



Appeal Decision

Site visit made on 12 June 2024

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2024

Appeal Ref: APP/H5390/W/23/3331581

Flat B, 34 Turneville Road, Hammersmith and Fulham, London W14 9PS

- 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 Nicolo Ascione against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The application Ref is 2023/00531/VAR.
 - The application sought planning permission for conversion of a single family dwellinghouse into 2no. self-contained maisonettes (consisting of 1no. two bedroom and 1no. three bedroom); erection of a single storey rear extension at lower ground floor level; replacement of existing rear windows on the ground and first floor levels with new windows; without complying with a condition attached to planning permission Ref: 2018/00654/FUL, dated 20 April 2018.
 - The condition in dispute is No. 13 which states that: No occupier of the first floor two-bedroom flat 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.
 - The reason given for condition 13 is: 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 Policies HO1, HO11 and T4 of the Local Plan (2018) and Key Principle TR3 of the Planning Guidance Supplementary Planning Document (SPD) (2018).
-

Decision

1. The appeal is allowed and planning permission is granted for conversion of a single family dwellinghouse into 2no. self-contained maisonettes (consisting of 1no. two bedroom and 1no. three bedroom); erection of a single storey rear extension at lower ground floor level; replacement of existing rear windows on the ground and first floor levels with new windows at Flat B, 34 Turneville Road, Hammersmith and Fulham, London W14 9PS, without complying with a condition attached to planning permission Ref: 2018/00654/FUL, dated 20 April 2018, in accordance with the application Ref 2023/00531/VAR, and subject to the conditions set out in the schedule to this Decision.

Main Issue

2. The main issue is whether or not condition 13 is reasonable, necessary and relevant to planning.

Reasons

3. Condition 13 of planning permission 2018/00654/FUL does not allow the occupier of the approved two-bedroom, first floor flat to apply for a parking permit or from retaining such a permit, with the exception of disabled persons who are blue badge holders. The condition also says that if such a permit is issued it must be surrendered on demand.
4. However, a planning permission and any attached conditions run with the land or building, and not with any individual. The prevention of an individual, or group of individuals, from such actions, in this case applying for a permit, is not a restriction on the land or buildings. Other than referring me to the Lillie Road appeal decision, which I have addressed further on in my Decision, the Council has submitted no specific comments that contest the previous appeal Inspectors¹ similar findings in this regard.
5. Paragraph 56 of the National Planning Policy 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. I find that the approach taken with condition 13 is unreasonable in that it would restrict the actions of individuals that are unrelated to how the approved development is used. As such, I conclude that condition 13 would fail the tests for planning conditions of reasonableness and relevance as set out in the Framework.

The effect of removing the condition 13

6. Policy T4 of the Hammersmith and Fulham Local Plan ('LP') says that the Council will require permit free measures unless a significant lack of public transport availability is evidenced, with supporting text that the Council will only consider issuing permits in locations with a PTAL of 2 or lower. Key principle TR3 of the Hammersmith and Fulham Planning Guidance Supplementary Planning Document (2018) requires, amongst other things, car parking permit free measures on all new development in areas of good public transport availability.
7. Policies T1 and HO2 of the LP seek to ensure that traffic generated by new development is minimised, so that it does not add to parking pressures on local streets, and say 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.
8. Policy CC10 of the LP seeks to reduce the potential adverse air quality impacts of new development and requires mitigation measures to be implemented to reduce emissions.
9. Whilst I acknowledge the objectives of the development plan policies, I have found that disputed condition 13 does not meet the tests for the use of conditions and is therefore not an appropriate mechanism to secure those objectives.
10. Accordingly, and whilst I have had regard to the submissions made by the main parties and third parties, it is not necessary for me to go on to consider the

¹ Appeal Decision APP/H5390/W/20/3257531

effect of the removal of condition 13 and the issues in relation to the encouragement of sustainable transport, parking stress, or air quality.

Other Matters

11. The Council has referred me to an appeal decision relating to a property in Lillie Road, London. In this case, one of the conditions in dispute is similar to condition 13, which is before me. In this appeal the Inspector concluded that the disputed conditions were necessary, relevant and reasonable having regard to on street parking. Furthermore, that varying them would cause unacceptable harm with regard to the development plan in respect of securing car-free development unless there is a significant lack of public transport available.
12. Nevertheless, I do not have the full details of the evidence that was before the Inspector in respect of the validity of the disputed conditions, at the time of determining the Lillie Road appeal. Accordingly, this appeal decision does not alter my findings.

Conditions

13. The Planning Practice Guidance is clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) should also repeat the relevant conditions from the original planning permission² unless they have already been discharged. In addition, Section 73 is drafted widely and so, in addition to considering the disputed condition(s), it does provide the power to attach new conditions, to not attach conditions which were previously imposed or to attach modified versions of them.
14. The appellant's submissions confirm that the development has been completed. As such, it is not necessary to attach the original condition 1, which set a time limit for commencement of the development.
15. Condition 14 of the original permission requires the approval of a scheme to ensure that all occupiers of the two-bedroom flat at first floor level, other than those who are blue badge holders, have no entitlement to parking permits from the Council. The scheme also needs to ensure that occupiers are informed of such a restriction prior to occupation. Notwithstanding, the mechanism that may be used, this condition also seeks to restrict the rights of an individual or individuals to undertake an act rather than a restriction that would be associated with the building that is the subject of the planning permission granted. Therefore, for the same reasons in relation to condition 13, this would fail the tests of reasonableness and relevance.
16. Condition 12 of the original permission requires the Council to be notified of the postal address of the two-bedroom flat at first floor level. This is to enable the Council to update its records, and since it would also be the Council issuing any parking permit, to ensure that parking permits are not issued to the occupiers of this flat. This condition would only be of purpose in conjunction with the conditions that follow it, i.e. conditions 13 and 14, as without them it would not have the effect of restricting the issuing of a parking permit, even though the Council would be aware of the full postal address. As such, and in light of my findings in respect of conditions 13 and 14, I conclude that condition 12 is both

² Ref: 2018/00654/FUL. dated 20 April 2018

unnecessary and irrelevant to planning, and so fails to meet the tests of conditions as set out in the Framework.

17. For the above reasons, it is not necessary to reinstate conditions 12 and 14.
18. As I am not certain that some of the original conditions have been complied with or discharged, I have reinstated these. Where works have already been undertaken in accordance with such conditions or the conditions have been discharged, these could be agreed between the main parties. I have also restated those undisputed conditions that are still subsisting and capable of taking effect. The reasons for reinstating any conditions are same as those specified on the original permission. I have amended condition 1 of my Decision to include the approved drawings.

Conclusion

19. For the reasons given above, condition 13 attached to planning permission 2018/00654/FUL is not reasonable or relevant to planning. The appeal should therefore be allowed, subject to the conditions set out in the attached schedule.

M Aqbal
INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be in accordance with the approved drawings: Site Location Plan; P-02_REV.B; P-03_REV.A; P05_REV.A; P07_REV.A and P-09_REV.A.
- 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 party walls of the extension hereby approved shall not exceed the height of the existing party walls.
- 4) The replacement openings to the property hereby approved shall be of timber frame construction.
- 5) Where replacement openings are to be formed in the external faces of the proposed development hereby permitted, the parts of the structure above such openings shall be supported by brick arches or brick faced lintels.
- 6) No water tanks, water tank enclosures or other structures shall be erected upon the flat roof of the extension hereby permitted.
- 7) The roof of the extensions hereby approved shall not be 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 these roofs in connection with their 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 rear elevation of the application property to form access onto these roofs.
- 8) No plumbing, extract flues or pipes, other than rainwater pipes, shall be fixed on the front elevation of the building.
- 9) The residential units hereby permitted shall not be occupied until full details of cycle storage, have been submitted to, and approved in writing by, the Council. Such details as approved shall be implemented prior to occupation of the residential development, and thereafter be permanently retained.
- 10) The residential units hereby permitted shall not be occupied until full details of refuse storage, including provision for the storage of recyclable materials, have been submitted to, and approved in writing by, the Council. Such details as approved shall be implemented prior to occupation of the residential development, and thereafter be permanently retained.
- 11) The conversion hereby approved shall only be used as residential units falling within Class C3 of the Town & Country Planning (Use Classes) Order 1987 (as amended). The resulting converted flats shall not be used as housing in multiple occupation falling within Class C4 of the Town & Country Planning (Use Classes) Order 1987 (as amended).