



Appeal Decision

Site visit made on 31 August 2022

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2023

Appeal Ref: APP/H5390/W/22/3292592

46 Pennard Road, London W12 8DS

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr John McCann against the decision of London Borough of Hammersmith and Fulham.
- The application Ref 2021/03834/VAR, dated 29 November 2021, was refused by notice dated 25 January 2022.
- The application sought planning permission for the conversion of a single family dwelling into 1 x 3 bedroom self-contained flat, 1 x 2 bedroom self-contained flat and 1 x 1 bedroom self-contained flat; erection of a rear roof extension; erection of a single storey extension to the side of the main building and to the side and rear of the existing back addition; alterations to the rear elevation to include the installation of new windows, Juliet balconies and bi-folding doors; installation of new railings to the front boundary wall and installation of a refuse and bike store in the front garden area without complying with conditions attached to planning permission Ref 2017/03503/FUL, dated 3 November 2017.
- The conditions in dispute are Nos 10, 11 and 12 which state that:
Condition 10
The new residential units known as Flats 2 and 3 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 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.
Condition 11
No occupiers of the new residential units known as Flats 2 and 3 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.
Condition 12
The new residential units known as Flats 2 and 3 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 dwelling 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 10
In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new units 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.

Condition 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 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.

Condition 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 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.

Decision

1. The appeal is allowed and planning permission granted for the conversion of a single family dwelling into 1 x 3 bedroom self-contained flat, 1 x 2 bedroom self-contained flat and 1 x1 bedroom self-contained flat; erection of a rear roof extension; erection of a single storey extension to the side of the main building and to the side and rear of the existing back addition; alterations to the rear elevation to include the installation of new windows, Juliet balconies and bi-folding doors; installation of new railings to the front boundary wall and installation of a refuse and bike store in the front garden area without compliance with condition Nos. 10, 11 and 12 previously imposed on planning permission 2017/03503/FUL dated 3 November 2017 and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The planning permission to which this appeal relates was granted prior to the adoption of the Council's current Local Plan in 2018. The policy justification for the disputed conditions has now been superseded by policies contained within the Hammersmith and Fulham Local Plan 2018. The planning application to remove the disputed conditions refers to the more up to date policies in the refusal reason and so shall I.
3. It appeared from my site visit that the planning permission has been implemented. As there is not particular evidence before me to cast this into doubt, and the permission would have otherwise lapsed, I have assumed this to be the case and proceeded to determine the appeal on the basis of the application.
4. Whilst I have allowed the appeal, I have not removed the requirement for a mechanism to control on-street parking. Rather I have amended the conditions attached for the reasons detailed below.

Background and Main Issues

5. Planning permission was granted for alterations and extensions to the appeal property to allow its conversion from a single-family dwelling to three self-contained flats (permission reference 2017/03503/FUL). The permission was granted subject to three conditions which collectively seek to restrict occupiers of the flats at the first and second floors (referred to by the Council

as Flats 2 and 3) of the appeal property from being eligible for a parking permit, to ensure that the development does not harm the existing amenities of the occupiers of neighbouring residential properties by adding to the already high levels of parking stress in the area.

6. The appellant wishes to remove these conditions on the basis that there is lack of evidence to justify them and they do not meet the tests for conditions in the National Planning Policy Framework (the Framework).
7. 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
 - If so, whether or not the disputed conditions provide such a mechanism.

Reasons

Need for a Mechanism to Control Parking

8. The appeal property is in an area with a Public Transport Accessibility Level (PTAL) rating of 6a which represents very good access to public transport. Pennard Road is a one-way street with on-street parking set out in marked bays on both sides of the street limiting the thoroughfare to single width and is subject to Controlled Parking Zone (CPZ) restrictions.
9. 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 parking demand resulting from the proposed development. Nevertheless, it was evident from my site visit that Pennard Road is heavily parked during the day. Whilst I appreciate that this is just a snapshot in time, I have no reason to believe that what I observed was not typical for the road. The surrounding streets are also subject to parking and waiting restrictions which means that parking is unlikely to be conveniently available elsewhere should no spaces be available on the appeal road.
10. Whilst not part of the original reasons for imposing the disputed conditions, Policy T4 of the Hammersmith and Fulham Local Plan (2018) (the Local Plan) now requires that all new development requires car parking permit free measures unless evidence is provided to show that there is a significant lack of public transport available. The reason for controlling parking is not just to protect areas from parking stress. As well as seeking to ensure that traffic generated by new development does not add to parking pressure elsewhere or cause highway safety issues, Policy T1 of the Local Plan also promotes and supports the modal shift away from the private car with a range of initiatives designed to improve access to alternative modes of transport across the borough. Additionally, Local Plan Policy CC10 expects new development to contribute towards improving local air quality, particularly where it could significantly increase traffic-generated emissions. Furthermore, Local Plan Policy HO11 seeks to ensure that new housing is of a high-quality taking vehicle parking into account.
11. Accordingly, I conclude that a mechanism to control parking to ensure that the new flats created by the development is permit free is reasonable and necessary, having regard to the requirements of Policies T1, T4, CC10 and HO11 of the Local Plan as well as the advice set out in Key Principle TR3 of the

Council's Supplementary Planning Guidance which advises that development in areas well connected by public transport are expected to be car-free with no parking provided, other than for disabled people.

Efficacy of the Disputed Conditions

12. To meet the requirements of car parking permit free measures, the development was permitted on the basis that the occupants of the flats at first and second floors would not be eligible for a residents parking permit. The issue of permits is the responsibility of the highways authority and are the subject of Traffic Management Orders (TMOs).
13. 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, condition 11 is written in a way that would be unlikely to pass the tests for conditions in the National Planning Policy Framework (the Framework) and would therefore be unreasonable.
14. However, to deliver car parking permit-free measures in line with Local Plan Policy T4, a mechanism would be required to ensure that occupiers, other than Blue Badge holders would not be eligible to apply for a resident parking permit. The mechanism must make a clear connection with the property in question. In order that the Council can make the appropriate amendment to the TMO, it would be necessary for them to be provided with precise details of the addresses of the properties which would not be eligible for a permit. Condition 10 would enable that information to be provided to the Council and hence is considered necessary to enable the development to provide car parking permit-free measures as required by Policy T4. Minor modifications to the condition would be necessary to improve the preciseness of the wording to clarify which residential units are affected and the permission to which the requirement relates. Moreover, Condition 12 places a restriction on the development in that a scheme be submitted rather than placing a restriction directly on the occupiers of the property themselves. Whilst the scheme would restrict future occupiers of the property, in itself the condition would pass the tests of the Framework and is therefore reasonable and necessary to ensure the aims of Local Plan Policies T1 and T4 in achieving a modal shift in the borough.
15. My attention has been drawn to a number of other appeals in support of each party's respective case, where the Inspector concluded that similar conditions did not pass the tests set out in the Framework. However, in some cases Inspectors have concluded that the conditions are necessary as no better solution to secure car free development could be found. While mindful of the various approaches that have been taken, the evidence before me in this case leads me to conclude that conditions 10 and 12 do meet the relevant tests.
16. I therefore conclude that condition 11 would not meet the tests for the use of conditions and is therefore not an appropriate mechanism to secure a car parking permit free development. However, condition 10 provides a mechanism by which their records of properties not eligible for car parking permits can be updated on a periodic basis and is therefore considered reasonable and necessary. Similarly condition 12 would allow the Council to agree a mechanism by which future occupiers of the flats would be aware of the restriction placed upon their occupation.

17. Requiring that the units at first and second floors have car parking permit free measures is justified having regard to the requirements of the development plan, and conditions 10 and 12 together are therefore necessary to provide a mechanism for this and pass the test of being related to planning as a means to achieve modal shift in the Borough set out in Local Plan Policies T1 and T4.

Other Matters

18. The site is within the Shepherd's Bush Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on the decision maker to have regard to the desirability of the preserving or enhancing the character or appearance of the CA. In considering the effect of the proposal on the CA the impact must be weighed against the harm it would have on the heritage asset.
19. Neither party has suggested that there would be any impact on the character or appearance of the CA. Given the nature of the conditions before me, I have no reason to disagree.

Conditions

20. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under Section 73 should also reinstate the conditions imposed on earlier permissions that continue to have effect. I have little information on the extent to which these conditions have been complied with. In the event that they have, this is a matter that can be resolved between the parties after my decision has been issued, so I have imposed all of the conditions as originally stated, with minor corrections to their wording where necessary. That is with the exception of the standard time limit condition, which, given the age of the original permission, I have not repeated.

Conclusion

21. For the reasons given above I conclude that conditions 10 and 12 are necessary albeit in a revised form. I also conclude that condition 11 is not reasonably imposed and should therefore be deleted. The effect of my decision leads me to conclude that the appeal should be allowed.

K L Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall not commence later than the expiration of 3 years beginning with the date of this planning permission.
- 2) The development shall be carried out and completed only in accordance with the approved drawings, and the height of the ridgeline shall match that of the existing ridgeline next door.

- 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) The flank/party walls of the rear roof extension and the single storey side and rear extensions shall be built in stock bricks to match the main building.
- 5) No plumbing, extract flues or pipes, other than rainwater pipes, may be fixed on the front elevation of the buildings.
- 6) The flank/party walls of the rear roof extension hereby permitted shall follow the profile of the extension and shall not project more than 250 millimetres above or beyond the external faces of the main roof structure.
- 7) The elevations of the roof extensions hereby approved shall be clad in slates or artificial slates.
- 8) The roof of the dormer window hereby approved shall be finished in lead or zinc, and thereafter permanently retained in this form.
- 9) Prior to occupation of the new extension hereby permitted, the Juliet balcony shall be installed to the rear dormer roof extension and shall be made of metal and painted black. The railings shall thereafter be maintained in this form.
- 10) Prior to the first occupation of the residential units at first and second floors hereby permitted the Council shall be notified in writing (and has acknowledged such notification) of the full postal address of the dwellings. Such notification shall be to the council's Head of Development Management and shall quote the planning permission reference 2021/03834/VAR and appeal reference APP/H5390/W/22/3292592.
- 11) The residential units known as Flats 2 and 3 shall not be occupied until such a time as a scheme has been submitted to and approved in writing by the Council to ensure that all occupiers, other than house 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 that in accordance with the approved scheme.
- 12) Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of an enhanced sound insulation value $D_{nT,w}$ and $L'_{nT,w}$ of at least 5dB above the Building Regulations value, for the wall/floor/ceiling 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.
- 13) Other than the area marked on the approved drawings as being a roof terrace, no other part of the roof of the new building, including the remainder of the flat roof at first floor level, shall be used use as a roof terrace or other form of open amenity space. No alterations shall be carried

out; nor planters or other chattels placed on these roofs in connection with their use as a roof terrace or other form of open amenity space. No railings or other means of enclosure shall be erected on the roofs, and no alterations shall be carried out to the rear elevation of the application property to form access onto these roofs. The windows to the rear elevation at first floor level shall be fixed shut to prevent any access being taken onto the flat roofs and permanently retained as such.

- 14) The flats hereby approved shall not be occupied until details, including location, size specification and type of fixture, of four dedicated cycle storage spaces for the new development have been submitted to, and approved in writing by, the Council. No part of the development shall be used or occupied prior to the completion of the development in accordance with the approved details.
- 15) The residential unit known as Flat 2 hereby approved shall not be occupied until details, including a sample, of the 1.7m high obscure glazed screen to be erected on the boundary with No.48 Pennard Road at first floor level has been submitted to, and7 Page 5 2017/03503/FUL approved in writing by, the Council and installed in accordance with the agreed details. Thereafter the screen shall be permanently maintained as such.
- 16) The new bi-folding doors in the ground floor rear extension hereby approved shall be formed of either timber or aluminium, and all other new windows hereby approved shall be formed of timber.