



Appeal Decision

Site visit made on 7 February 2023

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2023

Appeal Ref: APP/H5390/W/22/3304790

26 Shepherd's Bush Road, Hammersmith and Fulham, London W6 7PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by GWN Holding Ltd against the decision of London Borough of Hammersmith and Fulham.
- The application Ref 2022/00578/FUL, dated 26 February 2022, was approved on 18 July 2022 and planning permission was granted subject to conditions.
- The development permitted is change of use of the lower ground and upper ground floor level from restaurant (Class E) into 1 x 3 bedroom self-contained flat (Class C3); replacement of existing shopfront and entrance doors; alterations to forecourt to include removal of existing timber decking and replacement of glass blocks to existing front lightwell with a new glazed rooflight, and replacement of existing perspex boundary with new black railings on brick plinth and new metal gates; infilling of void at lower ground floor level to the existing back addition; replacement of existing door and windows with new UPVC double glazed window to the side elevation of the existing back addition at lower ground floor level; replacement of existing window with UPVC bi-folding doors to the rear elevation at lower ground floor level; replacement of window with a new uPVC double glazed window to the rear elevation at second floor level; replacement of existing railings with new wrought iron railings to existing roof terrace at first floor level to the rear elevation; formation of a bin store at the rear of the property; removal of the existing extraction flue.
- The conditions in dispute are Nos 11, 12 and 13 which state that:
 - 11. The new residential unit 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 residential unit. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter.*
 - 12. No occupiers of the new 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 receipt.*
 - 13. The new 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 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:
 - 11. In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new unit 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; and in order to discourage the use of private cars in the borough in the interests of local air quality, in accordance with Policies T4 and CC10 of the Local Plan (2018), and Key Principle TR3 of the Planning Guidance SPD (2018).*

12. 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; and in order to discourage the use of private cars in the borough in the interests of local air quality, in accordance with Policies T4 and CC10 of the Local Plan (2018), and Key Principle TR3 of the Planning Guidance SPD (2018).

13. In order that the prospective occupiers of the residential unit 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; and in order to discourage the use of private cars in the borough in the interests of local air quality, in accordance with Policies T4 and CC10 of the Local Plan (2018) and Key Principle TR3 of the Planning Guidance SPD (2018).

Decision

1. The appeal is allowed and planning permission Ref 2022/00578/FUL, for change of use of the lower ground and upper ground floor level from restaurant (Class E) into 1 x 3 bedroom self-contained flat (Class C3); replacement of existing shopfront and entrance doors; alterations to forecourt to include removal of existing timber decking and replacement of glass blocks to existing front lightwell with a new glazed rooflight, and replacement of existing perspex boundary with new black railings on brick plinth and new metal gates; infilling of void at lower ground floor level to the existing back addition; replacement of existing door and windows with new UPVC double glazed window to the side elevation of the existing back addition at lower ground floor level; replacement of existing window with UPVC bi-folding doors to the rear elevation at lower ground floor level; replacement of window with a new uPVC double glazed window to the rear elevation at second floor level; replacement of existing railings with new wrought iron railings to existing roof terrace at first floor level to the rear elevation; formation of a bin store at the rear of the property; removal of the existing extraction flue at 26 Shepherd's Bush Road, Hammersmith and Fulham, London W6 7PJ, is varied, by deleting conditions 11, 12 and 13.

Background and Main Issue

2. This appeal relates to conditions forming part of planning permission Ref 2022/00578/FUL which was granted on 18 July 2022 (the original permission) for the change of use of a restaurant at lower and ground floor levels to 1 self-contained flat, as well as various alterations and additions.
3. No 26 comprises a mid-terrace property fronting the busy Shepherds Bush Road. Conditions 11, 12 and 13 attached to the original permission essentially sought to prevent the occupiers of the additional flat, other than blue badge holders, from applying for, or holding permits for on-street car parking.
4. Taken together, the reasons for the imposition of the three conditions was to ensure that the development did not cause harm to the amenities of neighbouring residents by increasing parking stress and to discourage the use of private cars in the Borough in the interests of local air quality. The appellant is seeking to remove all three conditions.
5. Therefore, the main issue of the appeal is whether or not conditions 11, 12 and 13 of the above-mentioned planning permission are necessary and reasonable

to ensure that the development does not harm air quality and the existing amenities of the occupiers of neighbouring residential properties by adding to on-street car parking stress in the area.

Reasons

6. Policy T4 of the Hammersmith and Fulham Local Plan, February 2018 (Local Plan) states that the Council will 'require car parking permit free measures on all new development unless evidence is provided to show that there is a significant lack of public transport available'. The supporting text indicates that the Council will only consider the issuing of permits for on-street parking in locations where the Public Transport Accessibility Level (PTAL) is 2 or lower. The levels of local parking stress must also be considered when assessing the impact of additional on street parking.
7. Key Principle TR3 of the Hammersmith and Fulham Planning Guidance Supplementary Planning Document February 2018 (SPD) similarly states that development in areas well connected by public transport will be expected to be car-free. Parking permits may be issued for residential development subject to them being within areas of PTAL 1-2. Similarly, Policy T6 of the London Plan states that car-free development should be the starting point for all proposals in places that are well-connected to public transport.
8. The appeal development includes no car parking facilities and so it is likely that car-driving occupiers and visitors would be reliant upon roadside parking spaces nearby. The Council's case indicates that the area already suffers from significant on-street parking stress. However, there is no substantive evidence before me that indicates the current capacity/shortfall in spaces, or demonstrates the extent to which the development may affect demand for roadside parking or how it would exacerbate local on-street parking stress.
9. Shepherd Bush Road is a busy highway that incorporates a segregated bus lane. Due to the priority given to the flow and safety of traffic there are no on-street parking spaces along the section of highway close to the appeal site. Long stay parking options are nonetheless available on adjacent streets near the appeal site. These are primarily for permit holders along with the option to pay and display, or by phone.
10. During my mid-week, early afternoon site visit, I noted, that although parking levels along the nearby streets of Westwick Gardens, Minford Gardens and Poplar Grove were high, there were several unoccupied bays. Whilst I appreciate that this was only a snapshot in time of local conditions, the Council have provided no firm evidence that local parking pressure is at a level where there would not be capacity along surrounding streets, or any details of how parking congestion is currently having a detrimental effect on highway safety and local residential amenity.
11. Without conditions 12 and 13 the number of parking permits issued at the property would not be controlled. Yet, the proposal results in a net increase of one flat and even if the occupants of that flat were to have multiple permits, it is likely that there would still be an adequate number of car parking spaces available in the vicinity of the appeal site to cater for the additional parking demand.

12. The site is not within PTAL 1-2 and there would be conflict with Policy T4 of the Local Plan and Key Principle TR3 of the SPD. However, in this particular case and based on the evidence before me, the disputed conditions would not be necessary to make the development acceptable in planning terms. From what I observed and in light of the lack of evidence to demonstrate parking stress levels, if future occupiers were issued parking permits, the streets near to the appeal site would have sufficient capacity to accommodate the modest additional car parking that may arise from the development, without demonstrable harm.
13. Removing conditions 12 and 13 would not have an unacceptable adverse impact on parking stress in the area and therefore not lead to an unacceptable effect on the amenities of local residents. Furthermore, from the evidence presented to me, there would not be a harmful impact on highway safety were the likely additional cars parked locally. Consequently, there are considerations in this instance that outweigh the policy conflict.
14. I acknowledge that national and local policies seek to promote sustainable, less polluting modes of transport that contribute to lowering air pollution. However, limited information has been put to me to indicate that removing the disputed conditions would give rise to any significant increases in local air pollution levels, or lead to significant car usage and traffic congestion. In addition, the likely implications from vehicle usage are limited by the scale of the development, with one additional flat unlikely to significantly harm air quality. Moreover, even where occupants own a car they may not be used frequently or be used in conjunction with public transport journeys that could be accessed nearby. Additionally, with the advent of increased electric vehicle ownership, there is a possibility that future occupiers would own this type of vehicle. Such a prospect would not harm local air quality.
15. Given that I have found that conditions 12 and 13 are not required, this therefore renders condition 11, which involves occupiers of the relevant flats submitting address details to the Council, unnecessary.
16. The appellant's case has referred to the disputed conditions being unreasonable and not related to planning. On this matter, I note that the conditions have been worded to place restrictions on future occupiers of the flats, rather than relating to the appeal building or land upon which it is on. Nor is it clear how preventing an occupier from applying for a parking permit could be enforced. As such the relevant conditions would not meet the tests of precision, reasonableness, relevance to planning or enforceability contained in the Framework and in Planning Practice Guidance (PPG). Notwithstanding this, I have found that the conditions would not be necessary or reasonable given that there would be sufficient parking opportunities in the vicinity for occupiers of the appeal development.
17. For the reasons given above, conditions 11, 12 and 13 are not necessary and reasonable to ensure that the development does not harm air quality and the existing amenities of the occupiers of neighbouring residential properties by adding to on-street car parking stress in the area. Therefore, it would comply with Policies T1 and CC10 of the Local Plan which requires proposals to reduce adverse air quality impacts and that traffic generated is minimised so that it does not add to parking pressures on local streets or congestion.

18. The proposal would also comply with the National Planning Policy Framework (the Framework) where it states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. Moreover, the removal of the conditions would accord with the Framework where it requires that planning conditions should be kept to a minimum and only imposed where, amongst other things, they are necessary and reasonable.

Other Matters

19. The Council has referred to several dismissed appeals to demonstrate that the wording of similarly disputed conditions meets the test of necessity. In the case of the Shepherds Bush Road, Edith Villas, Lillie Road and Dancer Road appeals, those schemes related to more than one additional housing unit where more pressure would be placed on local parking conditions. Council surveys indicating high levels of parking stress were also provided for some of those cases (Edith Road and Vera Road). In the case of the Chesson Road appeal that scheme was assessed differently, considering a differently worded condition to the ones before me. There was also no assessment on whether the condition in dispute was necessary or reasonable in accordance with the Framework's tests for conditions. In any case, unlike those other schemes, the conditions before me have not been deemed necessary in the context of air quality and on-street car parking stress in the area. Accordingly, this appeal can be distinguished from those others referred to.

Conclusion

20. For the reasons given above I conclude that conditions 11, 12 and 13 should be deleted. Accordingly, the appeal should succeed.

RE Jones

INSPECTOR