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ENCLOSURE 3

## ENCLOSURE 3

APPEAL REF : APP/H5390/A/14/2212773  
45 HOLMEAD ROAD LONDON SW6 2JD

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## Appeal Decision

Site visit made on 11 August 2014

by **A U Ghafoor BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 October 2014

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**Appeal Ref: APP/H5390/A/14/2212773**  
**45 Holmead Road, London, SW6 2JD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr James Warren against the decision of the Council of the London Borough of Hammersmith and Fulham.
  - The application Ref 2013/04582/PD56, dated 28 October 2013, was approved on 4 December 2013 and planning permission was granted subject to conditions.
  - The development permitted is the change of use from office (Class B1) into a 4 bedroom dwellinghouse (Class C3).
  - The conditions in dispute are nos. 2 to 6 and 8 to 13 which are set out in the Appendix attached to this decision.
  - The reasons given for the conditions are set out in the Appendix attached to this decision.
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### Decision

1. The appeal is allowed in part and the prior approval ref: 2013/04582/PD56, dated 28 October 2013, for the change of use from office (Class B1) into a 4 bedroom dwellinghouse (Class C3) at 45 Holmead Road, London, SW6 2JD, granted on 4 December 2013 by the Council of the London Borough of Hammersmith and Fulham is varied by the deletion of condition nos. 4, 5, 6, 8, 9, 10, 11, 12 and 13.

### Reasons

2. Article 3, Schedule 2, Part 3, Class J of the Town and Country Planning (General Permitted Development) Order 1995 as amended ('the GPDO') permits a change of use of a building and any land within its curtilage to a use falling within Class C3 (dwellinghouses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended from a use falling within Class B1 (a) (offices) of that Schedule. The change of use is subject to conditions and limitations set out in paragraph J.1 and J.2.
3. Paragraph J.2 states that Class J development is permitted subject to the condition that before beginning the development, the developer shall apply to the local planning authority ('the LPA') for a determination as to whether the prior approval (abbreviated as 'PA') of the LPA will be required as to: (a) transport and highways impacts of the development, (b) contamination risks on the site and (c) flooding risks on the site, and the provisions of paragraph N shall apply in relation to any such application. Paragraph N sets out the procedure for submitting a PA application.

4. In this case, PA for the development was granted subject to 13 conditions. The planning agent considers that the Council has no power to impose conditions. However, on 6 April 2014 the GPDO was amended. Paragraph N, sub-section (11), states that the LPA may grant PA unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The planning agent complains that condition nos. 2 to 6, and 8 to 13, are unreasonable<sup>1</sup>.
5. Against all of that background information, I consider the **main issue** is whether the conditions in dispute meet with the advice in paragraph 206 of the National Planning Policy Framework, having particular regard to the local highway network and contaminated land.
6. The provisions of the GPDO require the LPA to assess the development solely on the basis of the transport and highways impacts, contamination risks and flooding risks on the site. The Council argue that the disputed conditions are necessary to make the development acceptable in terms of impact upon highway and contamination. The question is are the disputed conditions reasonable, necessary, and relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects?
7. The site is in a mixed use area with a large number of residential properties which would appear to have little off-road parking provision. No. 45 is situated in an area of permit controlled on-street parking and, collectively, conditions 2, 3, 4 and 5 seek to limit demand for on-street car parking space arising from the development.
8. The site is located in an area which is accessible by excellent public transport facilities but the Council's unchallenged assertion is that there is considerable pressure for on-street car parking spaces especially overnight. They argue that the parking stress within proximity of the site is an average 80% and that demand for on-street parking is considerable. Although they have not submitted specific data, at the time of my site visit, which was during the normal working day, there was limited amount of unoccupied permit holder on-street parking space available. The lack of on-street capacity is reflective of the highly urbanised nature of the locality, in my view.
9. The agent asserts that a single dwelling is unlikely to generate significant demand for on-street parking in comparison to the previous use of the site. The assertion is that the occupiers of the office building had the right to apply for two parking permits, and generated demand for eight on-street parking spaces, but the previous office use is likely to have taken place during the normal working day. Demand for on-street parking is likely to be greater during the early evenings and overnight, especially when people return home from work or a day out.
10. The agent argues that a 4-bedroom dwelling is unlikely to generate considerable demand for on-street parking because it would be occupied by a single family given its design and layout. Also, the plans show an integral garage which would provide one off-street car parking space. However future occupiers of the dwelling may have access to, or own, more than one vehicle. There is no guarantee that residents would not apply for on-street parking

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<sup>1</sup> The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014/564 and article 5 (8) (e) inserted paragraph (11) to paragraph N. On 16 September 2014, The Planning Inspectorate wrote to the appeal parties seeking comments on the amendments. I am grateful for all of the representations which I shall take into account.

- permits as there is no planning obligation. If future occupiers were to generate demand for on-street parking, the potential cumulative increase in vehicle use and demand would be significant as a result of the development.
11. Given the site's location, the lack of on-street spaces would create knock-on parking issues within the locality. When demand for kerbside parking is at its greatest, residents and visitors would potentially cruise the streets hunting for precious parking spaces. This would result in the congestion and clogging up of other side roads thereby having a detrimental impact upon local parking conditions. Vehicles displaced from the development would potentially be parked dangerously on the adjacent highway. The development would have a harmful impact upon the free-flow of traffic, due to the lack of sufficient capacity for on-street parking in the vicinity.
  12. Except for disabled badge holders, the effect of condition no. 3 would restrict future occupiers of the dwelling from obtaining parking permits. The terms of the condition would assist in ensuring that the residential use would not generate additional demand for on-street car parking in an area which is already showing considerable signs of parking stress. Condition no. 2 would help the Council to maintain a record of applications for parking permits made from the dwelling.
  13. Essentially, condition no. 4 requires the submission of a scheme showing how future occupiers would be informed of the parking restrictions associated with the use of no. 45 as a dwelling. Notwithstanding the reasons for imposing the stipulation, I find the wording imprecise. This is because it would be difficult to detect whether or not there has been a breach of the condition.
  14. Condition no. 5 requires the provision of bicycle storage facilities prior to the occupation of the dwelling. It seeks to promote alternative sustainable forms of transport. However, the dwelling would include a garage and there would be adequate space within the property given its design and layout for bicycle storage. I consider that the condition would be too onerous and unnecessary.
  15. Condition no. 6 requires all household waste to be stored internally and that it shall only be brought to the front of the premises on the day of collection. I consider that the condition would be unnecessary in this case as there would be adequate space within the dwelling to store waste. It is also likely that occupiers would put out waste bins on the day of collection. Other legislative provisions control the removal of waste bins from the public footpath.
  16. Conditions 8 to 13 all relate to land contamination. A preliminary risk assessment was prepared by Environmental Assessment Services limited (*'the EAS report'*) dated October 2013. It was submitted with the PA application. The EAS report shows that the site is not contaminated<sup>2</sup>. The Council consider that the site might be affected by off-site pollutants. This is because of a nearby dry cleaners and the vapour/gas pathway from the Kempton Park Gravels. However, the EAS report concludes that the site is at a low risk from these pollutants. I find that the future occupiers of the dwelling are unlikely to be in contact with contaminated land given that the development does not involve major structural or earthwork.

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<sup>2</sup> As described in Part 2A of the Environmental Protection Act 1990 and further guidance is found in Contaminated Land Statutory Guidance issued by Secretary of State for the Environment, Food and Rural Affairs in April 2012.

17. Additionally, the EAS report shows that the potential risk to contractors would be satisfactorily addressed by normal industrial hygiene, health and safety requirements. The evidence presented shows that contamination risks on the site would be insignificant to require the submission of more details such as a site investigation scheme, quantitative risk assessment report, and remediation method statement and verification reports. Therefore, I find condition nos. 8 to 13, collectively.
18. Taking all of the points in the preceding paragraphs together, I find condition nos. 2 and 3 would be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonably related to the subject matter of the prior approval. The reasons for imposing the conditions accord with the main thrust of Policies T1, transport, of the London Borough of Hammersmith and Fulham Local Development Framework Core Strategy 2011 ('CS'), Policies DM J2 and DM J3 of the Development Management Local Plan 2013 ('DMP'), which relate to vehicle parking standards and housing with reduced parking. The conditions would also meet the aims and objectives of the Council's supplementary planning document 2013 ('the SPD').

### **Other matters and conclusion**

19. In coming to my findings above, I have taken account of representations made by the occupier of no. 1 Holmead Road. However, the proposal would not involve extensions to the appeal building. Considerations about the potential effect of the development upon residential amenities are not pertinent to this particular appeal.
20. For the reasons given above and having considered all other matters, I find that stipulations 2 and 3 serve a useful planning purpose and meet the requirements for planning conditions outlined in the paragraph 206 of the Framework. Therefore, I dismiss the appeal with regard to these conditions.
21. On balance, however, I conclude that conditions 4, 5, 6, 8, 9, 10, 11, 12 and 13 fail the advice found in paragraph 206 of the Framework regarding the imposition of planning conditions. On the particular circumstances of this case, the appeal should succeed with regard to these conditions and I have deleted them.

*A U Ghafoor*

Inspector

Appendix to appeal ref: APP/H5390/A/14/2212773 – list of disputed conditions and reasons for the imposed conditions

- (2) The dwellinghouse 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 dwellinghouse. Such notification shall be to the council's Head of Development Management and shall quote the planning application number specified in this decision letter.

Reason: In order that the Council can update its records to ensure that parking permits are not issued to the occupiers of the dwellinghouse 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 CS Policy T1, DMP Policy DM J2 and DM J3, and SPD Transport Policies.

- (3) No occupiers of the dwellinghouse 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.

Reason: 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 CS Policy T1, DMP Policy DM J2 and DM J3 of the Development Management Local Plan 2013, and SPD Transport Policies.

- (4) The dwellinghouse 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 dwellinghouse shall not be occupied otherwise than in accordance with the approved scheme unless prior written agreement is issued by the Council.

Reason: In order that the prospective occupiers of the dwellinghouse 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 CS Policy T1, DMP Policy DM J2 and DM J3, and SPD Transport Policies.

- (5) No part of the development hereby approved shall be occupied prior to the provision of the cycle storage for the residential development hereby approved, and such storage facilities shall be permanently retained thereafter in accordance with the approved details.

Reason: In order to promote alternative, sustainable forms of transport, in accordance with DMP Policy DM J5 and SPD Transport Policy 12.

- (6) All refuse generated by the development hereby permitted shall be stored internally, and shall only be brought to the front of the premises on the day of collection.

Reason: To ensure that the use does not give rise to smell nuisance and to prevent harm to the street scene arising from the appearance of accumulated rubbish, in accordance with DMP Policy DM H5 and SPD Sustainability Policies 3, 4, 6 and 8.

- (8) No development shall commence until a preliminary risk assessment report is submitted to and approved in writing by the Council. This report shall comprise: a desktop study which identifies all current and previous uses at the site and surrounding area as well as the potential contaminants associated with those uses; a site reconnaissance; and a conceptual model indicating potential pollutant linkages between sources, pathways and receptors, including those in the surrounding area and those planned at the site; and a qualitative risk assessment of any potentially unacceptable risks arising from the identified pollutant linkages to human health, controlled waters and the wider environment including ecological receptors and building materials. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

Reason: Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site. The condition is required to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works, in accordance with CS Borough Wide Strategic Policy CC4 and DMP Policies DM H7 and DM H11.

- (9) No development shall commence until a site investigation scheme is submitted to and approved in writing by the Council. This scheme shall be based upon and target the risks identified in the approved preliminary risk assessment and shall provide provisions for, where relevant, the sampling of soil, soil vapour, ground gas, surface and groundwater. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

Reason: Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site. The condition is required to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works, in accordance with CS Borough Wide Strategic Policy CC4 and DMP Policies DM H7 and DM H11.

- (10) Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until, following a site investigation undertaken in compliance with

the approved site investigation scheme, a quantitative risk assessment report is submitted to and approved in writing by the Council. This report shall: assess the degree and nature of any contamination identified on the site through the site investigation; include a revised conceptual site model from the preliminary risk assessment based on the information gathered through the site investigation to confirm the existence of any remaining pollutant linkages and determine the risks posed by any contamination to human health, controlled waters and the wider environment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

Reason: Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site. The condition is required to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works, in accordance with CS Borough Wide Strategic Policy CC4 and DMP Policies DM H7 and DM H11.

- (11) Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until, a remediation method statement is submitted to and approved in writing by the Council. This statement shall detail any required remediation works and shall be designed to mitigate any remaining risks identified in the approved quantitative risk assessment. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

Reason: Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site. The condition is required to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works, in accordance with CS Borough Wide Strategic Policy CC4 and DMP Policies DM H7 and DM H11.

- (12) Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until the approved remediation method statement has been carried out in full and a verification report confirming these works has been submitted to, and approved in writing, by the Council. This report shall include: details of the remediation works carried out; results of any verification sampling, testing or monitoring including the analysis of any imported soil; all waste management documentation showing the classification of waste, its treatment, movement and disposal; and the validation of gas membrane placement. If, during development, contamination not previously identified is found to be present at the site, the Council is to be informed immediately and no further development (unless otherwise agreed in writing by the Council) shall be carried out until a report indicating the nature of the contamination and how it is to be dealt with is submitted to, and agreed in writing by, the Council. Any required remediation shall be detailed in an amendment to the remediation statement and verification of these works included in the verification report. All works



must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

Reason: Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site. The condition is required to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works, in accordance with CS Borough Wide Strategic Policy CC4 and DMP Policies DM H7 and DM H11.

- (13) Unless the Council agree in writing that a set extent of development must commence to enable compliance with this condition, no development shall commence until an onward long-term monitoring methodology report is submitted to and approved in writing by the Council where further monitoring is required past the completion of development works to verify the success of the remediation undertaken. A verification report of these monitoring works shall then be submitted to and approved in writing by the Council when it may be demonstrated that no residual adverse risks exist. All works must be carried out in compliance with and by a competent person who conforms to CLR 11: Model Procedures for the Management of Land Contamination (Defra 2004) or the current UK requirements for sampling and testing.

Reason: Potentially contaminative land uses (past or present) are understood to occur at, or near to, this site. The condition is required to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works, in accordance with CS Borough Wide Strategic Policy CC4 and DMP Policies DM H7 and DM H11.

End of Appendix to appeal ref: APP/H5390/A/14/2212773.