
Appeal Decision

Site visit made on 28 March 2017

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 27 April 2017

Appeal Ref: APP/L5810/W/16/3163655
36 Hampton Road, Twickenham TW2 5QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Christopher Niel against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/3297/FUL, dated 3 August 2016, was refused by notice dated 13 October 2016.
 - The development proposed is change of use of ground floor retail unit (A1) and ground, first and second floor residential unit (C3) to create a single live/work unit (sui generis) with dedicated work area (B1a).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor retail unit (A1) and ground, first and second floor residential unit (C3) to create a single live/work unit (sui generis) with dedicated work area (B1a) at 36 Hampton Road, Twickenham TW2 5QB in accordance with the terms of application Ref 16/3297/FUL, dated 3 August 2016 and the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the approved plans listed: Site Location Plan, Drawings PL/100/001, PL/200/002 and PL/200/003.
 - 3) The business floorspace of the live/work unit as highlighted on the ground floor shown on drawing PL/200/003 shall remain and shall not be used for any purpose other than Use Class B1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - 4) Within 6 months of the date of this decision, arrangements for the storage and disposal of refuse and recycling shall be submitted to and approved in writing by the local planning authority. The approved details shall be retained thereafter. No refuse or waste material of any description shall be left or stored anywhere on the site other than within a building or refuse enclosure.
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Main Issues

2. The main issues in this case are the effect of the proposal on:
 - the retail function of the area; and
 - highway safety having regard to parking, cycle and refuse provision.

Reasons

3. The appeal property is situated in the middle of a short terrace on the southern side of Hampton Road. The proposal is to change the use of the building into a live/work unit. The ground floor front room of the property would be used as employment workspace and the remainder of the property would comprise residential use. No external alterations to the building are proposed.

Retail Function

4. Hampton Road within the vicinity of the appeal site comprises a mix of uses including a public house, retail premises, offices and residential properties. There is no dispute between the parties that the appeal site is located with Hampton Road's Area of Mixed Use and does not fall within a designated shopping frontage. It is located within 400 metres of Twickenham Green's key shopping frontage.
5. The objective of Policy DM TC2 of the London Borough of Richmond upon Thames Local Development Framework Development Management Plan (DMP) is to protect and improve the provision of day-to day goods and services in Areas of Mixed Use. The policy allows for mixed use schemes in such areas, including business or employment development. This is on the basis that such development maintains suitable provision for small businesses and other uses which serve the community or attract visitors; and are of a scale that enhances the vibrancy and vitality of the centre and does not erode the core function of the centre, or another neighbouring centre, or compromise an existing use.
6. To ensure that residents have access to local food shopping and essential services DMP Policy DM TC3 seeks to protect shops and post offices in designated frontages in smaller centres and local parades which sell or last sold essential goods, where there is no similar alternative within 400 metres. The Council confirm that the appeal site does not fall within a designated frontage and therefore sub section A, B, C and D of Policy DM TC 3 of the DMP are not applicable to the appeal proposal. Sub section E of this policy is however relevant and this states that the Council will generally consider favourably applications for change of use to any non-shop use compatible with the retail function of the centre.
7. The Council refused the planning application on the basis that marketing evidence was not submitted with the planning application to justify the change of use. However it is clear from paragraph 4.2.27 accompanying Policy DM TC 3 that such marketing is only necessary when the site falls within a designated frontage and the development involves a change of use from a general grocer, newsagent, green grocer, baker, butcher, fishmonger, chemist, or a post office to another non-A1 use. The appeal site does not fall within a designated frontage and therefore a marketing exercise is not required to support an application from an A1 use to a non-A1 use.

8. The appellants submit that the premises have not been used as a shop for approximately 15 years. Paragraph 4.2.30 of Policy DM TC 3 states that in areas not covered by designated frontages, vacant shop units can provide employment or business opportunities. It acknowledges that such units may help to provide premises for small businesses and start-ups. This paragraph also states that the Council will consider applications for such uses favourably where the buildings could be satisfactorily converted and where the proposed use would not adversely affect the functioning or appearance of the shopping centre or residential amenity.
9. The proposed 'work' element would be within the front room of the premises. No external alterations are proposed to the existing shop front. The nature of the use could be controlled to ensure that it did not cause harm to residential amenity. The intended future occupier of the premises would be able to either set up their business or continue with an existing business from the premises where they also lived. Although I have not been provided with details of the type of work that would be undertaken, including whether or not it would serve the community or attract visitors, I am in no doubt that the proposal would contribute to the mix of uses within this vibrant area.
10. I note the Council's concern that the internal wall separating the retail use from the living accommodation has been removed. The appellants propose a 'moving wall' which it is submitted would provide a degree of flexibility between either a separate or more integrated work space with the residential use of the site. Whilst noting both parties' submission the absence of a physical separation between the live and work elements of the premises does not necessarily preclude a certain area being used for a set purpose. Planning conditions could be applied to the grant of planning permission stipulating which areas could be used for the work element in any event.
11. The Council has made reference to earlier planning applications upon the site and an appeal decision¹ which were refused and dismissed on the basis of the absence of marketing to justify the proposal. I note the planning history of the site, however in terms of the 2001 application and subsequent appeal, this was for a different proposal to change the use of the premises to residential only. They were also considered under different development plan policies to the scheme before me. As such I find that the appeal proposal is not directly comparable to the examples referred to by the Council.
12. In light of the foregoing, I consider that the proposal would be compatible with the Area of Mixed Use within which the appeal site is located. The new use would facilitate flexible working practices as set out in paragraph 21 of the National Planning Policy Framework (the Framework). In the absence of substantive evidence to demonstrate otherwise, I conclude that the loss of the retail unit would not adversely affect the functioning or appearance of the retail function of this part of Hampton Road. There would be no conflict with the objectives of policies DM TC 2 and DM TC 3 of the DMP.

Highway Safety

13. DMP Policy DM TP 8 requires that proposals demonstrate that an appropriate level of off street parking is provided. There is no off road parking upon the site for the existing uses of the building to use. None are proposed. The Council

¹ Ref APP/L5810/A/02/1084386

has not raised the lack of facilities as an objection to the scheme, and having regard to the nature of the proposed use, I have no reason to find that there would be an increased demand for parking in the area, over and above the permitted uses on the site.

14. The Council's second reason for refusal made reference to the absence of a suitable mechanism to prevent future occupants from applying for parking permits in the event that a Community Parking Zone (CPZ) came into operation. The appellants submit that there is no CPZ in the area or plans for there to be one.
15. Whilst I note the Council's concern in this regard, I have not been provided with evidence that there are plans to implement a CPZ nor have I been directed to a policy which would support its concern in this regard. The use of the premises as a live/work unit would be unlikely to generate additional vehicle movements over and above the permitted use of the site. Furthermore, I have not been provided with details that the area suffers from parking stress or evidence that additional vehicles parking in the area would cause harm to highway or pedestrian safety. In light of my findings, I conclude that the proposal would not result in conflict with the parking, pedestrian or highway safety objectives of Policies DM TC 2, DM TP 6 or DM TP 8.
16. The appellants have indicated that the garden shed could be used for cycle storage, or alternatively the ground floor hallway. I consider that it would be unlikely that the proposed hallway would be used for storing cycles as this is the main access into the property. However, I observed on my site visit for another appeal on the site² that the garden shed is of a size that could accommodate cycles. In light of this, I am satisfied that suitable facilities would be available for the storage of cycles. There would be no conflict with DMP Policies DM DC 1 or DM TP 7 in this regard.
17. The Council has indicated that had it been minded to grant planning permission, matters such as refuse storage could have been requested. I consider that such matters could be controlled by way of a suitably worded planning condition. There is space to the rear of the property for the storage of waste and recycling facilities. Accordingly, subject to a suitable scheme being agreed, there would be no conflict with the design or neighbourliness objectives of DMP Policies DM DC 1 or DM CC 5.

Other Matters

18. It has been put to me by interested parties that the grant of planning permission would establish a precedent for other similar developments. However, no similar or comparable sites to which this might apply have been put forward. Each application and appeal must be determined on its individual merits and a generalised concern of this nature does not justify withholding permission in this case.
19. I have noted the submissions made by an interested party that there are potential tenants for the retail unit upon the site. This is not however substantiated and this matter therefore attracts little weight in my consideration of the appeal proposal. In any event, for the reasons given, I

² Ref APP/L5810/D/16/3163879

have found that the proposal would not adversely affect the retail function of the area.

20. The appeal site is located within the Twickenham Green Conservation Area, in close proximity to Nos 30 and 38 Hampton Road, which the Council has indicated to be locally listed as Buildings of Townscape Merit (BTM). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. Paragraph 131 of the National Planning Framework (the Framework) sets out matters which should be taken into account when determining planning applications, including sustaining and enhancing the significance of heritage assets (which includes conservation areas and locally listed buildings) and the desirability of new development making a positive contribution to local character and distinctiveness.
21. The Council did not raise the impact of the scheme on the character or appearance of the conservation area or the setting of BTM as a concern in its decision notice. Given my conclusions above and the fact that no external alterations are proposed, I find that the proposal would preserve the character and appearance of the conservation area and the setting of locally listed BTM.
22. I note the submissions made about works being undertaken to the property without the benefit of planning permission. These are matters for the Council to investigate in the first instance. In this case, I am not aware that the proposed use has begun and this matter is not therefore a material consideration in this case.

Conditions

23. The Council has indicated a number of conditions it would wish to see imposed in the event that planning permission was granted. I have considered the suggested conditions against the guidance on conditions in the Framework and the Planning Practice Guidance.
24. To ensure that the development is carried out in accordance with the approved plans, a condition is necessary. A condition is also necessary to control the 'work' element of the proposal to ensure that the use is compatible with the area. A condition is also necessary controlling the storage of refuse and recycling in the interests of highway safety and neighbourliness.
25. A condition preventing occupiers from applying for a parking permit is not reasonable or necessary for the reasons given earlier in my Decision. Cycle storage already exists on the site and it not necessary to attach a condition in this regard.

Conclusion

26. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

R C Kirby

INSPECTOR