



Appeal Decision

Site visit made on 23 May 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st June 2023

Appeal Ref: APP/H5390/W/22/3311131

**Ground Floor Flat 131A Munster Road, Hammersmith And Fulham,
London SW6 6DD**

- 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 Robert Kean against the decision of London Borough of Hammersmith and Fulham.
- The application Ref 2022/02734/VAR, dated 25 September 2022, was refused by notice dated 11 November 2022.
- The application sought planning permission for *change of use of ground floor from restaurant (Class A3) into a one bedroom self-contained residential flat (Class C3); associated external alterations including the erection of a single storey rear extension to the side and rear of the existing back addition following partial demolition of existing back addition; installation of a new window to the rear elevation and to the side of rear back addition at ground floor level; alterations to existing shopfront to include installation of new windows and entrance door to replace the existing at ground floor level* without complying with conditions attached to planning permission Ref 2014/00526/FUL, dated 7 April 2014.
- The conditions in dispute are Nos 11, 12 and 13 which state that:
 - "11) The 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 flat. 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 occupier of the one 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".
 - "13) The one 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 flat 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, respectively:
 - "In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new 1 bed flat 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 DM A1, A9, J2 and J3 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011".
 - "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 DM A1, A9, J2 and J3

of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011”.

“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 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 DM A1, A9, J2 and J3 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011”.

Decision

1. The appeal is allowed and planning permission is granted for change of use of ground floor from restaurant (Class A3) into a one bedroom self-contained residential flat (Class C3); associated external alterations including the erection of a single storey rear extension to the side and rear of the existing back addition following partial demolition of existing back addition; installation of a new window to the rear elevation and to the side of rear back addition at ground floor level; alterations to existing shopfront to include installation of new windows and entrance door to replace the existing at ground floor level without complying with conditions attached to planning permission Ref 2014/00526/FUL, dated 7 April 2014 at Ground Floor Flat 131A Munster Road, Hammersmith And Fulham, London SW6 6DD in accordance with the terms of the application, Ref 2022/02734/VAR, dated 25 September 2022, subject to the conditions in the attached schedule.

Background and Main Issue

2. The appeal property was granted planning permission for change of use from a restaurant into a one-bedroom flat on 7 April 2014 under reference 2014/00526/FUL. Among the planning conditions attached to the permission were the three disputed conditions, which collectively seek to restrict occupiers of the flat from being eligible for a parking permit. The conditions seek to ensure that the development does not harm the existing amenities of neighbouring residential properties by adding to the already high level of on-street car parking stress in the area.
3. The application sought to remove these conditions, on the basis that there is a lack of evidence to justify them, and that they do not meet the tests for conditions set out in the National Planning Policy Framework (the Framework). In refusing the application, the Council’s Officer Report and reason for refusal also referred to the effect of removing the conditions on highway safety, sustainable transport choices and air quality.
4. Therefore, the main issue in this appeal is whether the conditions are necessary and reasonable having regard to on-street car parking provision in the area, highway safety, sustainable transport choices and air quality.

Reasons

5. In support of the appeal, my attention has been drawn to 16 appeal decisions in the London Borough of Hammersmith and Fulham. All of these appeals were against the refusal to remove similar conditions from permissions for residential development, which sought to restrict the ability of future occupants to apply for and hold a parking permit. The Council has had the opportunity, through the appeal process, to comment on these decisions and their relevance

to this appeal, but I have not received any evidence in this regard. Whilst each appeal is required to be determined on its merits, these appeals relate to conditions that are substantially the same as those before me now, and in many cases are identical. They are all relatively recent, and one relates to a development in the same road. I therefore give them substantial weight in my considerations.

6. Policy T4 of the Hammersmith & 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 Planning Guidance Supplementary Planning Document, 2018 (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.
7. In this case, the Council identifies that the property lies within an area where the PTAL is 4, which means that it benefits from good public transport links. I saw that the site is on a bus route, with stops within walking distance. There is also an underground station in reasonably close proximity. There is not, therefore, a significant lack of public transport available. Furthermore, I saw a range of local services and facilities within easy walking distance. Consequently, this is a location where Policy T4 of the Local Plan and Policy TR3 of the SPD would expect new residential development to be car-free.
8. Policy HO2 of the Local Plan says that in streets where there is less than 10% night-time free space, the number of additional dwellings may be restricted or conditioned to allow no additional on-street parking. The appellant contends that the Council has provided no quantitative evidence to support its claim that the area suffers from significant on-street parking stress. However, I have not been provided with survey information from the appellant showing that there is night-time capacity. In the absence of site-specific survey evidence from either party, I am reliant on my own observations. I saw that there was some availability in Munster Road near the premises, and there were some spaces in Vera Road. However, Gowan Avenue was fully parked. My visit was at midday on a weekday, and I have little doubt that there would be increased levels of on-street parking in the evenings and at weekends. From the evidence available, I conclude that this is an area where competition for on-street parking space from residents is high.
9. In any event, the reason for controlling car parking is not just to protect areas from parking stress. Policies T1 and T2 of the Local Plan also promote and support the development of initiatives designed to encourage modal shift away from private vehicles, and to reduce congestion and improve air quality. Accordingly, whilst I have not been provided with any evidence that the proposal would lead to any additional highway danger, I conclude that a mechanism to control parking to ensure that the flat is permit-free would accord with the aims and requirements of Policies T1, T2, T4 and HO2 of the Local Plan, and the advice in Key Principle TR3 of the SPD.

10. However, Condition 12 prevents the occupiers of the flat from applying for a parking permit, or from retaining such a permit, except for disabled persons who are blue badge holders. The condition states that, if such a permit is issued, it must be surrendered on demand. A planning permission, and any conditions it is subject to, should run with the land or building, and not with any individual. The disputed condition seeks to control the actions of an individual or group of individuals. It is not, therefore, a restriction that would be associated with the property which is the subject of the planning permission. This is an unreasonable approach, and the condition therefore fails the test of reasonableness that is required to be met by all conditions. Accordingly, I conclude that the condition should be removed.
11. Condition 13 requires, before occupation of the flat, 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. It is unclear from the wording what mechanism would be used to secure compliance with the condition. To meet the test of reasonableness, it would be necessary to ensure that the mechanism ran with the property, rather than applying to individual actions. Any mechanism would need to reflect that the issue of permits is the responsibility of highway authorities and subject to Traffic Management Orders (TMOs). There is likely to be a cost to amending the relevant TMO, to exclude the flat from the list of properties that are eligible to apply for permits. It therefore seems inevitable that the scheme would involve a planning obligation.
12. The Planning Practice Guidance (the PPG) makes it clear that a negatively worded condition, limiting the development that can take place until a planning obligation or other agreement has been entered into, is unlikely to be appropriate in the majority of cases¹. However, it does say that, in exceptional circumstances, a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). In this case, the proposal is not complex, and no exceptional circumstances have been demonstrated to justify a negatively worded condition in respect of the requirement for an obligation or other agreement. The condition therefore fails the test of reasonableness, and I conclude that it should be removed.
13. Condition 11 requires the postal address of the flat to be submitted to the Council prior to its occupation. While this may be administratively helpful, the condition is not relevant to planning because it is not directly related to the use of land and buildings. Furthermore, it is not necessary, as there are other mechanisms available for street naming and numbering. In the light of my conclusion on conditions 12 and 13, it has no purpose. For these reasons, the condition does not therefore meet the tests of relevance or necessity.
14. My conclusions on whether the disputed conditions meet the tests laid out in the Framework are consistent with the approach adopted by the Inspectors in the numerous cases quoted by the appellant. The Council has drawn my attention to an appeal decision² where an Inspector concluded that similar

¹ Paragraph: 010 Reference ID: 21a-010-20190723

² Appeal Ref: APP/H5390/W/19/3242157

conditions were necessary, relevant, and reasonable having regard to on-street parking. It is not apparent, in that case, whether any other appeal decisions had been provided in the evidence. In any event, nine of the decisions that have been put before me are more recent than that decision, and therefore carry more weight in my conclusions.

15. Whilst I acknowledge the objectives of the development plan policies, I have found that the disputed conditions do not meet the tests in the Framework for the use of conditions, and are not therefore an appropriate mechanism for securing those objectives. I have given consideration to whether I could alter or replace the disputed conditions with condition(s) that would achieve similar objectives. However, neither party has suggested any alternative wording, so such action could be prejudicial to one or both parties.

Conditions

16. The PPG says that, to assist with clarity, 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. In this case I have limited information before me about the status of the other conditions imposed on the original planning permission. I shall therefore impose all those that remain relevant.
17. The application form indicates that the development was commenced on 8 April 2014 and completed on 9 January 2015. The Council has not questioned this position. Consequently, a time limit condition is not necessary. In view of the length of time since the development was completed, a condition requiring the development to be carried out and completed in accordance with the approved plans, any pre-commencement conditions, and conditions requiring the development to be constructed in a particular way (but not retained as such) are no longer relevant, so are not restated.
18. A condition requiring the installation of all flood prevention and mitigation measures has been reimposed, as I have no evidence of what measures were required, and whether they have been provided.
19. Conditions preventing the installation of plumbing, extract flues and pipes on the front elevation, and water tanks and plant on the flat roof are still relevant, in the interests of the character and appearance of the area. A condition preventing use of the roof of the extensions as a terrace or amenity space is still relevant, to ensure no unacceptable impact on the living conditions of neighbouring occupiers. Conditions requiring the provision and retention of bin and cycle storage are still relevant, but require rewording in the light of the development having already been completed.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR

Schedule of Conditions

- 1) All flood prevention and mitigation measures should be installed as outlined in the Flood Risk Assessment approved by the local planning authority under reference 2014/00526/FUL on 7 April 2014.
- 2) No plumbing, extract flues or pipes, other than rainwater pipes, may be fixed on the front elevation of the building.
- 3) The roof of the extension hereby approved shall not be used as a terrace or other amenity space. No railings or other means of enclosure shall be erected on or around the roof, and no alterations shall be carried out to the rear elevation of the application property to form access onto the roof.
- 4) No water tanks, water tank enclosures or other structures shall be erected upon the flat roof of the extension hereby permitted.
- 5) Any facilities for the storage for refuse and recyclables that have previously been submitted to and approved in writing by the Council, pursuant to Condition 10 of planning permission reference 2014/00526/FUL on 7 April 2014, shall be permanently retained.
- 6) The approved cycle storage, as indicated on the approved drawing 732-201, shall be permanently retained in accordance with the approved details.

END OF SCHEDULE