



Appeal Decision

Site visit made on 19 June 2023

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2023

Appeal Ref: APP/H5390/W/22/3305825

Peterborough House, Peterborough Mews, London SW6 3BL

- 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 Ms Clare Guy against the decision of the London Borough of Hammersmith and Fulham Council.
 - The application Ref 2022/01182/FUL, dated 24 April 2022, was approved on 15 July 2022 and planning permission was granted subject to conditions.
 - The development permitted is erection of a part one, part three storey plus a single storey basement single family dwellinghouse; creation of swimming pool, plant room, entertainment and leisure rooms at basement level; and installation of a motorised vehicular turntable to the south of the proposed garage, with access provided from the existing entrance gate in Peterborough Mews.
 - The condition in dispute is No.23 which states that: Prior to the occupation of the development hereby permitted, the windows at first and second floor levels in the south and west elevation [P-07 Rev. A and P-08 Rev.A] shall be fitted with obscure glass to a minimum level of obscurity equivalent to Pilkington Texture Glass Level 3, and shall be non-opening and fixed shut up to a height of 1.7m above the finished floor level. The windows shall thereafter be permanently retained as approved.
 - The reason given for the condition is: To protect the amenities of adjoining occupiers in terms of privacy and overlooking in accordance with Policy HO11 of the Hammersmith and Fulham Local Plan (2018).
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Decision

1. The appeal is allowed and the planning permission Ref 2022/01182/FUL for erection of a part one, part three storey plus a single storey basement single family dwellinghouse; creation of swimming pool, plant room, entertainment and leisure rooms at basement level; and installation of a motorised vehicular turntable to the south of the proposed garage, with access provided from the existing entrance gate in Peterborough Mews at Peterborough House, Peterborough Mews, London SW6 3BL granted on 15 July 2022 by the London Borough of Hammersmith and Fulham Council, is varied by deleting condition 23 and substituting for it the following condition included in the attached revised schedule of conditions: 'Prior to the occupation of the development hereby permitted the window at second floor level in the west elevation shall be fitted with obscure glass to a minimum level of obscurity equivalent to Pilkington Texture Glass Level 3, and shall be non-opening and fixed shut. The window shall thereafter be permanently retained as approved.'

Main Issues

2. The original planning permission approved a new dwelling subject to a number of conditions. Condition 23 specified that windows at first and second floor levels in the west and south elevations be fitted with obscured glass and be non-opening and fixed shut up to a height of 1.7 metres above finished floor level. This condition was attached to the approval by the Council to protect the living conditions of adjoining residential occupiers in terms of their privacy from overlooking.
3. The appellant contends that condition 23 is not necessary and does not therefore meet one of the 'six tests' for conditions set out in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG). As part of their appeal statement the appellant has submitted a suggested variation of condition No.23 in order for it to apply to only the second floor window in the west elevation of the proposal.
4. Accordingly, the main issue is whether the condition No.23 of the planning permission is necessary with regard to the living conditions or neighbouring residential occupiers.

Reasons

5. The development of the relatively substantial detached house appears, from my sight visit, to be under construction. The appeal site is located at the rear of Peterborough Mews and is an enclosed urban plot that to the west backs on to the rear of terraced houses that front Broomhouse Road and their gardens. To the west the site is bounded by the rear garden and a detached annex of 1 Broomhouse Road (No.1).
6. The first and second floor windows in the south elevation of the development under construction would be located away from the boundary with the side of the Garden at No.1 and its detached annex. The first floor windows in the west elevation would face towards the boundary wall and rear garden of the house. Views from these windows would be partial and tangential.
7. Similarly, the second floor window in the south elevation would have views of the house and annex, albeit from a higher vantage point than those in the floor below. This would allow for more overlooking of the garden and views towards the rooflights of the annex, although views to the house and annex would be oblique and tangential. Overlooking of rear garden spaces from neighbouring properties is a characteristic of densely developed residential areas of this type.
8. Due to the distances involved and the partial and tangential views from windows in the first and second floor south elevations of the development under construction, I find that the extent of this overlooking would be in keeping and of a degree to be expected in a residential area of this type, this would not, therefore, be to a degree that would result in a loss of privacy that would cause any significant harm to the living conditions of the occupiers of No.1 or its annex.
9. However, the second floor window in the west elevation would look directly towards the windows of rear rooms in houses fronting Broomfield Road and there would be limited distance between the development under construction and these neighbouring dwellings. This limited distance and direct views into living spaces would result in intrusive overlooking that would result in a loss of

privacy. This loss of privacy would be to a degree that would cause substantial harm to the living conditions of the residential occupiers of these dwellings.

10. For these reasons I find that condition 23 is not wholly necessary and does not, therefore, meet one of the 'six tests' for conditions set out in the Framework and PPG. However, I have identified a need to protect the living conditions of the occupiers of dwellings fronting Broomhouse Road from views from the second floor window in the west elevation. This could be achieved through a revised condition requiring that this window has obscured glazing and is non-opening and fixed shut up to a height of 1.7 metres above finished floor level, as suggested as a variation by the appellant.
11. On this basis, the development under construction would accord with Policy HO11 of the Hammersmith and Fulham Local Plan (2018), the London Plan (2021) and the National Planning Policy Framework 2021, which collectively seek to ensure that development is of a high quality design, thereby, respecting the living conditions of occupiers of neighbouring buildings. I shall therefore vary this condition accordingly.

Conditions

12. The PPG sets out that decision notices for the grant of planning permission under section 73 should restate conditions imposed on the earlier permission that continue to have effect. In the event that some have been already discharged, that is a matter for the Council and the appellant to address.
13. The development underway appears to be in accordance with the original planning permission. As it has already commenced, I do not need to reimpose the standard time limit condition, which requires renumbering of the previous schedule of conditions.
14. I have included the numbers of approved plans in the plan condition as these were noted separately on the Council's decision notice.
15. A Condition regarding construction logistics planning is necessary to ensure proper operation of the public highway. Conditions regarding potential contaminated land are necessary to ensure no unacceptable risks are caused to humans, controlled waters or the wider environment. Conditions regarding parking provision on and off the site are necessary to ensure no addition to the level of on-street car parking stress in the area.
16. In the interests of design quality, a condition regarding submission and approval of detailed design and materials to be used for external surfaces is attached. In the interest of air quality, a condition is attached requiring submission and approval of details of heat-pumps and boilers.
17. To reduce the impact of flooding on future occupants and to prevent flooding more widely, conditions requiring completion of the sustainable drainage prior to occupation and pool emptying protocols are necessary. To ensure satisfactory provision of waste and cycle storage a pre-occupation condition is also included requiring submission and approval of details.
18. A condition requiring the dwelling to be used as residential units falling in Class C3 and not as a House in Multiple Occupation (HMO) without a further planning permission is attached, as HMO use would raise wider issues with regard to housing capacity in the local area that would need further consideration.

19. A condition regarding use of the roof or parts of the building for roof terraces or amenity space is necessary to protect the living conditions of neighbouring residential occupiers. For this reason, a condition requiring planning permission to be sought for fans, air-conditioning and extraction equipment and external pipework is also necessary.
20. To protect potential archaeological deposits on the site, conditions requiring submission and approval of a written scheme of investigation in sequence are necessary.

Conclusion

21. For the reasons given above and having regard to all matters raised, the appeal is allowed.

Victor Callister

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in complete accordance with the following plans and drawings: P-01; P-02 Rev. A; P-03 Rev. A; P-04; P-05; P-06 Rev. A; P-07 Rev. A; P-08 Rev. A; P-09 Rev. A; P-11; P-12; FRA with Addendum 14.07.22.
2. Prior to commencement of the development hereby approved, a Construction Logistics Plan shall be submitted to, and approved in writing by, the Council. This must be in accordance with Transport for London (TfL) requirements and should seek to minimise the impact of construction traffic on nearby roads and restrict construction trips to offpeak hours only. Thereafter the approved details shall be implemented throughout the project period.
3. No demolition shall take place until a preliminary risk assessment report is submitted to and approved in writing by the Council. This report shall comprise: a desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses; a site reconnaissance; and a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
4. No demolition shall take place until a site investigation scheme is submitted to and approved in writing by the Council. This scheme shall be based upon and target the risks identified in the approved preliminary risk assessment and shall provide provisions for, where relevant, the sampling of soil, soil

vapour, ground gas, surface and groundwater. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

5. Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no demolition shall commence until, following Page 3 2022/01182/FUL a site investigation undertaken in compliance with the approved site investigation scheme, a quantitative risk assessment report is submitted to and approved in writing by the Council. This report shall: assess the degree and nature of any contamination identified on the site through the site investigation; include a revised conceptual site model from the preliminary risk assessment based on the information gathered through the site investigation to confirm the existence of any remaining pollutant linkages and determine the risks posed by any contamination to human health, controlled waters and the wider environment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
6. Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no demolition shall commence until, a remediation method statement is submitted to and approved in writing by the Council. This statement shall detail any required remediation works and shall be designed to mitigate any remaining risks identified in the approved quantitative risk assessment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
7. Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no demolition shall commence until the approved remediation method statement has been carried out in full and a verification report confirming these works has been submitted to, and approved in writing, by the Council. This report shall include: details of the remediation works carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all waste management documentation showing the classification of waste, its treatment, movement and disposal; and the validation of gas membrane placement. If, during development, contamination not previously identified is found to be present at the site, the Council is to be informed immediately and no further development (unless otherwise agreed in writing by the Council) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the Council. Any required remediation shall be detailed in an amendment to the remediation statement and verification of these works included in the verification report. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

8. Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no demolition shall commence until an onward long-term monitoring methodology report is submitted to and approved in writing by the Council where further monitoring is required past the completion of development works to verify the success of the remediation undertaken. A verification report of these monitoring works shall then be submitted to and approved in writing by the Council when it may be demonstrated that no residual adverse risks exist. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.
9. The new residential dwellinghouse 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.
10. No occupiers of the new residential dwellinghouse 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.
11. The new residential dwellinghouse 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 units shall not be occupied otherwise than in accordance with the approved scheme unless prior written agreement is issued by the Council.
12. Prior to commencement of any construction works above ground level, details (including samples and specifications) of all materials to be used on the external faces of the development have been submitted to, and approved in writing by, the council. The development shall be constructed in full accordance with the agreed details and permanently maintained as such thereafter.
13. Prior to commencement of any construction works above ground level, drawings in plan, section and elevation at a scale of no less than 1:20 of each of the three gable elevations shall be submitted to, and approved in writing, by the Council. The development shall be constructed in full accordance with the agreed details and permanently maintained as such thereafter.
14. Prior to commencement of any construction works above ground level, details (including material, colour and finish) and drawings in plan, section and elevation at a scale of no less than 1:10 of all new rooflights, dormers, window bays and door bays shall be submitted to, and approved in writing by, the Council. The development shall be constructed in full accordance with the agreed details and permanently maintained as such thereafter.

15. No part of the development hereby approved shall be occupied until details of the installation of air source heat pumps (ASHP) or electric boilers to be provided for space heating and hot water shall be submitted to, and approved in writing by, the Council. The development shall be implemented in full accordance with the approved details prior to occupation and thereafter the systems shall be permanently retained and maintained in good working order.
16. No part of the development hereby approved shall be occupied until provision for sustainable drainage has been implemented in full accordance with the details contained within the Flood Risk Assessment received 16.9.2020. 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.
17. No part of the development hereby approved shall be occupied until provision has been made for the storage of domestic refuse and recycling, in the form of the dedicated storage area at ground floor level as indicated on the approved drawings. Thereafter the provision for refuse and recycling storage shall be so maintained for the life of the development.
18. No part of the development hereby approved shall be occupied until provision has been made for the storage of two cycles, in the form of the dedicated storage area as indicated on the approved drawings. Thereafter the provision for cycle storage shall be so maintained for the life of the development.
19. The residential unit at this address shall only be used as residential units falling within Class C3 of the Town & Country Planning (Use Classes) Order 1987 (as amended). The residential units shall not be used as housing in multiple occupation falling within Class C4 of the Town and Country Planning (Use Classes) (Amendment) (England) Order 2015 (as amended).
20. No other part of any roof of the new building 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 properties to form access onto the roofs.
21. No alterations shall be carried out to the external appearance of the development, including the installation of external, pipe work, air-conditioning units, ventilation fans or extraction equipment not shown on the approved drawings, without planning permission first being obtained.
22. Prior to the occupation of the development hereby permitted the window at second floor level in the west elevation shall be fitted with obscure glass to a minimum level of obscurity equivalent to Pilkington Texture Glass Level 3 and shall be non-opening and fixed shut. The window shall thereafter be permanently retained as approved.
23. No demolition or development shall take place until a stage 1 written scheme of investigation (WSI) has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI,

no demolition or development shall take place other than in accordance with the agreed WSI, and the programme and methodology of site evaluation and the nomination of a competent person(s) or organisation to undertake the agreed works.

24. If heritage assets of archaeological interest are identified by stage 1 (Condition 24) then for those parts of the site which have archaeological interest a stage 2 WSI shall be submitted to and approved by the local planning authority in writing. For land that is included within the stage 2 WSI, no demolition/development shall take place other than in accordance with the agreed stage 2 WSI which shall include: A. The statement of significance and research objectives, the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works B. Where appropriate, details of a programme for delivering related positive public benefits. B. Where appropriate, details of a programme for delivering related positive public benefits. C. The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. this part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the stage 2 WSI.
25. The development shall not be occupied prior to the submission and approval in writing by the Council of details of the measures proposed to ensure that the proposed mechanical car parking is maintained in working order and in accordance with the manufacturer's advice. The measures shall be implemented in full in accordance with the approved details, and shall thereafter continue to be implemented in full.
26. The pool to be emptied overnight and in dry periods, and the discharge rate is controlled such that it does not exceed a flow rate of 5 litres/ second into the public sewer network.