



# Appeal Decision

Site visit made on 13 September 2023

**by S Pearce BA(Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 October 2023**

## **Appeal Ref: APP/H5390/W/23/3319146**

### **1A Quarrendon Street, Hammersmith and Fulham, London SW6 3ST**

- 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 A Gosling against the decision of the Council of the London Borough of Hammersmith and Fulham.
- The application Ref 2023/00002/VAR, dated 3 January 2023, was refused by notice dated 7 March 2023.
- The application sought planning permission for the demolition of existing single storey garage and erection of a replacement two storey plus basement building to provide a one bedroom dwelling house; erection of a new low level boundary wall with railings on top, brick piers and a pedestrian access gate to the front elevation without complying with conditions attached to planning permission Ref 2020/03452/FUL, dated 26 February 2021.
- The conditions in dispute are Nos 20, 21 and 22 which state that:  
Condition 20 – *The 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 units. 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 21 – *No occupier of the residential unit 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 22 – *The residential unit 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 new residential units 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 20 – *In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new residential 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, in accordance with Policy HO2 and T4 of the Local Plan 2018.*  
Condition 21 – *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 HO2 and T4 of the Local Plan 2018.*  
Condition 22 – *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 HO2 and T4 of the Local Plan 2018.*

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## **Decision**

1. The appeal is allowed and planning permission is granted for the demolition of existing single storey garage and erection of a replacement two storey plus basement building to provide a one bedroom dwelling house; erection of a new low level boundary wall with railings on top, brick piers and a pedestrian access gate to the front elevation at 1A Quarrendon Street, Hammersmith and Fulham, London SW6 3ST in accordance with the application Ref 2023/00002/VAR dated 3 January 2023, without compliance with condition numbers 20, 21 and 22 previously imposed on planning permission Ref 2020/03452/FUL dated 26 February 2021 and subject to the conditions set out in the attached schedule.

## **Preliminary Matters**

2. The appellant has submitted a recent planning approval<sup>1</sup> from the Council, which allowed the removal of similar conditions to those being considered as part of this appeal. The appellant could not have submitted the additional information within the appeal timescales, due to the date of decision. The Council have been provided with an opportunity to comment and, albeit no further comments were made, I am satisfied that they have not been prejudiced by my acceptance of this late evidence.
3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 5 September 2023, replacing the version published on 20 July 2021. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by my taking this approach.

## **Main Issue**

4. The main issue is whether or not conditions 20, 21 and 22 are reasonable, necessary and relevant to planning, having regard to on-street car parking provision in the area, the impact on air quality and living conditions of the occupiers of neighbouring properties.

## **Reasons**

5. The appellant, in support of the appeal, has drawn my attention to a number of 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 an opportunity through the appeal process to comment on these decisions, but no comments in this regard have been received. While each appeal is required to be determined on its merits, the conditions the subject of these previous appeals are substantially the same as those the subject of the current appeal. As they are also relatively recent, these previous decisions, and the recent

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<sup>1</sup> Planning application reference 2023/01773/VAR

planning approval, are relevant material considerations in the assessment of this appeal.

6. The Framework makes clear that conditions attached to planning permissions should be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Planning Practice Guidance (PPG) refers to this guidance as the six tests.
7. Policy T1 of the Hammersmith and Fulham Local Plan February 2018 (LP) seeks, amongst other things, to encourage a modal shift away from private vehicles and ensure traffic generated by new development is minimised. These measures seek to improve congestion and air quality and ensure development does not add to parking pressures on local streets or congestion.
8. LP Policy T4 requires, among other things, 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 to this policy states 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. Supporting this, 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.
9. The site is within PTAL 3, thereby benefitting from good transport links. I observed during my site visit that the site is located within close proximity to bus and tube services. Therefore, the site is not located within an area where there is a significant lack of public transport available and, as a result, this is a location where LP Policy T4 and Key Principle TR3 of the SPD would require new residential development to have car parking permit-free measures.
10. LP Policy HO2 states, among other things, 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.
11. LP Policy HO11 seeks, among other things, to ensure that new housing will respect the principles of good neighbourliness and take into account vehicle parking.
12. LP Policy CC10 seeks to reduce the potential adverse air quality impacts of new development and requires mitigation measures to be implemented to reduce emissions.
13. Neither party has provided substantive evidence demonstrating on-street parking stress, the numbers of additional private car usage it is likely to generate, including any associated air quality impacts and any resultant impact upon the living conditions of occupiers of neighbouring properties. During my site visit, I observed some on-street parking spaces available on Quarrendon Street and neighbouring streets. Although my site visit was only a snapshot in time, and having regard to representations made from third parties, further evening demand would be likely to come from residents returning from work. I acknowledge therefore that there may well be on-street parking stress and congestion in the area.

14. Having regard to the above, I have no reason to doubt the aims and requirements of LP Policies T1, T4, HO2, HO11 and CC10 and the advice in Key Principle TR3 of the SPD.
15. Condition 20 requires the postal address of the residential unit to be submitted to the Council prior to occupation. This condition is not relevant to planning as it is not directly related to the use of land and buildings. Furthermore, as this condition seeks to assist the Council in updating its records, it would not prevent the Council from issuing parking permits. This condition does not therefore meet the test of necessity.
16. Condition 21 prevents future occupiers, with the exception of disabled persons who are blue badge holders, from applying to the Council for a parking permit or retain such a permit. Planning permission, and any associated conditions, runs with the land or building, not an individual. It is not the role of the planning system to control the actions of an individual, namely future occupiers of the property, in this way by preventing them from applying for parking permits. As such, the condition fails to meet the test of reasonableness.
17. Condition 22 requires a scheme to be submitted to the Council to inform occupiers, other than those with disabilities who are blue badge holders, that they have no entitlement to apply for parking permits. The scheme also seeks to ensure occupiers are informed prior to occupation and that the unit is not occupied otherwise than in accordance with the approved scheme. The condition seeks to control the actions of an individual, rather than the land or building. As such, the condition fails to meet the test of reasonableness.
18. The Council have made reference to a suitable legal agreement to replace conditions 20, 21 and 22. I am not aware that any such agreement was requested during the consideration of the application and, in any case, no further details have been submitted for consideration as part of this appeal.
19. While noting the objectives of the development plan, the disputed conditions 20, 21 and 22 do not meet the tests for the use of conditions and are not therefore an appropriate mechanism to secure these objectives.

### **Other Matters**

20. The site lies within the Studdridge Street Conservation Area (CA). I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The significance of the CA is derived from the uniformity, better than average late Victorian and Edwardian architecture, size and overall cohesive character. Having regards to the site's location, the context of the surrounding area and noting the removal of the conditions would not physically alter the extant scheme<sup>2</sup>, the development would not harm the significance of the CA and the character and appearance of the CA would be preserved.
21. The Council has drawn my attention to an appeal decision<sup>3</sup> which, I understand, considered the same conditions for a similar site, also within PTAL3. I am advised that the Inspector agreed the conditions were necessary. However, I have not been provided with the full details of the case. Consequently, based on the evidence before me, I cannot be certain the case is

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<sup>2</sup> Planning application reference 2020/03452/FUL

<sup>3</sup> Appeal reference APP/H5390/W/19/3242157

directly comparable. Furthermore, I have been provided with a number of other more recent cases, including one<sup>4</sup> quoted in the Council's recent approval<sup>5</sup>, in which the Inspector concluded the conditions did not meet the condition tests. In any case, I have determined this appeal on its own merits.

22. Third party concerns have been raised in respect of loss of privacy, loss of light, and noise and disturbance. The Council have not raised any concerns with respect to these matters. Having regard to the residential use proposed, the predominately surrounding residential properties and their orientation, together with those conditions which seek to safeguard living conditions of neighbouring occupiers, I see no reason to disagree.

### **Conditions**

23. The PPG states that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) should also repeat the relevant conditions from the original planning permission where relevant.
24. Based on the information before me, work has not commenced on site. The PPG<sup>6</sup> states that a grant of planning permission under section 73 of the Act should not extend the time period for implementation. Therefore, I shall vary the standard time condition in order to ensure the commencement of development is three years from the date the original permission was granted.
25. A condition is required to ensure the development is completed in accordance with the approved plans. In order to ensure a satisfactory finish, with specific regard to the conservation area, conditions relating to materials, cycle parking space, refuse storage, external works, removal of permitted development rights for aerials, antennae, satellite dishes or related telecommunications equipment have been re-imposed.
26. In the interests of highway safety and to ensure no loss of on-street parking, conditions relating to a demolition and Construction Management Plan and specific highway works are re-imposed. A condition restricting the use of the development within Class C3 only, is required to ensure the development is used for the purposes applied for. In the interests of air quality, a condition requiring details of the installation of the Air Source Heat Pumps or Electric Boilers is re-imposed.
27. Conditions restricting the use of the roof of the building as a terrace or other form of amenity space and requiring enhanced sound insulation are necessary, in the interests of the living conditions of neighbouring occupiers. I have reworded the condition relating to sound insulation, as there is no clear justification for such details to be required pre-commencement, as advised by the PPG<sup>7</sup>. A condition is also required to ensure suitable design measures to minimise opportunities for crime.
28. In the interests of flood prevention and given potentially contaminative land uses are understood to occur at, or near to, the site, conditions relating to sustainable drainage and contamination, including a preliminary risk

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<sup>4</sup> Appeal reference APP/H5390/W/22/3311131

<sup>5</sup> Planning application reference 2023/01773/VAR

<sup>6</sup> Paragraph: 014 Reference ID: 17a-014-20140306

<sup>7</sup> Paragraph: 007 Reference ID: 21a-007-20180615

assessment report, site investigation scheme, a quantitative risk assessment report, remediation method statement, onward long-term monitoring methodology report and verification report, are re-imposed.

## **Conclusion**

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

*S Pearce*

INSPECTOR

## **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 26 February 2024.
- 2) The development hereby permitted shall be carried out in accordance with the plans approved under planning reference 2020/03452/FUL.
- 3) 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 including the brick sample panel and permanently maintained as such thereafter.
- 4) Prior to commencement of the hereby permitted development, a Demolition and Construction Logistics Plan (CLP) shall be submitted to and approved in writing by the Council. This plan should be based upon the Mayor's Construction Logistics Plan (2017) and include:
  - Routing of vehicles
  - Access arrangements to the site
  - The estimated number of vehicles per day/week
  - Details of the vehicle holding area
  - Details of the vehicle call up procedure and
  - Details of any diversion, disruption or other abnormal use of the public highway
  - Swept path analysis for relevant junctions on arrival and departure route
  - Details shall include control measures for delivery locations, numbers, size and routing of construction vehicles and other matters relating to traffic management to be agreed.
- 5) No part of the development hereby permitted shall be occupied prior to the installation of 1 safe and secure cycle parking space which has been hereby approved.
- 6) The residential units hereby permitted shall not be occupied until the refuse storage as shown on approved drawings has been installed, and shall be permanently retained thereafter for such use.

- 7) 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 unit 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).
- 8) No 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.
- 9) No alterations or extensions 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.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that principal Order with or without modification), no aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any part of the development hereby permitted, without planning permission first being obtained.
- 11) Save for demolition and site clearance, prior to the commencement of the development details of the proposed measures to ensure that the development achieves "secured by design" status shall be submitted to and approved in writing by the Council. No part of the development thereby effected shall be used or occupied prior to the implementation of the approved details.
- 12) Prior to occupation of the hereby permitted development, details shall be submitted to and approved in writing by the Council, of an enhanced sound insulation value  $D_{nT,w} + C_{tr}$  of at least 5dB above the Building Regulations value, for the floor/ceiling /wall structures separating different types of rooms/ uses in adjoining dwellings [eg. Living room and kitchen above/adjacent to bedrooms of separate dwellings]. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 13) No part of the development hereby permitted shall be occupied until provision for sustainable drainage has been implemented in full accordance with the details contained within the Flood Risk Assessment. 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.
- 14) No development shall commence 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.

- 15) No development shall commence 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.
- 16) Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until, following 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.
- 17) Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development 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.
- 18) Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development 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.

- 19) Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development 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.
- 20) Prior to occupation of the development, details of the installation of the Air Source Heat Pumps or Electric Boilers to be provided for space heating and hot water for each residential unit shall be submitted to and approved in writing by the Local Planning Authority. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.
- 21) There shall be no occupation of the development until an agreement pursuant to Section 278 of the Highways Act 1980 has been entered into in respect of the following highways works:
  - Removal of disused vehicle crossover adjoining the site on Quarrendon Street.
  - Reconstruction of footway along this section of Quarrendon Street.
  - Extension of existing on-street parking bay on this side of the road along the frontage of the development.

The development shall not be occupied until the works referred to within the completed agreement pursuant to Section 278 of the Highways Act 1080 have been installed and completed.

### **End of Schedule**