
Appeal Decision

Site visit made on 30 May 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 14 June 2017

Appeal Ref: APP/N5660/W/17/3170225

Land Rear of 181 Valley Road, London SW16 2XH

- 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 Nigel Broome against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 16/06494/VOC, dated 16 November 2016, was refused by notice dated 13 January 2017.
 - The application sought planning permission for demolition of existing garage to the rear of 181 Valley Road and erection of a single storey building for use as a garage/store without complying with a condition attached to planning permission Ref 07/03607/FUL, dated 2 November 2007.
 - The condition in dispute is No 3 which states that: The development hereby approved shall only be used as a garage and storage area.
 - The reason given for the condition is: In order to protect the amenity of neighbouring properties (Policies 33 and 56 of the Adopted Unitary Development Plan 2007).
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Planning permission has been granted by the Council to erect a single storey building. Condition 3 has placed a limitation on this planning permission to restrict the use of the building to a garage and storage area. The appellant seeks to remove this condition as he does not consider that the limitations of this condition meet the tests of Paragraph 206 of the National Planning Policy Framework (the Framework) for imposing such a condition. It is contested that Condition 3 is not necessary, is not relevant to the development and is not reasonable.
 3. The Council explain that the Condition is necessary to regulate and maintain the use of the replacement garage/store in perpetuity because any other use of the building is likely to cause undue impact upon the living conditions of surrounding residential occupiers. The condition is, in their view, required to make the development acceptable in planning terms. The Council also consider the condition to be related to the development to prevent other uses of the building. Furthermore, it considers the condition to be reasonable and justified as the use of the building as a garage/store is what was applied for and formed part of the description of the proposed development. Therefore the Council
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considers that the condition would not place any disproportionate burden on the applicant. It is also reasonable in the interests of protecting the living conditions of adjoining occupiers.

4. The Council also considers that the use of the building for other purposes and/or the displacement of the existing garage parking could increase parking on Valley Road, a local Distributor Road.
5. I consider the main issues are the effect that removing the condition would have on: -
 - (a) the living conditions of adjoining occupiers; and
 - (b) parking in Valley Road.

Reasons

6. The development granted planning permission under Ref 07/03607/FUL specifies the use of the building as a garage/store within the description of proposed development. The appellant contests that Condition 3 is redundant giving the use has been stated in the proposal description and is shown upon the plans that accompanied the planning permission. However, the description of a development, cannot, in itself, control, restrict or limit a development; this is the purpose of conditions. In this case the Council has correctly, in my opinion, imposed Condition 3 to setting out the limitation of the use of the building as a garage and store area. However, despite the description of the development purporting to contain limitations to the use of the building, this does not prevent the removal of Condition 3.
7. Section 70(1)(a) of the 1990 Act¹ enables local planning authorities to impose conditions that it considers necessary. I observed that the building is located in a residential area and in close proximity to neighbouring occupiers and their private gardens. It is also a large outbuilding. I consider that the occupiers could use the building for other purposes that could cause harm to the living conditions of the adjoining occupiers, particularly if the activities are noisy. The condition limiting the use of the building to a garage and store area would prevent this and, in my opinion, the condition is both necessary and reasonable to make the development acceptable in planning terms to prevent harm to the living conditions of adjoining residential occupiers.
8. With regard to the appellant's point that the condition would not modify or restrict what is permitted and has no meaningful relationship with the development that has been permitted, I do not agree. The condition, as noted above, sets out the limitation of the use of the building and therefore is directly relevant to the development.
9. I acknowledge that the 1990 Act can control the change of use of this building to other uses and the GPDO² provides conditional permitted development rights. The designation of an Article 4 Direction by the Council can also restrict permitted development rights but no such Direction is in place at the appeal site. The appellant asserts that these mechanisms are available to and should be used by the local planning authority in order to meet their objective. Notwithstanding this, these do not sidestep or replace the Council's ability to

¹ The Town and Country Planning Act 1990

² The Town and Country Planning (General Permitted Development) (England) Order 2015

use conditions as set out under Section 70 of the 1990 Act to address unacceptable impacts.

10. The appellant asserts that no other conditions have been imposed upon the parent planning permission that would restrict the use of the building such as to the type of garage, noise, fumes, hours of operations or goods to be stored. However, such conditions would normally relate to a commercial garage or storage premises and are not activities that normally relate to or take place at a domestic garage and/or store.
11. The Council is concerned that the loss of the garage and any intensification over and above the use of the garage could increase on street parking on Valley Road. However, Condition 3 does not specifically require the garage to be kept available for the parking of vehicles. Furthermore, any intensification in on street parking relating to a different use of the building to that of a domestic garage and store area would be subject to planning controls and assessment by the Council. I therefore cannot conclude from the evidence before me that on street parking on Valley Road would significantly increase as a result of the removal of Condition 3. For these reasons I do not consider that Policies T6 and T7 of the Lambeth Local Plan 2015 that seek to prevent unacceptable on street parking impacts would be compromised.
12. Despite my findings on the second main issue, I conclude, for those reasons set out above, that the condition is reasonable and necessary to retain the restriction of use of the building to a garage and storage area in the interests of the living conditions of adjoining occupiers. The proposed development would be contrary to Policy Q2 of Lambeth Local Plan 2015 which seeks to protect amenity, amongst other matters. The proposal would also conflict with the Framework as the condition is necessary, relevant to both planning and the development itself, and reasonable. I also consider the condition takes due regard of the conditions tests set out in the Framework and the National Planning Practice Guidance.

Conclusion

13. For the reasons given above, I conclude that the appeal should be dismissed.

Nicola Davies

INSPECTOR