



Appeal Decision

Site visit made on 21 May 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd July 2024

Appeal Ref: APP/H5390/W/23/3328613 676-680 Fulham Road, London SW6 5SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr P Pressland on behalf of Lambert Pressland Partnership against the decision of the Council of the London Borough of Hammersmith and Fulham.
- The application Ref is 2023/01111/VAR.
- The application sought planning permission for change of use from an English language school (Class D1) at first and second floor levels into 8 self-contained residential units (5 x 1 bedroom and 3 x 2 bedroom flats); erection of a roof extension involving an increase in the ridge height together with the installation of rooflights in the roofslopes to no. 676 Fulham Road and rear extension at second floor level to no. 678 Fulham Road; formation of roof terraces at first, second and third floor level; installation double glazed windows to replace the existing to all elevations of the building; installation of a hardwood timber door at ground floor level and an extract flue to the side of the building to replace the existing, installation of new glazed windows and a security entrance gate to the northern elevation; installation of 2no timber doors to replace the existing door and a window at ground floor level, installation of new glazed windows at ground floor level to the eastern elevation; installation of a new louvred door, weatherboard screening, louver screen covering ac units at ground floor level to the western elevation; installation of a new window to the southern elevation at first floor level; installation new doors to access the roof terraces at first and second floor level to the western and southern elevations; associated external alterations to fenestration of the building without complying with conditions attached to planning permission Ref 2017/00632/FUL, dated 13 April 2017.
- The conditions in dispute are Nos. 16, 17 and 18 which state that:
 - 16. *The 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.*
 - 17. *No occupiers of the 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.*
 - 18. *The 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 flats 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:

16. *In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the new flats hereby approved, and thus ensure that the development does not harm the existing amenities of the occupiers of neighbouring residential properties by adding to the already high level of on-street car parking stress in the area, in accordance with Policy DM A1, A9, J2 and J3 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011.*
 17. *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.*
 18. *In order that the prospective occupiers of the residential units 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.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use from an English language school (Class D1) at first and second floor levels into 8 self-contained residential units (5 x 1 bedroom and 3 x 2 bedroom flats); erection of a roof extension involving an increase in the ridge height together with the installation of rooflights in the roofslopes to no. 676 Fulham Road and rear extension at second floor level to no. 678 Fulham Road; formation of roof terraces at first, second and third floor level; installation double glazed windows to replace the existing to all elevations of the building; installation of a hardwood timber door at ground floor level and an extract flue to the side of the building to replace the existing, installation of new glazed windows and a security entrance gate to the northern elevation; installation of 2no timber doors to replace the existing door and a window at ground floor level, installation of new glazed windows at ground floor level to the eastern elevation; installation of a new louvred door, weatherboard screening, louver screen covering ac units at ground floor level to the western elevation; installation of a new window to the southern elevation at first floor level; installation new doors to access the roof terraces at first and second floor level to the western and southern elevations; associated external alterations to fenestration of the building at 676-680 Fulham Road, London SW6 5SA in accordance with the application Ref 2023/01111/VAR, without compliance with condition numbers 1, 16, 17 and 18 previously imposed on planning permission Ref 2017/00632/FUL, dated 13 April 2017 and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The site address in the above banner heading, and within my formal decision, is taken from the site address as detailed on the original planning permission.

3. The Hammersmith and Fulham Local Plan (LP) was adopted in February 2018, thereby superseding the policies referred to in the reasons for the conditions within the original decision notice. I have therefore determined this appeal on the basis of the policies listed within the reasons for refusal provided on the decision notice¹ and with reference to relevant national policy and guidance.
4. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Both parties, within their respective submissions had an opportunity to comment on the revised Framework. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Background and Main Issues

5. This appeal relates to a three-storey corner building with a dual frontage facing onto Fulham Road and Rostrevor Road, within the Central Fulham Conservation Area.
6. Conditions 16, 17 and 18 attached to the original planning permission essentially sought to prevent the occupiers of the approved 1-bedroom and 2-bedroom flats, with the exception of disabled persons who are blue badge holders, from applying for or possessing a parking permit for on-street parking.
7. Collectively, the reasons for imposing these three conditions were to ensure that the development did not cause harm to the amenities of neighbouring residents by way of increased parking stress by adding to the already high level of on-street car parking in the area. The reasons for refusal provided on the decision notice also refer to highway safety, sustainable modes of transport and impacts on local air quality. The appellant is seeking to remove all three conditions.
8. Therefore, the main issue is whether or not conditions 16, 17 and 18 are reasonable, necessary and relevant to planning, having particular regard to highway safety; parking conditions in the vicinity; air quality; the living conditions of the occupiers of nearby dwellings; as well as supporting sustainable modes of transport.

Reasons

9. Policy T4 of the LP states that the Council 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 available*'. The supporting text details that the Council will only consider the issuing of permits for on-street parking in locations where the Public Transport Accessibility Level (PTAL) is 2 or lower, before stating the levels of local parking stress must also be considered when assessing the impact of additional on-street parking.
10. Key Principle TR3 of the Hammersmith and Fulham Planning Guidance Supplementary Planning Document February 2018 (SPD) similarly states that development in areas well connected by public transport will be expected to be car-free. Parking permits may be issued for residential development subject to them being within areas of PTAL 1-2.

¹ LPA Ref: 2023/01111/VAR

11. The appeal scheme includes no car parking facilities and it is therefore likely that car-driving occupiers and visitors would be reliant upon roadside parking spaces in the area. I observed there is no parking allowed on Fulham Road directly to the front of the appeal building, and on-street parking on Rostrevor Road, and other surrounding streets, between the hours of 09:00 – 17:00 (Mon – Sat) is primarily for permit holders or those willing to pay and display.
12. While noting representations from local residents regarding the parking shortage and stress in the vicinity, in addition to the Council's concerns, there is no substantive evidence before me to demonstrate a current shortfall in spaces, or indicate the extent to which the development may affect demand for roadside parking or how it would exacerbate local on-street parking stress.
13. During my site visit, on a weekday afternoon, I noted several unoccupied spaces on the surrounding streets of Rostrevor Road; Crookham Road; Chesilton Road and Dancer Road. I also observed that further away from Fulham Road the highways of Bishop's Road and Lettice Street had even greater levels of unoccupied spaces, albeit acknowledging that these are a reasonable walk from the appeal site.
14. Nevertheless, these unoccupied spaces on the surrounding streets, and those slightly further from the site, demonstrated that during the time of my site visit there was on-street parking capacity within this area. I acknowledge that my site visit is only a snapshot in time, however the Council have provided no firm evidence that local parking pressure is at a level where there would not be capacity on surrounding streets, or any details of how parking congestion in this area is currently having a detrimental effect on highway safety.
15. The proposal is for 8 flats, however given my observations on site it is likely that there would be an adequate number of car parking spaces available in the vicinity of the appeal site to cater for the additional parking demand arising from the appeal development.
16. I note the Council's comments in respect of a previous Inspector's findings when allowing an appeal² in this Borough. Whereby the Council state that parking stress usually occurs after 17:00 and on weekends, and therefore a more accurate assessment should have been carried out during the day, overnight, on weekend and during school holidays. However, as mentioned earlier, the Council has provided little evidence to substantiate these claims or to demonstrate the parking capacity in surrounding streets at these times. As such, this appeal has been determined on the evidence before me and my observations on site.
17. As the site is within PTAL 4 there would be conflict with Policy T4 of the LP and Key Principle TR3 of the SPD. However, in this particular case and based on the evidence before me, the disputed conditions would not be necessary to make the development acceptable in planning terms. From what I observed and in light of the lack of evidence to demonstrate parking stress levels, if future occupiers were issued parking permits, the streets near to the appeal site would have sufficient capacity to accommodate the additional car parking that may arise from the development, without demonstrable harm.

² APP/H5390/W/22/3294403

18. Consequently, removing conditions 17 and 18 would not have an unacceptably adverse impact on parking stress in the area and therefore not lead to an unacceptable effect on the living conditions of local residents. Furthermore, from the evidence presented to me, there would not be a harmful impact on highway safety if likely additional cars arising from the appeal proposal parked locally. Consequently, there are considerations in this instance that outweigh the policy conflict.
19. In respect of air quality and sustainable modes of transport, the appeal site is located within an Air Quality Management Area. The Council's reason for refusal cites Policy CC10 of the LP, which allows for mitigation measures to reduce emissions and exposure and for resisting development proposals which would materially increase exceedances of local air pollutants. Furthermore, I acknowledge that together national and local policies seek to promote sustainable, less polluting modes of transport that contribute to lowering air pollution and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants.
20. The Council states that the removal of these conditions would result in additional private motor vehicle usage contributing to increased harmful emissions and harm to air quality in this area, to the detriment of residents. However, limited information has been put to me to indicate that removing the disputed conditions would give rise to any material increases in local air pollution levels, or lead to significant car usage and traffic congestion.
21. What has been put to me by the appellant, is that with likely future increases in electric vehicle ownership, alongside the introduction of the Ultra Low Emission Zone and the future ban on the sale of petrol and diesel cars, there is a possibility that future occupiers would own this more sustainable type of vehicle. Such a prospect would not harm local air quality. Moreover, even where occupants own a car they may not be used frequently or may be used in conjunction with public transport journeys that could be accessed in the vicinity of the appeal site. As such, I have insufficient evidence before me that the removal of conditions 17 and 18 would unacceptably harm local air quality to the detriment of nearby residents, and / or significantly reduce the use of sustainable modes of transport.
22. Given that I have found that conditions 17 and 18 are not required, this therefore renders condition 16, which requires the full postal address of the proposed flats to be submitted to the Council, unnecessary.
23. The appellant's case has referred to the disputed conditions being unreasonable and not related to planning. On this matter, I note that the conditions have been worded to place restrictions on future occupiers of the flats, rather than relating to the appeal building or land upon which it is on. Nor is it clear how preventing an occupier from applying for a parking permit could be enforced. As such the relevant conditions would not meet the tests contained in the Framework and in Planning Practice Guidance (PPG). Notwithstanding this, I have found that the conditions would not be necessary or reasonable given that there would be sufficient parking opportunities in the vicinity for occupiers of the appeal development, and there is insufficient evidence before me that the proposal would have an unacceptable impact upon highway safety, local air quality and / or significantly reduce the use of sustainable modes of transport.

24. For the reasons given above, conditions 16, 17 and 18 are not necessary or reasonable to ensure that the development does not adversely affect highway safety and the living conditions of neighbouring residential properties, by adding to on-street car parking stress in the area. Moreover, insufficient evidence has been presented to demonstrate that the proposal would unacceptably harm local air quality to the detriment of nearby residents and / or significantly reduce the use of sustainable modes of transport. Therefore, the proposal would comply with Policies HO11, T1 and CC10 of the LP which together seek to ensure, among other things, that proposals reduce adverse air quality impacts; consideration is given to vehicle parking; and that traffic generated is minimised so that it does not add to parking pressures on local streets or congestion.
25. The proposal would comply with the Framework where it states development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The removal of the conditions would also accord with the Framework where it requires that planning conditions should be kept to a minimum and only imposed where, amongst other things, they are necessary and reasonable.

Other Matters

26. The appellant has drawn my attention to various other appeal decisions in the Borough. I accept that those schemes are similar to this proposal given that the conditions subject to those appeals are substantively the same as those before me now. As such, whilst mindful that each appeal is judged on its own merits, they are relevant considerations to my assessment of the merits of this appeal and I have taken them into account in my reasoning. In doing so I have noted the different approach taken by the Inspector in the appeal³ referred to by the Council, however, for the reasons set out above, it does not alter my decision, which is also consistent with other similar cases.
27. The Council's reasons for refusal both refer to the absence of a suitable legal agreement to replace these conditions. However, I have concluded that the disputed conditions are not necessary and reasonable to make the development acceptable in planning terms. As such, and for the same reasons, any planning obligation to secure these matters would not meet the tests as set out in Paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
28. The site is within the Central Fulham Conservation Area (CA) and the effect of the development on the CA has not been raised as a concern by the Council. Nevertheless, in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
29. Having considered the proposal and visited the site and its surroundings, I conclude that the character and appearance of the CA as a whole would be preserved by the removal of these conditions.

³ APP/H5390/W/3242157

30. Interested parties have also commented on the materials used within the development and raised concerns in respect of overlooking. However, this decision relates solely to the parking permit conditions and therefore these matters are not relevant in my determination of this appeal.

Conditions

31. The guidance in the 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. As I have no information before me about the status of the other conditions imposed on the original planning permission (2017/00632/FUL), I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

32. As a consequence of the allowing this appeal I have removed conditions 16, 17 and 18 as numbered on the original planning permission. There is no dispute between the parties that the development has commenced on site and therefore it is not necessary to re-impose the standard time limit condition. Furthermore, in the interests of clarity I have amended the approved plans condition⁴ and included the list of drawing numbers that were referenced on the original decision notice. I have no reason to doubt that these drawing numbers are not correct.

Conclusion

33. For the reasons given above I conclude that the appeal should be allowed and conditions 16, 17 and 18 should be deleted. Permission is therefore granted subject to the conditions as set out in the schedule below.

R Major

INSPECTOR

⁴ Condition 1 in the below schedule

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

(PL)AP01Rev A; (PL)AP02Rev A; (PL)AP03Rev A; (PL)AP04 Rev A;
(PL)AP05Rev A; (PL)AP06Rev A;(PL)AP07 Rev A; (PL)AP08Rev B;
(PL)300 Rev A; (PL)301 Rev A; (PL)302 Rev A; (PL)200 Rev B;
(PL)201 Rev A; (PL)202 Rev A; (PL)203 Rev A; (PL)100 Rev C;
(PL)101 Rev B; (PL)102 Rev C; (PL)103 Rev B; and (PL)104 Rev B.

2. Any alterations to the elevations of the existing building shall be carried out in the same materials as the existing elevation to which the alterations relate.
3. The development hereby permitted shall not commence prior to the submission and approval in writing by the Council of details and samples of all materials to be used on the external faces of the building and all surface treatments and no part of the development shall be used or occupied prior to the completion of the development in accordance with the approved details.
4. With exception to the private roof terrace areas shown on approved drawings, no part of the remainder of the flat roof areas provided by the development hereby approved shall be converted into or used use 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 roof of any part of the site in connection with its use as a roof terrace or other form of open amenity space. No railings or other means of enclosure shall be erected on the roofs, and no alterations shall be carried out to the application property, to form access onto these roofs.
5. The residential units hereby permitted shall not be occupied until details of the means of separation of the roof terraces from the sedum roof at third floor level have been submitted to and approved in writing by the Council, and such details as are approved shall be implemented prior to the occupation or use of the flats and permanently retained thereafter for such use.
6. The new and replacement openings at first and second floor level hereby approved will be of a timber construction and painted white.
7. No water tanks, water tank enclosures or other structures shall be erected upon the flat roof of the extensions hereby permitted.
8. No plumbing, extract flues or pipes, other than rainwater pipes, may be fixed on the front elevation of the building.
9. The development hereby permitted shall not commence until detailed drawings in plan, section and elevation at a scale of no less than 1:20 of the replacement windows at first and second floor levels of each elevation of each of the extensions are 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.

10. Where openings are to be formed in the external faces of the development at first or second floor level, the parts of the structure above such openings shall be supported by brick arches or brick faced lintels.
11. 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.
12. The residential units hereby permitted shall not be occupied until details of 8 secure cycle parking spaces to be provided in connection with the proposed residential dwellings have been submitted to and approved in writing by the Council, and such details as are approved shall be implemented prior to the occupation or use of the flats and permanently retained thereafter for such use.
13. No part of the development hereby approved shall be occupied prior to the provision of the refuse storage enclosures, as indicated on the approved drawings.
14. No part of the development hereby approved shall be occupied until details of an inward opening door to the refuse storage area have been submitted to and approved in writing by the Council, and such details as are approved shall be implemented prior to the occupation or use of the flats and permanently retained thereafter for such use.
15. No construction works shall commence prior to the submission and approval in writing by the Council of a construction logistics plan which shall include details of the steps to be taken to re-use and recycle waste, details of site enclosure throughout construction and details of the measures proposed to minimise the impact of the construction processes on the existing amenities of the occupiers of neighbouring properties, including monitoring and control measures for dust, noise, vibration, lighting and working hours, waste classification and secure off-street loading and drop off facilities, and the measures proposed to prevent the passage of mud and dirt onto the highway by vehicles entering and leaving the site in connection with the construction process. All construction works shall be carried out in accordance with the approved details.
16. Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of an enhanced sound insulation value $D_{nT,w}$ and $L'_{nT,w}$ of at least 5dB above the Building Regulations value, for the floor/ceiling /wall structures separating different types of rooms/ uses in adjoining dwellings. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
17. Prior to commencement of the development, details shall be submitted to and approved in writing by the Council, of the sound insulation of the floor/ ceiling/ walls separating the commercial part(s) of the premises from dwellings. Details shall demonstrate that the sound insulation value $D_{nT,w}$ is enhanced by at least 20dB above the Building Regulations value and, where necessary, additional mitigation measures are implemented to contain commercial noise

within the commercial premises and to achieve the criteria of BS8233:2014 within the dwellings/ noise sensitive premises. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

18. Prior to commencement of the development, a noise assessment shall be submitted to the Council for approval of external noise levels incl. reflected and re-radiated noise and details of the sound insulation of the building envelope, orientation of habitable rooms away from major noise sources and of acoustically attenuated mechanical ventilation as necessary to achieve internal room- and (if provided) external amenity noise standards in accordance with the criteria of BS8233:2014. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
19. Prior to commencement 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 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 BS4142:2014 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.
20. Prior to commencement of the development, details of anti-vibration measures shall be submitted to and approved in writing by the Council. The measures shall ensure that machinery, plant/ equipment, extract/ ventilation system and ducting are mounted with proprietary anti-vibration isolators and fan motors are vibration isolated from the casing and adequately silenced. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
21. Prior to commencement of the development, (excluding site clearance and demolition) a report including detailed information on the proposed mechanical ventilation system with NOx Filtration shall be submitted to and approved in writing by the Council. This report shall specify air intake locations and the design details and locations of windows on residential floors to demonstrate that they avoid areas of NO2 or PM exceedance e.g. Fulham Road (A304). The whole system shall be designed to prevent summer overheating and minimise energy usage. Chimney/boiler flues and ventilation extracts shall be positioned a suitable distance away from ventilation intakes, openable windows, balconies, roof gardens, terraces and receptors. Approved details shall be fully implemented prior to the occupation/use of the residential development and thereafter permanently retained and maintained. 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.

22. Prior to the commencement of the development (excluding site clearance and demolition) details must be submitted to and agreed in writing by the council of the Ultra Low Nox Gas fired boilers to be provided for space heating and domestic hot water. The Gas fired boilers to be provided for space heating and domestic hot water shall have dry NOx emissions not exceeding 40 mg/kWh (at 0% O₂). Where any installations do not meet this emissions standard it should not be operated without the fitting of suitable NOx abatement equipment or technology as determined by a specialist to ensure comparable emissions. Following installation, emissions certificates will need to be provided to the council to verify boiler emissions.
23. The development hereby permitted shall not commence until details of water efficiency measures and details of a non return valve have been submitted to and approved in writing by the council. The measures/scheme shall be implemented in accordance with the approved details prior to occupation of the development hereby permitted, and thereafter permanently retained and maintained in line with the agreed plan.
24. The development hereby permitted shall not commence prior to the submission and approval in writing by the Council of details of the green roofs, including planting and maintenance plan shall be submitted to and approved in writing by the Council. Development shall accord with the details as approved.

***** END OF SCHEDULE *****