



Appeal Decision

Site visit made on 1 August 2023

by C Butcher BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2023

Appeal Ref: APP/H5390/W/22/3313799

20 Fulham Broadway, Hammersmith and Fulham, London SW6 1AH

- 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 Romulus Construction Ltd (Mr Jody Bishop) against the decision of the Council of the London Borough of Hammersmith and Fulham.
- The application Ref 2022/00909/VAR, dated 29 March 2022, was refused by notice dated 8 July 2022.
- The application sought planning permission for the partial demolition of existing building facades to enable the erection of a double-height lobby extension to the existing forecourt of the building and a part five part six storey extension fronting Vanston Place to provide enlarged A2 uses at ground floor level and office use (Class B1) on the floors above; formation of a roof terrace at fifth floor level; proposed change of colour of external render of the existing building and re-cladding of external walls at ground floor level; re-glazing of external lift to the east elevation; erection of additional plant structure at roof level without complying with a condition attached to planning permission Ref 2020/01025/VAR, dated 4 August 2020.
- The condition in dispute is No. 2 which states that: the development shall not be erected otherwise than in accordance with the following approved plans: 1409_PL_1100F; 1101E; 1102E; 1103E; 1104E; 2100E; 2101E; 2102E; 2103E; 3100E; 3101E; 5101.
- The reasons given for the condition is: to ensure full compliance with the planning application hereby approved and to prevent harm arising through deviations from the approved plans, in accordance with Policies DC1, DC2 and DC8 of the Local Plan 2018.

Decision

1. The appeal is allowed and planning permission is granted for the partial demolition of existing building facades to enable the erection of a double-height lobby extension to the existing forecourt of the building and a part five part six storey extension fronting Vanston Place to provide enlarged A2 uses at ground floor level and office use (Class B1) on the floors above; formation of a roof terrace at fifth floor level; proposed change of colour of external render of the existing building and re-cladding of external walls at ground floor level; re-glazing of external lift to the east elevation; erection of additional plant structure at roof level without complying with a condition attached to planning permission Ref 2020/01025/VAR, dated 4 August 2020, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. For the purposes of this decision, I have used the description of development from planning application reference 2015/00670/FUL as that was the original

permission for this development. The appeal before me seeks to vary a condition attached to planning permission reference: 2020/01025/VAR.

Background and Main Issue

3. Planning permission was originally granted for various works to the existing building in 2016 (2015/00670/FUL), including the erection of a double height lobby extension. In 2018, a material amendment application (2017/04094/FUL) was approved for changes to that permission, including a reduction in the size of the permitted lobby extension. In 2019 a variation application (2019/00664/VAR) was approved to change the orientation of the frontage of the lobby extension. Subsequent non-material amendment applications were then approved (2019/03299/NMAT and 2020/00414/NMAT). In addition, in 2020, permission was granted to vary two conditions (2020/01025/VAR), including to provide for a new roof terrace.
4. In this instance, the appellant is seeking to amend the standard plans condition to refer to updated plans that would enable a new vehicular access and a parking space. The Council refused the application on the basis that there was inadequate information in relation to highway safety and the suitability of the proposed parking space. As a result, the main issue is the effect of varying the condition on highway safety and the suitability of the parking space.

Reasons

5. The proposal includes a new vehicle crossover point off Fulham Broadway and a parking space for one vehicle within the existing forecourt area. Access to the parking space would be controlled by sliding gates.
6. In order to respond to the Council's concerns on highway safety, the appellant has provided additional evidence as part of their appeal statement. The Council's statement confirms that they are satisfied that the details provided on vehicle sightlines and visibility splays are sufficient. Therefore, this is no longer an issue in dispute.
7. The appellant has also provided a Road Safety Audit (RSA) which was produced by Capital Road Safety in July 2022. The RSA identifies two aspects of the proposal which could lead to safety concerns: the prospect of vehicles turning right into the parking area when travelling westbound along Fulham Broadway, and also vehicles turning left against the flow of one-way traffic when exiting onto Vanston Place. In my view, the provision of appropriate signage in suitable locations, as recommended within the RSA and shown on the updated Parking Management Plan, July 2023 (PMP), would be sufficient to prevent either of these scenarios from happening. Accident data from Transport for London confirms that there were several accidents in the vicinity of the appeal site over a 36-month period. However, this is not surprising on a very busy thoroughfare, and there is no substantive evidence before me to suggest that the proposal, with appropriate mitigation would lead to an increased risk to vehicle users or pedestrians.
8. The appellant has produced a unilateral undertaking (UU) to facilitate the delivery of the necessary highway works. In this instance, a UU, which does not have the agreement of the Council, is not a sufficient mechanism. However, I am satisfied that this issue could be addressed through the

imposition of a suitably worded condition that would prevent the use of the operational parking space until the required works have been completed.

9. The Council has also raised concerns about how access to the operational parking space would be managed. The proposed development is very similar to the scheme already permitted, including the use of sliding access gates. Nevertheless, the updated version of the PMP proposes the use of an automatic number plate recognition system. In my view, this would be sufficient to ensure that any waiting time on the vehicle crossover would be very limited and would not result in any undue harm to highway safety. To ensure this would be the case, a condition could be imposed to require the preparation of an agreed management plan prior to the commencement of the relevant works.
10. The Council's appeal statement confirms that a number of their concerns regarding the suitability of the operational parking space have been adequately addressed, including information on swept paths, inclusive access and the provision of an electric vehicle charging point. These are therefore no longer issues in dispute. The Council does remain concerned about the possibility of larger vehicles trying to access the parking space. However, the automatic number plate recognition system would prevent access to unsuitable vehicles, which could instead be directed to the loading bay on Vanston Place, or to other on-street parking. I am satisfied that this issue, and other matters that ensure the suitability of the parking space, could be satisfactorily addressed as part of an agreed management plan.
11. I therefore conclude that the proposed development would not harm highway safety and that the parking space would be suitable. It therefore accords with Policy T6.2 of the London Plan, 2021 as well as Policies T1 and T4 of the Hammersmith and Fulham Local Plan, February 2018. Taken together, the relevant aspects of these policies seek to create safe environments for cyclists and pedestrians and ensure that proposals for operational car parking spaces are considered on a site-by-site basis, are accompanied by a suitable PMP, and include electric vehicle charging points.

Other Matters

12. The site is located within the Walham Green Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In this instance, the proposed changes, being a vehicle entrance and a parking space, would be very minor and would have little visual impact. I am therefore satisfied that the proposal would preserve the character and appearance of the Conservation Area.
13. The Council's statement notes the presence of nearby listed buildings. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard is given to the desirability of preserving the setting of listed buildings. For the reasons given above, the proposal would preserve the setting of listed buildings.
14. In addition, the Council's statement sets out that a locally listed building is also nearby. Again, for similar reasons, I am satisfied that the proposal would preserve the significance of the locally listed building.

Conditions

15. In the interests of highway safety, and to ensure that the proposed parking space is suitable, I have imposed a condition to require the preparation of a PMP. For the same reason a separate condition has been imposed to prevent use of the parking space until the necessary highway works have been completed. For certainty, I have also included a condition to identify the relevant plans. In this instance, there is no reason for me to depart from the appellant's wishes to include the plans that show a glass balustrade and gate given that the Council does not appear to object to that scenario.
16. I am aware that various conditions appear to have been discharged. However, this is an issue that can be resolved between the Council and the appellant. Condition numbers 23, 24, 29 and 42 have been updated to ensure that they refer to the current use class order, as set out within permission ref: 2021/01899/VAR. Condition number 44 reflects the amended wording of permission ref: 2022/03021/NMA. Both main parties have set out within their respective appeal statements that they agree to these amendments.
17. The remaining conditions are replicated from permission ref: 2020/01025/VAR, given it is a condition on that permission that is the subject of this appeal. The reasons for re-imposing all previous conditions remain the same as previously outlined by the Council. I note that there are no conditions numbered 30 or 45 on that decision notice. I have retained the scheme of numbering for ease of reference.

Conclusion

18. For the reasons given, the appeal is allowed.

C Butcher

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall not commence later than the expiration of 3 years beginning with the date of the planning permission ref. 2019/00664/VAR dated 24 October 2019.
- 2) The development shall not be erected otherwise than in accordance with the following approved drawings: 1409_PL_1000 Rev D, 1100 rev O; 1101 rev H; 1102 rev H; 1103 rev H; 1104 Rev J; 2100 rev J; 2101 rev L; 2102 rev G; 2103 rev L; 3100 rev F; 3101 rev J; 5101 Rev A, 22760917-STR-HGN-100-DR-D-00201 Rev P1, 00202 Rev P1, 00206 Rev P1 and 00301 Rev P1.
- 3) The development shall be completed in accordance with the Demolition Management Plan, Construction Logistics Plan and Construction Management Plan approved under application 2019/03314/DET.
- 4) Details and samples of all materials to be used on the external faces of the new building, any new surface treatment, and any boundary walls, railings, gates and fences, including the balustrade to the terraces at second and sixth floor levels, shall be submitted to and approved in writing by the Council before the relevant parts of the works are commenced. No part of the development shall be used or occupied prior to the completion of the development in accordance with the approved details.
- 5) The window glass of the shopfronts on the Vanston Place frontage and new and replacement glass of the shopfronts on the Fulham Broadway frontage shall not be mirrored, painted or otherwise obscured.
- 6) None of the new shopfronts on the Vanston Place and Jerdan Place, nor the altered / new shopfronts on the Fulham Broadway frontages, shall be fitted with external roller shutters.
- 7) No plant, water tanks, water tank enclosures or other structures, that are not shown on the approved plans, shall be erected upon the roofs of the building hereby permitted.
- 8) No plumbing, extract flues or pipes other than rainwater pipes shall be fixed on the elevations of the building hereby approved.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no aerials, antennae, satellite dishes or related telecommunications equipment shall be erected on any external part of the approved buildings, 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 Order with or without modification) no extensions or other

form of enlargement to the development hereby permitted, nor erection of porches, outbuildings, hardstandings, storage tanks, gates, fences, walls or other means of enclosure, shall take place without the prior written permission of the Council.

- 11) No advertisements shall be displayed on or within the shopfronts on the Vanston Place frontage, or on the front Fulham Broadway frontages of the building itself, without details of the advertisements having first been submitted to and agreed in writing by the Council.
- 12) The development shall be completed in accordance with the "Secured by Design" details, as approved by 2019/03610/DET and permanently maintained thereafter.
- 13) No burglar or fire alarms shall be mounted on the front elevation of the building or any key architectural features.
- 14) With the exception of those indicated on the approved drawings, no new windows, doors or other openings shall be created in the external elevations of any part of the development hereby approved.
- 15) The entrance doors hereby permitted shall have a level threshold at the same level as the area fronting the entrance. The entrance doors shall not be less than 800mm wide.
- 16) With the exception of the roof terraces area shown on the approved drawings, no part of the remainder of the flat roof areas provided by the development hereby approved shall be used as a terrace or other accessible amenity space. The roof terraces hereby approved shall not be enlarged prior to approval from the Council. No walls, fences, railings or other means of enclosure shall be erected around the roofs (other than those shown on approved drawings), and no alterations shall be carried out to the approved building / extensions to form access onto the roofs (other than those shown on approved drawings).
- 17) Prior to commencement use of the development, details shall be submitted to and approved in writing by the Council, of the external sound level emitted from plant/machinery/equipment and mitigation measures as appropriate. The measures shall ensure that the external sound level emitted from the plant, machinery/equipment will be lower than the lowest existing background sound level by at least 10dBA in order to prevent any adverse impact. The assessment shall be made in accordance with BS41542:2014 at the nearest and/or most affected noise sensitive premises, with all machinery operating together at maximum capacity. A post installation noise assessment shall be carried out where required to confirm compliance with the sound criteria and additional steps to mitigate noise shall be taken, as necessary. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

- 18) Before the relevant parts of work are commenced, details of external artificial lighting shall be submitted to and approved in writing by the Council. Lighting contours shall be submitted to demonstrate that the vertical illumination of neighbouring premises is in accordance with the recommendations of the Institution of Lighting Professionals in the 'Guidance Notes For The Reduction Of Light Pollution 2011'. Details should also be submitted for approval of measures to minimise use of lighting and prevent glare and sky glow by correctly using, locating, aiming and shielding luminaries. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 19) Before the relevant parts of the work are commenced, details of suitable façade glazing lighting periods within side extension fronting Vanston Place and mitigation measures to minimise light trespass, glare and sky glow from internally transmitted or reflected artificial light shall be submitted to and approved in writing by the council. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 20) Prior to commencement of the use, details shall be submitted to and approved in writing by the Council, of the installation, operation, and maintenance of the odour abatement equipment and extract system, including the height of the extract duct and vertical discharge outlet, in accordance with the 'Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems' January 2005 by DEFRA. Approved details shall be implemented prior to the commencement of the use and thereafter be permanently retained.
- 21) The development hereby permitted shall be completed in full accordance with the details approved under application 2018/04112/DET relating to Temporary Fencing.
- 22) No part of the development hereby approved shall be occupied prior to the provision of the refuse storage enclosures, have been submitted to and details approved by the Council, and such storage facilities shall be permanently retained thereafter in accordance with the approved details.
- 23) The extended premises shall not be occupied until details of a servicing and delivery plan for the extended office space on the upper levels and the two E(c) units at ground floor level hereby approved have been submitted to and approved by the Council. Approved details shall be implemented throughout the lifetime of the development unless otherwise agreed by the Council.
- 24) The commercial (Class E(c)) floorspace hereby approved at ground floor level on the Vanston Place frontage shall be provided in the form of at least 2 separate units, as indicated on the approved drawings. The floorspace shall thereafter be retained in this form and shall not be amalgamated or occupied as one larger single unit.

- 25) No part of the development hereby approved shall be occupied prior to the provision of 24 cycle storage for the development hereby approved, have been submitted to and details approved by the Council, and such storage facilities shall be permanently retained thereafter in accordance with the approved details.
- 26) All external entrance doors hereby approved shall be designed and installed so that they only open inwards (with the exception of the existing fire exit door on Jerdan Place) and thereafter shall be retained in this form.
- 27) No tables and/or chairs shall be set outside the premises on the Vanston Place frontage for use in connection with the ground floor commercial floorspace hereby approved.
- 28) The development shall not be occupied prior to submission and approval in writing by the Council of a satisfactory Travel Plan, which shall include information on how alternative methods of transport to and from the development, other than by car, will be encouraged by the applicants. No part of the development shall be used or occupied prior to the implemented of the Travel Plan in accordance with the approved details, and the Travel Plan shall thereafter continue to be fully implemented.
- 29) No persons shall be on the premises in connection with the operation of the ground floor commercial (Class E(c)) floorspace hereby approved between 21:00 hours and 07:00 hours the following day.
- 31) The development hereby permitted shall not be occupied before implementation of the sustainable design and construction measures detailed in the submitted Sustainability and Energy Statement. All details shall be implemented prior to occupation/use of the development hereby permitted, and thereafter be permanently retained.
- 32) The development hereby permitted shall be completed in full accordance with the details approved under application 2018/03535/DET relating to Sustainable Urban Drainage System (SUDs).
- 33) The development shall be implemented in accordance with the recommended flood mitigation measures as proposed in the submitted Flood Risk Assessment otherwise agreed in writing by the local planning authority. The recommended mitigation measures shall be permanently retained thereafter.
- 34) The development hereby permitted shall be completed in full accordance with the details approved under application 2018/03535/DET relating to the Drainage Strategy.
- 35) The development hereby permitted shall be completed in full accordance with the details approved under application 2018/03535/DET relating to Preliminary Risk Assessment.

- 36) The development hereby permitted shall be completed in full accordance with the details approved under application 2018/03535/DET relating to Site Investigation Scheme.
- 37) The development shall be completed in accordance with the quantitative risk assessment approved under application 2019/03314/DET.
- 38) The development shall be completed in accordance with the quantitative risk assessment approved under application 2019/03314/DET.
- 39) 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 if required by the approved quantitative risk assessment, 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 appropriate waste Duty of Care documentation 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 method statement to be submitted and approved by the Council and verification of these works included in the verification report. All works must be carried out in compliance with the approved details 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.
- 40) 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 setting out where further monitoring is required past the completion of development works (as identified in the approved site investigation scheme or the approved remediation statement or the approved verification report) to verify the success of the remediation undertaken. If required, 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 the approved details 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.

- 41) Before the relevant parts of work are commenced, detailed drawings in plan, section and elevation at a scale of no less than 1:20 of a typical bay of each elevation shall be submitted to and approved in writing by the Council. The development shall be carried out in accordance with such details as have been approved and thereafter permanently retained in this form.
- 42) Prior to commencement of above ground works in the development a Ventilation Strategy Report to mitigate the impact of air pollution shall be submitted to and approved in writing by the Local Planning Authority. The report shall include the following information:
- a) Details and locations of the air intake locations for E(c) use class at rear roof level
 - b) Details and locations of openable windows for E(c) use class
 - c) Details and location of the air intakes for E(c) use class at rear elevations
 - d) Details and locations of ventilation extracts, chimney/boiler flues, to demonstrate that they are located a minimum of 2 metres away from the fresh air ventilation intakes, openable windows, balconies, roof gardens, terraces
 - e) If part a) is not implemented details of the independently tested mechanical ventilation system with Nitrogen Dioxide (NO₂) and Particulate Matter (PM_{2.5}, PM₁₀) filtration to remove airborne pollutants and ventilation intakes located on the rear elevation. The filtration system shall have a minimum efficiency of 75% in the removal of Nitrogen Oxides/Dioxides, Particulate Matter (PM_{2.5}, PM₁₀) in accordance with BS EN ISO 10121-1:2014 and BS EN ISO 16890:2016

The whole system shall be designed to prevent summer overheating and minimise energy usage. The maintenance and cleaning of the systems shall be undertaken regularly in accordance with manufacturer specifications, and shall be the responsibility of the primary owner of the property. A post installation certificate of the approved ventilation strategy shall be submitted to the Council prior to the occupation/use of the development. Approved details shall be fully implemented prior to the occupation/use of the development and thereafter permanently retained and maintained.

- 43) Approved details under 2019/03314/DET shall be fully implemented and permanently retained and maintained during the demolition and construction phases of the development.
- 44) Within one month of the occupation of the development hereby permitted a Low Emission Strategy for the operational phase of the E(c) class use of the development in order to mitigate the impact of air pollution shall be submitted to the Local Planning Authority for approval. The Low Emission Strategy must detail the remedial action and mitigation measures that will be implemented to protect receptors (e.g. design solutions). The Strategy must make a commitment to implement the mitigation measures that are required to reduce the exposure of poor air quality and to help mitigate the development's air pollution impacts, in particular emissions of NO_x and

particulates from on-road vehicle transport by the use of the Ultra Low Emission Vehicles in accordance with the emissions hierarchy (1) Cargo bike (2) Electric Vehicles (3) Alternative Fuel e.g. Hydrogen, CNG. The approved Low Emission Strategy shall be fully implemented within one month following the approval of these details by the LPA and shall thereafter be permanently retained and maintained.

- 46) The Demolition and Construction Logistics Plan shall be implemented in accordance with the approved details under 2019/03314/DET throughout the relevant project period.
- 47) The Construction Logistics Plan shall be implemented in accordance with the approved details under 2019/03314/DET throughout the relevant project period.
- 48) All the roof terraces within the building shall only be used between 0800hrs and 2100hrs Monday to Sunday, and shall not be used at any other time. No music (either acoustic or amplified) shall be played at any time on any of the terraces.
- 49) Before the relevant parts of the works are commenced, details of the on-site operational parking space, including the design of the Electric Vehicle Charging point and its associated management shall be submitted to and approved in writing by the Council. The parking space shall be constructed, and used thereafter, in accordance with the approved details.
- 50) The operational car parking space, hereby permitted, shall not be used until the following off-site highways works have been completed: (i) the provision of an access crossover onto Fulham Broadway, in accordance with plan ref: 22760917-STR-HGN-100-DR-D-00201 Rev P1; (ii) the removal of the exiting access crossover onto Fulham Broadway (iii) the installation of appropriate highway signage to prevent vehicles from making right hand turns to access the parking space from Fulham Broadway; and (iv) the installation of appropriate highway signage to prevent vehicles from making left hand turns to exit the parking space onto Vanston Place.