147/VAR and appeal Ref APP/H5390/W/22/3294364.
- 14) Prior to commencement of above ground works in the development a Ventilation Strategy Report for C3 class use to mitigate the impact of existing poor air quality for receptor locations where the air quality objectives for NO₂ and World Health Organisation (WHO) targets for Particulate Matter (PM_{2.5}, PM₁₀) are already exceeded and where current and future predicted pollutant concentrations are within 5 % of these limits shall be submitted to and approved in writing by the Local Planning Authority. The report shall include the following information:
1. Details and locations of the ventilation intake locations at rear roof level;
 2. Details and locations of restricted opening windows (maximum 100mm for emergency purge ventilation) for all habitable rooms (Bedrooms, Living rooms) on all residential floors with front elevations on Fulham Palace Road (A219);
 3. Details and locations of ventilation extracts, to demonstrate that they are located a minimum of 2 metres away from the air ventilation intakes, openable windows, terraces;
 4. Details of the independently tested mechanical ventilation system with Nitrogen Dioxide (NO₂) and Particulate Matter (PM_{2.5}, PM₁₀) filtration with air intakes on the rear elevation to remove airborne pollutants. The filtration system shall have a minimum efficiency of 75% in the removal of Nitrogen Oxides/Dioxides, Particulate Matter (PM_{2.5}, PM₁₀) in accordance with BS EN ISO 10121-1:2014 and BS EN ISO 16890:2016.
- The whole system shall be designed to prevent summer overheating and minimise energy usage. 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.
- 15) Prior to occupation of the development, details of a post installation report of the approved ventilation strategy as required by condition 14 to mitigate the impact of existing poor air quality shall be submitted to and approved in writing by the Local Planning Authority. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.
- 16) Prior to occupation of the development hereby permitted, details of the installation of the Zero Emission MCS 007 certified Air/Water Source Heat Pumps, or Electric Boilers, for the supply of space heating and hot water for each of the two new residential units shall be submitted to and approved in

writing by the Local Planning Authority. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

- 17) The development hereby approved shall not be occupied until the proposed window on the side of the back addition at second floor level 265 Fulham Palace Road have all been fitted with obscured glazing and fixed shut below a height of 1.7m above finished floor level. This window shall be permanently retained in this form thereafter.
- 18) The development shall be carried out and completed in full accordance with the details contained within the Flood Risk Assessment, reference PP-09583535 dated March 2021. No part of the development shall be used or occupied until all flood prevention and mitigation measures have been installed in accordance with the submitted details and the development shall be permanently retained in this form thereafter.
- 19) Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of an enhanced sound insulation value $D_{nT,w}$ of at least 5dB above the Building Regulations value, for the floor/ceiling/wall structures separating different types of rooms/ uses in adjoining dwellings. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.