



Appeal Decision

Site visit made on 21 November 2023

by **K Lancaster BA (hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2024

Appeal Ref: APP/H5390/W/23/3319051

7 Dancer Road, Hammersmith and Fulham, London SW6 4DU

- 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 H Dale against the decision of the Council of the London Borough of Hammersmith and Fulham.
- The application Ref 2022/03632/VAR, dated 14 December 2022, was refused by notice dated 13 February 2023.
- The application sought planning permission for the conversion from a single dwelling home to 1x one bed and 2 x three bed flats; installation of glass balustrade over flat roof at rear third floor, in connection with its use as a roof terrace; erection of a single storey ground floor extension to the side of the existing back addition; excavation to front and rear gardens to form lightwells in connection with the enlargement of the basement granted 19 December 2013 without complying with conditions attached to planning permission Ref 2013/03699/FUL, dated 8 November 2013.
The conditions in dispute are Nos 10, 13 and 14 which state that: (10) *The three flats 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 flats. Such notification shall be to the Council's Head of Development Management and shall quote the planning application number specified in this decision letter;* (13) *No occupier of the two upper floor flats 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;* and (14) *The two upper floor flats 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: (10) *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 at first floor level hereby approved, and thus ensure that the development does not harm the existing amenities of then 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;* (13) *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;* and (14) *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 the removal of conditions 10 (postal address), 13 (parking permit) and 14 (parking permit scheme) of planning permission ref: 2013/03699/FUL for 'Conversion from a single dwelling house to 1 x one bed and 2 x three bed flats; installation of a glass balustrade over flat roof at rear third floor, in connection with its use as a roof terrace; erection of a single storey ground floor extension to the side of the existing back addition; excavation to front and rear gardens to form lightwells in connection with the enlargement of the basement' granted 19 December 2013 at 7 Dancer Road, London SW6 4DU in accordance with the terms of the application, Ref 2022/03632/VAR, dated 15 December 2022.

Preliminary Matter

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
3. The appellant has submitted a recent planning approval¹ 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 I am satisfied that they have not been prejudiced by my acceptance of this late evidence.

Background and Main Issue

4. Planning permission was granted for the sub-division of the appeal site to provide three self-contained flats. This permission was the subject of a number of conditions, including the three which are disputed by the appellant. The disputed conditions sought to ensure that the new residential units created would be a car free development, in accordance with local planning policy.
5. The Council considers that the conditions are necessary to promote and support initiatives to encourage a modal shift away from private vehicles, to consider alternative modes such as cycling and walking, and other sustainable means of transport and to secure car-free development. However, the appellant objects to the imposition of these conditions as they consider that they are not necessary, reasonable, or relevant to planning.
6. Therefore, the main issue of this appeal is whether conditions No.10, 13 and 14 are reasonable, necessary, and relevant to planning having regard to on-street parking provision within the area.

¹ Application Ref: 2023/01773/VAR

Reasons

7. My attention has been drawn to a number of appeal decisions², also in the London Borough of Hammersmith and Fulham. These appeals were against the refusal of the Council to remove three conditions, attached to approvals for residential development, which sought to restrict the ability of future occupants to apply for and hold a parking permit. The Council have had the opportunity through the appeal process to make representations in respect of these appeals and their relevance to this appeal, although I have no detailed comments before me from the Council on this matter. While each appeal is required to be determined on its merits, as the conditions subject of these earlier appeals are substantially the same as those before me now, and that those decisions were reasonably recent, albeit in some cases that the reasons refer to an earlier Local Plan, I attach these other appeal decisions substantial weight in my considerations.
8. My attention has also been drawn to a recent application³ in which the Council has granted approval for the removal of the same conditions, stating that whilst acknowledging the objectives of the development plan policies, it is noted that a recent appeal decision⁴ 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, and should therefore be removed. I also attach this decision substantial weight in my considerations.
9. Policy T6 of the London Plan 2021 seeks, among other things, to restrict car parking in line with levels of existing and future public transport accessibility and connectivity.
10. Policy HO2 of the Hammersmith and Fulham Local Plan 2018 (HFLP), which relates to housing conversions, states 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. Policy T4 of the HFLP sets out vehicle parking standards and states that it will require car parking permit free measures on all new development unless evidence is provided to show that there is a significant lack of public transport. This is supported by Key Principle TR3 of the Planning Guidance Supplementary Planning Document 2018 (SPD) which states 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.
12. The appeal site, 7 Dancer Road, is a mid-terraced property, which has been converted into 3 flats. It is located within a predominantly residential street, which has permit parking restrictions in place between 09:00 and 17:00 hours, Monday to Saturday.
13. The appeal site is located in an area with a Public Transport Accessibility Level (PTAL) rating of 4 (PTAL is assessed on a scale of 1 to 6b with 6b representing excellent access to public transport). I observed during my site visit that the site is located in close proximity to public transport services, including buses

² Appeal Refs: APP/H5390/W/16/3167706, APP/H5390/W/19/3239068, APP/H5390/W/3257537, APP/H5390/W/21/3269642

³ Application Ref: 2023/01773/VAR

⁴ Appeal Ref: APP/H5390/W/22/3311131

and the tube. Therefore, the site is not located within an area where there is a significant lack of public transport. 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.

14. During my site visit, I observed that only a limited number of on-street parking spaces were available. However, my site visit represents a snapshot in time, and it is likely that parking demand would be higher in the evenings or weekends. I have not been provided with any substantive evidence to demonstrate whether or not the area is under significant on-street parking stress. Nevertheless, given the location and general situation, I can appreciate the concerns of the Council and local residents that there are issues with resident parking and related parking stress.
15. Paragraph 56 of the Framework states that planning conditions should only be imposed where, amongst other tests, they are relevant to planning and to the development to be permitted, as well as reasonable in all other respects.
16. Condition No.10 prevents occupation of the development until the Council has been notified in writing of the full postal address of the flats. The reason for this condition is to ensure that the Council can monitor whether parking permits are requested and ensure that they are not issued to the occupiers of the new residential units. This condition 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 tests of relevant to planning or necessity.
17. Condition No.13 states that no occupier of the two upper floor flats 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. However, I find that condition 13 seeks to restrict the actions of individuals that are unrelated to how the approved development is used. This condition does not therefore meet the test of reasonableness.
18. Condition No.14 states that the two upper floor flats 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 occupiers are informed, prior to occupation, of such restriction. The residential unit shall not be occupied otherwise than in accordance with the approved scheme unless prior written agreement is issued by the Council.
19. The planning permission, and their associated conditions, run with the land or building to which they relate. It is not the role of the planning system to control the actions of an individual. Condition 14, similar to condition 13, seeks to control the actions of an individual, namely future occupiers of the property, by preventing them from applying for parking permits. Therefore, condition 14 also fails to meet the test of reasonableness.

20. I have had regard to a previous appeal decision⁵ relating to the appeal site, which also considered the disputed conditions. The Inspector concluded that that the conditions didn't meet any of the tests, but that, in the absence of a mechanism to deliver car free housing, the development would not have been policy compliant. The Inspector found that conditions were therefore necessary to deliver car free housing.
21. Since this appeal decision was issued, a number of further appeals within Hammersmith and Fulham have been allowed on the basis that the same conditions do not meet all of the tests. The Framework and the Planning Practice Guidance⁶ (PPG) clearly state that planning conditions should only be imposed where the conditions satisfy all the relevant tests. In reaching my conclusions, I have agreed with the previous Inspector in so far as delivering car free housing is necessary. However, I have found that the disputed conditions are not reasonable or relevant to planning and are therefore not an appropriate mechanism to secure car free housing.
22. Consequently, whilst I note the objectives of the development plan, the disputed conditions 10, 13 and 14 do not meet the tests for the use of conditions and are not therefore an appropriate mechanism to secure these objectives.

Conditions

23. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. It is noted that the original decision notice did not include a condition no. 11 or 12.
24. I understand from the evidence provided that the development is complete. Accordingly, it is not necessary to impose a condition seeking works to commence within three years of the date of granting of permission and further conditions relating to the development being carried out in accordance with the approved plans and use of external materials are also not necessary. A condition restricting the height of a side extension is also no longer necessary as the development is already complete.
25. A condition requiring the submission, approval, and implementation of sound insulation measures is required to be submitted within three months of the date of this decision, is necessary in the interests of safeguarding the living conditions of the occupiers of the residential units.
26. Following confirmation that details have been submitted to an approved in writing by the Councils for original condition numbers 7, 8 and 18, I have amended the wording of these conditions to require the retention of those agreed details. These conditions are necessary in the interests of the character and appearance of the area.
27. In respect of refuse storage, a condition preventing refuse storage within the pavement or street is necessary in the interests of protecting the living conditions of neighbouring occupiers and the character and appearance of the area.

⁵ APP/H5390/W/20/3250298

⁶ Paragraph: 003 Reference ID: 21a-003-20190723

28. Further conditions are also necessary in the interests of the character and appearance of the area, preventing the external appearance of the building, including the installation of air-conditioning units, ventilation fans or extraction equipment not shown on the plans, alterations to the front lightwell, new pipework (except for rainwater pipes), and the introduction of water tanks or other structures on the flat roof.
29. A condition preventing the basement from exceeding the approved dimensions or being occupied independently is also necessary to prevent the creation of a separate residential unit, without a planning application first being submitted for consideration. A condition preventing the roof terrace shown on approved drawing 046-05 rev:C from being enlarged is necessary to protect the living conditions of neighbours.
30. The Council has confirmed that original conditions 25 to 28 were discharged under reference 2013/03699/FUL. In the absence of any evidence to indicate that contamination was present on the site, I find that it is not necessary to impose further conditions relating to contaminated land and the submission of a remediation statement or long-term monitoring methodology report.

Conclusion

31. For the reasons given above, I have found that the three disputed conditions fail the tests set out in Paragraph 56 of the Framework, and the PPG, and should be deleted. The appeal should therefore be allowed.

K Lancaster

INSPECTOR

Schedule of Conditions

- 1) Within three months of the date of this decision details of an enhanced sound insulation value LnT,w for the floor/ceiling structures separating different types of rooms/uses in adjoining dwellings shall be submitted to the local planning authority for approval in writing.

The approved details specified in this condition, shall be implemented with three months of approval being granted and shall thereafter be retained.
- 2) The cycle parking spaces agreed under ref 2016/01845/DET shall be permanently retained.
- 3) The waste storage arrangements agreed under ref 2016/01845/DET shall be permanently retained.
- 4) Any refuse/recycling generated by the residential units hereby approved shall be stored in the refuse stores forming part of the details approved pursuant to Condition 3 and shall not be stored on the pavement or street.
- 5) The 1.7-metre-high obscure glazed screen installed on the roof terrace agreed under ref 2016/01845/DET shall be permanently retained.
- 6) The metal grille installed over the approved front lightwell shall be permanently retained. At no time shall railings or any other vertical element be constructed around the lightwell.
- 7) The form and dimensions of the front lightwell, at basement and ground floor level, shall not exceed those shown on drawings.
- 8) No water tanks, water tank enclosures or other structures shall be erected upon the flat roof of the extension hereby permitted.
- 9) No plumbing, extract flues or pipes, other than rainwater pipes, shall be fixed on the front elevation of the building.
- 10) No alterations shall be carried out to the external appearance of the building, including the installation of air-conditioning units, ventilation fans or extraction equipment not shown on the plans, without planning permission first being obtained. Any such changes shall be carried out in accordance with the approved details.
- 11) The extent of the terrace on top of the existing back addition shall not exceed that indicated on the approved drawing 046-05 rev:C and the roof terrace shall not be subsequently enlarged prior to the submission and approval in writing of a further planning application.

The roof of the remainder of the back addition 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.
- 12) The basement floorspace shall not exceed the dimensions hereby approved and shall only be used in connection with, and ancillary to, the use of the remainder of the application property as a ground and basement residential unit.

The basement accommodation shall not be occupied as a self-contained flat that is separate and distinct from the use of the remainder of the application property as a single residential unit.

End of Schedule