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## Appeal Decision

Site visit made on 6 September 2022

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 29<sup>th</sup> September 2022**

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**Appeal Ref: APP/H5390/W/21/3269642**

**165 – 167 New King's Road, London SW6 4SN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A 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 Adam Gosling, Property Investments London Ltd against the decision of London Borough of Hammersmith and Fulham.
- The application Ref 2020/03423/VAR, dated 8 December 2020, was refused by notice dated 12 February 2021.
- The application sought planning permission for: 'Erection of front and rear roof extensions involving an increase in the ridge height; erection of rear extensions at ground and second floor; formation of a roof terrace at second floor and lowering of the existing basement in connection with the conversion of the existing dwellinghouse into a mixed use building comprising 2 x 1 bedroom and 2 x 2 bedroom self-contained flats at basement, ground, first, second and third floors, and 83.7 square metres of Di (non-residential institution) floorspace at ground and basement floors to be used by the existing children's day nursery and preparatory school at 165 New King's Road; erection of external staircase from ground floor to first floor level at the rear of the property; installation of new windows to replace the existing windows to the rear and side elevations; bricking up of 1no window and French doors at first floor level to the rear elevation; alterations to the roof of single storey back addition; installation of a new rooflight above the roof of second floor rear back addition; enlargement of the front basement lightwell; internal links between 165 and 167 New Kings Road at basement and ground floor level' without complying with conditions attached to planning permission Ref 2018/02454/FUL, dated 25 September 2018.
- The conditions in dispute are Nos 10, 11 and 12 which state that:  
Condition 10 - *No occupier of newly created flats, 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 11 - *The newly created flats, 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 development shall not be used otherwise than in accordance with the approved scheme, unless prior written agreement is issued by the Council.*
- Condition 12 - *The newly created flats, 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 dwellings. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter.*
- The reasons given for the conditions are:  
Condition 10 - *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 T1 and T4 of the Local Plan 2018.*

*Condition 11 - In order that the prospective occupiers of the flats 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 T1 and T4 of the Local Plan 2018.*

*Condition 12 - In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new dwellings 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 policies T1 and T4 of the Local Plan 2018.*

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## **Decision**

1. The appeal is allowed and planning permission is granted for erection of front and rear roof extensions involving an increase in the ridge height; erection of rear extensions at ground and second floor; formation of a roof terrace at second floor and lowering of the existing basement in connection with the conversion of the existing dwellinghouse into a mixed use building comprising 2 x 1 bedroom and 2 x 2 bedroom self-contained flats at basement, ground, first, second and third floors, and 83.7 square metres of Di (non-residential institution) floorspace at ground and basement floors to be used by the existing children's day nursery and preparatory school at 165 New King's Road; erection of external staircase from ground floor to first floor level at the rear of the property; installation of new windows to replace the existing windows to the rear and side elevations; bricking up of 1no window and French doors at first floor level to the rear elevation; alterations to the roof of single storey back addition; installation of a new rooflight above the roof of second floor rear back addition; enlargement of the front basement lightwell; internal links between 165 and 167 New Kings Road at basement and ground floor level at 165 – 167, New King's Road, London SW6 4SN in accordance with the terms of the application, Ref 2020/03423/VAR, dated 8 December 2020, without compliance with condition numbers 10, 11 and 12 previously imposed on planning permission reference 2018/02454/FUL, dated 25 September 2018, but subject to the conditions in the Schedule at the end of this decision.

## **Preliminary Matters**

2. I have taken the address from the appeal form, which more accurately describes this than the application form in respect of the property's street numbers. In July 2021, since the Council's decision was made, a new National Planning Policy Framework (the Framework) has been issued. I have taken references to the Framework to relate to the most up-to-date version and determined the appeal on the current Framework.

## **Main Issue**

3. 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.

## Reasons

4. The Framework and the Planning Practice Guidance (PPG) are clear that conditions attached to planning permission should be necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.
5. To promote sustainable travel and to improve congestion and air quality, Policy T1 of the Hammersmith and Fulham Local Plan (HFLP), adopted February 2018, requires that proposals do not add to parking pressures on local streets. HFLP Policies HO2 and T4 require development to be car parking permit free unless evidence shows that public transport availability is limited. Key Principle TR3 of the Planning Guidance Supplementary Planning Document, February 2018 (SPD) makes similar requirements.
6. On my mid-morning site visit, I saw that there were a few spaces available in local streets. However, my visit represents only a snapshot in time and, taking into account the representations made, I acknowledge that there may well be genuine on-street parking stress and congestion. The site is located close to bus and tube services within a good Public Transport Accessibility Level (PTAL) of 4. There is little to suggest a significant lack of public transport available. As such, I have no reason to doubt the necessity of conditions 10 and 11 in accordance with HFLP Policies HO2, T1 and T4 and the SPD.
7. However, in removing the rights of occupiers to apply for a parking permit, condition 10 seeks to restrict the actions of an individual. A planning permission and any conditions it is subject to runs with the land or building, and not the individual. It is therefore not the role of the planning system to control the actions of individuals by preventing them from applying for parking permits. As such, the wording of the condition fails to meet the test of reasonableness.
8. Condition 11 requires the approval of a scheme to ensure that most occupiers have no entitlement to parking permits from the Council and that the development shall not be used otherwise than in accordance with the approved scheme. The condition also seeks to control the actions of a person rather than control the use of land and so also fails to meet the test of reasonableness.
9. Condition 12 requires the postal address of the residential units to be submitted to the Council prior to their occupation. This condition is not relevant to planning because it is not directly related to the use of land and buildings. There are other mechanisms available for street naming and numbering and it would not prevent the Council from issuing parking permits. In light of my conclusion on conditions 10 and 11 it has no purpose. For these reasons, the condition does not therefore meet the test of necessity or relevance to planning.

## Other Matters

10. The Council has referred me to an appeal decision<sup>1</sup> at 44 Chesson Road where the restriction on car parking permits for occupiers was also found to be necessary. However, that appeal involved a condition with a different wording to those in dispute here and did not prevent a parking permit being applied for.

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<sup>1</sup> PINS Ref: APP/H5390/W/20/3244349

Furthermore, whether that condition was reasonable and relevant to planning were not matters referred to in that decision. This does not therefore convince me that the conditions should be retained.

11. The site is within the Studdridge Conservation Area (CA). There is no dispute between the main parties that removal of the conditions would have no adverse effect on the character or appearance of the CA. Having considered the proposal and visited the site and its surroundings, I concur with that view. Accordingly, the character and appearance of the CA as a whole would be preserved, but this does not alter my conclusion on the main issue. Representations have referred to matters such as loss of privacy, noise and disturbance and flood risk from the proposal. However, this decision relates solely to the parking permit conditions and so these matters are not relevant to my determination.

### **Conditions**

12. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The PPG also indicates that a grant of planning permission under section 73 should not extend the time period for implementation. However, the conditions recommended by the Council suggest that the development has been implemented and, from my observations on site, I see no reason to disagree.
13. Therefore, and with the agreement of the parties, I have imposed a condition that makes clear that this permission has effect from the date of this decision. I have also amended the previous conditions that required information to be submitted to and approved by the Council before the commencement of development (numbers 8, 9, 13) to instead require this information within three months, and that these measures be installed within six months. Similarly, for those conditions where information has already been provided (19, 20 and 21), I have amended their wording to require the installation of these measures within six months.

### **Conclusion**

14. For the reasons given above, notwithstanding that I have found conditions 10 and 11 to be necessary, I have found that the three disputed conditions fail the tests set out in Paragraph 56 of the Framework, and the PPG, and so should be deleted. The appeal should therefore be allowed.

*O Marigold*

INSPECTOR

### **Schedule of Conditions**

- 1) Notwithstanding the time limits given to implement planning permission as prescribed by Sections 91 and 92 of the Town and Country Planning Act 1990 (as amended), this permission in so far as it relates to the development (being granted under section 73A of the Act in respect of development already carried out) shall have effect from the date of this decision.

- 2) The development shall not be carried out otherwise than in accordance with the details shown in the following approved drawings: A\_PL\_099 Rev B, A\_PL\_100 Rev C, A\_PL\_101 Rev C, A\_PL\_102 Rev C, A\_PL\_200 Rev A, A\_PL\_201 Rev A, A\_PL\_300, A\_PL\_301; A\_PL\_002 Rev B.
- 3) The number of children attending the premises in connection with the operation of the nursery use shall not exceed 90 at any one time for a temporary period of 18 months from the date of this decision. The number of children is permitted for a limited period only and shall revert back to 70 on or before the date 18 months from the date of this decision unless, prior to that date, an application for renewal of planning permission has been submitted to and approved by the Council.
- 4) The basement and ground floors of the premises hereby approved shall be used only as a children's day nursery and for no other purpose, including any other purpose within Class D1 of the Town and Country Planning (Use Classes) Order 1987.
- 5) The nursery use hereby permitted shall only operate between 08:00 and 18:00 hours Mondays to Fridays, and not at all on Saturdays, Sundays or Bank Holidays. These hours are permitted for a limited period only and shall revert back to 08:15 and 18:00 hours Mondays to Fridays, and not at all on Saturdays, Sundays or Bank Holidays, on or before the date 18 months from the date of this decision unless, prior to that date, an application for renewal of planning permission has been submitted to and approved by the Council.
- 6) Other than for fire safety drill and emergency purposes, the open area of private amenity space at the rear of 165 and 167 New Kings Road shall not be used by staff or children attending the nursery/pre-preparatory school, other than for a maximum of one hour between 10:15 – 11:15 and 14:45 – 15:45 hours.
- 7) Noise from machinery or equipment operated in connection with the Class D1 use hereby approved shall not be less than 10dB LAeq below the existing background LA90 noise level, which exists in the absence of such machinery or equipment operating. The background level shall be measured, for the purposes of this condition, from the nearest noise sensitive location, in accordance with BS4142.
- 8) Within three months of the date of this decision, details shall be submitted to, and approved in writing by, the Council, of an enhanced sound insulation value DnT,w and LnT,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. Within six months of the date of this decision the development shall be carried out in accordance with the approved details and the approved noise attenuation measures shall be fully installed. They shall be permanently retained thereafter.
- 9) Within three months of the date of this decision, details shall be submitted to and approved in writing by the Council, of the sound insulation of the floor/ ceiling/ walls separating the commercial part(s) of the premises from dwellings and neighbouring dwellings. Details shall demonstrate that the sound insulation value DnT,w is enhanced by at

least 10dB above the Building Regulations value and, where necessary, additional mitigation measures are implemented to contain commercial noise within the commercial premises and to achieve the criteria of BS8233:2014 within the dwellings/ noise sensitive premises. The approved details shall be implemented within six months of the date of this decision and thereafter be permanently retained.

- 10) Deleted
- 11) Deleted
- 12) Deleted
- 13) Within three months of the date of this decision, 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. The approved details shall be implemented throughout the project period.
- 14) No plumbing, extract flues or pipes (other than rainwater pipes) shall be affixed to the front elevation of the building without the prior approval in writing of the Local Planning Authority.
- 15) The mansard roof extension and second floor rear extension hereby approved shall be clad in natural or artificial slate to match the appearance of the existing roof.
- 16) No water tanks, water tank enclosures or other structures shall be erected upon the flat roofs of the extensions hereby permitted.
- 17) Notwithstanding any details or annotations to the contrary on the approved plans, the raised party walls of the rear roof extension hereby permitted shall be constructed of London stock brick to match the existing building and shall not project more than 250 millimetres above or beyond the external faces of the main body the roof extension.
- 18) 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 approved drawings, without planning permission first being obtained. Any such changes shall be carried out in accordance with the approved details.
- 19) Within six months of the date of this decision the cycle storage facilities as shown on approved drawing No. A\_PL\_002 Rev B shall be provided and thereafter such facilities shall be retained, and the space used for no other purpose and the development shall not be carried out otherwise than in accordance with any such approval given.
- 20) Within six months of the date of this decision, the refuse storage arrangements shown on approved drawing No. A\_PL\_002 Rev B shall be provided and made available for use by the occupiers of the dwellings and the facilities provided shall thereafter be retained and shall not be used or the space used for any other purpose.

- 21) Within six months of the date of this decision the Sustainable Urban Drainage Systems (SUDS) details approved under application ref. 2018/04147/DET dated 18th February 2019 shall be implemented in accordance with the approved details, and thereafter permanently retained and maintained in line with the agreed plan.

**End of Conditions**