



Appeal Decision

Site visit made on 13 June 2017

by S J Buckingham BA (Hons) DipTP MSc MRTPI FSA

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

Decision date: 7th July 2017

Appeal Ref: APP/L5810/W/17/3170942

9 - 23 Third Cross Road, Twickenham, TW2 5DY

- 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 John Vigar, Sunstone Refurbishments Ltd. against the decision of the Council of the London Borough of Richmond-upon-Thames.
- The application Ref 16/4591/VRC, dated 1 December 2016, was refused by notice dated 26 January 2017.
- The application sought planning permission for *demolition of existing warehouse and change of use to mixed use, construction of 8 no. dwellings at the front of the site and 2 storey commercial offices to the rear, with new access, landscaping and parking*, without complying with conditions attached to planning permission Ref 14/1609/VRC, dated 17 November 2014.
- The conditions in dispute are Nos U78223 and U78204 which state that:
 - *U78223 (Parking – Evening Use Residential Only) Parking spaces located in front of the commercial block on approved drawing no. 12.7226.110 Rev P1 shall not be used between the hours of 18.30 and 08.00 for any purpose other than for the parking of private motor vehicles used by occupiers or visitors to the residential properties hereby approved; and*
 - *U78204 (Parking – Private vehicles - communal) Parking spaces located in front of the commercial block on approved drawing no. 12.7226.110 Rev P1 shall not be used between the hours of 18.30 and 08.00 for any purpose other than for the parking of private motor vehicles used by occupiers or visitors to the residential properties.*
- The reasons given for the conditions are:
 - *(U78223) To ensure that the parking provided within the site is utilised by occupants of the site to meet the car parking standards of the Local Planning Authority; and*
 - *(U78204) to ensure that the parking provided within the site is utilised by occupants of the site to meet the car parking standards of the Local Planning Authority.*

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing warehouse and change of use to mixed use, construction of 8 no. dwellings at the front of the site and two storey commercial offices to the rear, with new access, landscaping and parking at 9 - 23 Third Cross Road, Twickenham, TW2 5DY in accordance with the application Ref 16/4591/VRC, dated 1 December 2016, without complying with conditions Nos U78223 and U78204 set out in planning permission Ref 14/1609/VCR, granted on 17 November 2014 by the Council of the London Borough of Richmond upon Thames, but otherwise subject to the conditions set out in the schedule to this Decision.

Main Issue

2. The conditions have the identical effect of preventing use of the car parking spaces during the evening by anyone other than the occupiers of or visitors to the residential properties. The appellant wishes to have them removed as he contends that they would create unnecessary uncertainty for future occupiers of the commercial units now being constructed, and are in any event unenforceable. The main issue is therefore the effect that the removal of the conditions would have on levels of parking congestion within the area, and thereby the effect on highway safety.

Reasons

3. The residential units created by the original permission at 9 – 23 Third Cross Road comprise a terrace of 5 houses and a small flatted block on the road frontage, which have been completed and occupied for several years. The development of 6 commercial units to the rear was under construction at the time of my site visit. The houses have a single allocated parking space each, while there are none for the flats, which have no parking rights within their leases. Changes to the scheme since it was first granted have seen a reduction in the number of commercial units from 10 to 6, and an increase in parking spaces related to those units from 5 to 10. It is to these ten spaces that the disputed conditions apply.
4. The area is predominantly residential, and Third Cross Road is relatively narrow, with limited opportunities for on-street parking. At the time of my visit, designated on-street parking spaces in the vicinity of the site were mostly in use. Both parties agree that there is parking pressure within the area but not as to its severity, and the evidence presented to me on this point is inconclusive.
5. In conjunction with the original permission a S106 Agreement was entered into to remove the rights of any occupiers of the development to obtain a parking permit should a controlled parking zone be implemented in the area within five years of the permission. I have, however, seen no evidence of a controlled parking zone, and it appears to me therefore that parking pressure in the area has not reached a point of severity where the Council has found one to be necessary.
6. Neither the houses nor the flats have previously had access to the additional parking spaces created by the commercial development, as it has not yet been completed. No evidence has been put before me to suggest that this situation has had a harmful effect on local parking congestion or is one which would be improved by access to a greater number of parking spaces for the occupiers of those dwellings. Nor, due to their small number and existing parking arrangements, does it appear likely that in future these dwellings would generate additional parking in the area which would have an adverse effect on existing local highways or traffic conditions. Removal of the disputed conditions would not therefore bring them into conflict with the Council's maximum parking standards and those of the London Plan.
7. The appellant also notes that breaches of the conditions would be likely to be short-lived and so hard to enforce against. Although no evidence has been submitted to support this view, it appears to me likely that a confusing situation could arise of repeated, but short term overstaying in relation to the

permitted hours, with uncertainty about the prospect of enforcement. Furthermore, neither the appealed conditions nor any other conditions relating to the development appear to prohibit use of the ten parking spaces by residential occupiers during office hours. The appealed conditions are likely therefore to give rise to some uncertainty on the part of operators of the commercial units concerning the availability and use of parking spaces.

8. The appellant has drawn my attention to an appeal decision relating to the same site¹, and concerning the removal of a condition restricting the hours of deliveries, loading, parking etc. in the commercial units. In this the Inspector acknowledged that the retention of the condition would have an adverse effect on marketing of the commercial space and make it difficult for the occupiers to run their businesses properly, which would be contrary to development plan and national policy. Given the similarly restrictive effect of the currently disputed conditions on the use of the office space, it appears likely to me that the potential for uncertainty and its harmful effects on the operation of businesses in the units remains a legitimate concern.
9. The proposal would not therefore conflict with the provisions of Policy CP7 of the Council's Local Development Framework Core Strategy 2009 in relation to environmental quality. It would not conflict with policy TP2 of the Development Management Plan 2011 (DMP), which seeks new development which meets the Council's transport standards, or with policy TP8 of the DMP, which requires development to provide an appropriate level of off-street parking. Policy TP9 of the DMP discourages the parking of vehicles in front gardens and Supplementary Planning Document 'Front Garden and Other Off-street Parking' provides advice on how this can be successfully accommodated. As no front garden parking is proposed, I consider that the appeal scheme would not conflict with either.
10. The Local Plan has been published for consultation, and its policies may be subject to change, which reduces the weight which I can attach to it. Policy LP45 of the Local Plan Publication Version for Consultation 2017 seeks development which makes provision for accommodation of vehicles to provide for its needs and the appeal proposal would not conflict with this.

Conclusion

11. For the reasons given above therefore I conclude that removal of the contested conditions would be unlikely to have a harmful effect on parking congestion or highway safety in the area but would be likely to remove uncertainty for the operation of businesses in the commercial units. They are not therefore reasonable or necessary in the interests of preventing unsafe or undesirable levels of parking in the area, or in meeting the parking needs generated by the development.

Conditions

12. The Council has provided a list of the conditions attached to the most recent permission, on which the appellant has had an opportunity to comment, and which I have taken into account.
13. The Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant

¹ Ref APP/L5810/A/09/2103349

conditions from the original planning permission, unless they have been discharged. As I do not have information before me about the status of all the conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, this is a matter which can be addressed by the parties.

14. A condition requiring implementation of the scheme in accordance with the approved plans is added in the interests of clarity. Conditions relating to the BREEAM standard, the implementation of a travel plan and implementation of approved details of cycle parking are added in the interests of promoting sustainable forms of development. A condition preventing the reduction in number of flats is added to ensure that the development continues to meet housing need within the borough.
15. Conditions relating to the implementation and maintenance of the approved landscaping scheme and tree planting are added to protect the appearance of the area, but avoiding the duplication in the Council's suggested list. Conditions relating to boundary treatments are added in the interests of highway safety, and safeguarding the amenities of occupiers of the area. I have added a condition requiring porous or permeable hard landscaping in order to avoid excessive surface water runoff.
16. A condition requiring implementation of access arrangements for disabled people is added in the interests of providing a satisfactory and convenient form of development for disabled people.
17. Conditions relating to the provision and use of refuse and recycling facilities are added to protect the appearance of the area and living conditions of adjoining occupiers. A condition relating to external illumination is added in order to protect the living conditions of adjoining occupiers. A condition requiring the remediation of any contamination is added in order to protect future users of the site.
18. I have added conditions relating to the implementation of the access road and the parking and loading spaces in the interests of highway safety. Implementation of the scheme in relation to existing and finished ground levels is required by condition in the interest of appearance, drainage and access.
19. Use of the roof of the commercial building is restricted in order to protect the living conditions of neighbouring occupiers.
20. The National Planning Policy Framework is clear at Paragraph 200 that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification for doing so. No such justification has been put before me, and I have not, therefore, attached such conditions.

S J Buckingham

INSPECTOR

Schedule of 21 Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:- Drg. No 12.7226.113 Rev P1; Drg. No. 12.7226.114 Rev P2; Drg. No. 12.7226.111 Rev P1; Drg. No.12.7226.110 Rev P1; Drg. No. 12.7226.112 Rev P1 and Energy Statement prepared by Briary Energy dated May 2014.
- 2) The development hereby approved shall achieve BREEAM Rating 'Excellent'; in accordance with the terms of the application & the requirements of the BREEAM Guide (or such national measure of sustainability for design that replaces that scheme).
- 3) Staff and customer/visitor travel surveys shall be undertaken in accordance with a survey methodology to be submitted to and approved by the Local Planning Authority prior to it being carried out. Within 6 months of the use commencing, a new travel plan based on the results of the survey shall be submitted with clear objectives, targets, actions and timeframes to manage the transport needs of staff and customer/visitors to the development, to minimise car usage and to achieve a shift to alternative transport modes .

Following approval by the Local Planning Authority, the applicant shall then implement these actions to secure the objectives and targets within the approved plan. The travel plan (including surveys) shall be annually revised and a written review of the travel plan submitted and approved by Council by the anniversary of its first approval and yearly thereafter. At the third anniversary, the travel plan (including surveys) shall be re-written, and resubmitted for further approval by the Council. This review and re-write cycle shall continue every three years and any approved revision shall be implemented within three months of the date of approval.

- 4) No buildings of the development shall be occupied until cycle parking facilities have been provided in accordance with details submitted on Drawing Number 12.7226.114 Rev P2.
- 5) No alterations shall be made to the flats hereby approved nor shall they be occupied in any way which would result in a reduction in the number of residential units.
- 6) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
- 7) The development shall be carried out in accordance with the details submitted and approved under planning application 08/2651/DD02 which indicates the proposed tree planting and the proposed times of planting.
- 8) If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, [or becomes, in the opinion of the Local Planning Authority,

seriously damaged or defective] another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

- 9) Notwithstanding the provisions of the Town and Country Planning General Development Orders 1995, no wall, fence, hedge or other obstruction to visibility within any part of the areas defined hereunder which is under the control of applicant shall at any time exceed a height of 0.6m above ground level, as agreed by the Local Planning Authority: one area on each side of the proposed access, defined by:
 - i. The highway boundary.
 - ii. The edge of the proposed vehicular access.
 - iii. A line joining a point 2.4m from the intersection of the highway boundary, with a point 2.1m from that intersection measured along the edge of the proposed access.
- 10) None of the terraced houses hereby approved shall be occupied until the means of enclosure submitted and approved under application 08/2651/DD02 has been erected along the boundaries of the site and shall remain in situ unless otherwise agreed in writing by the Local Planning Authority.
- 11) All new hard surfacing shall be porous or permeable paving and be constructed and laid out in accordance with details to be submitted to and agreed in writing by the Local Planning Authority.
- 12) The development hereby permitted shall be implemented in accordance with drawing 2722/Disabled Access/C412/p.* submitted to and approved under application 08/2651/DD01 unless otherwise agreed in writing by the Local Planning Authority.
- 13) None of the buildings hereby approved shall be occupied until a dustbin enclosure has been provided in accordance with the details submitted and approved under planning application 08/2651/DD03 unless otherwise agreed in writing by the Local Planning Authority.
- 14) None of the buildings hereby approved shall be occupied until recycling facilities have been provided in accordance with the details submitted and approved under planning application 08/2651/DD03 unless otherwise agreed in writing by the Local Planning Authority.
- 15) 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.
- 16) Any external illumination of the premises shall be installed in accordance with the details submitted and approved under application 08/2651/DD03 unless otherwise agreed in writing by the Local Planning Authority.
- 17) None of the dwellings/buildings hereby approved shall be occupied until:
 - a) Approved remediation works have been carried out in full on site in compliance with the proposed methodology and best practice. If during the works new areas of contamination are encountered, which have not previously been identified, then the additional contamination shall be fully

- assessed and an appropriate remediation scheme agreed with the local planning authority and,
- b) Upon completion of the remediation works, a validation report has been submitted to and approved by the local planning authority. The validation report shall include details of the remediation works and Quality Assurance/Quality Control results to show that the works have been carried out in full and in accordance with the approved methodology. Details of any validation sampling and analysis to show the site has reached the required clean-up criteria shall be included in the validation report together with the necessary waste management documentation.
- 18) The access road shall be constructed in accordance with the details submitted and approved under planning application 08/2651/DD02 unless otherwise agreed in writing by the Local Planning Authority.
- 19) No building/dwelling/part of the development shall be occupied until the parking spaces and loading bay indicated on drawing no: 12.7226.110 Rev P1 has been constructed to the satisfaction of the Local Planning Authority and shall at no time be used other than by occupiers/callers to the premises and for no other purpose.
- 20) The proposed finished floor levels of all buildings and the finished ground levels of the site in relation to existing site levels of surrounding land shall be constructed in accordance with the submitted details approved under 08/2651/DD02 unless otherwise agreed in writing by the Local Planning Authority.
- 21) The roof of the commercial building shall not be used for any purpose other than as a means of escape in emergency or for maintenance of the building.