



Appeal Decision

Site visit made on 3 April 2019

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2019

Appeal Ref: APP/P3610/W/18/3209698

Land rear of 44 – 48 Stoneleigh Broadway, Stoneleigh, Surrey, KT17 2HS

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Alex Day of Pentagon Homes (Southern) Ltd against the decision of Epsom and Ewell Borough Council.
 - The application Ref 17/01320/REM, dated 1 December 2017, was refused by notice dated 27 February 2018.
 - The application sought planning permission for demolition of existing buildings and the erection of a part single/part three storey building providing 230 sqm commercial floorspace at ground floor and 2 three bedroom, 2 two bedroom and 2 one bedroom flat units at upper floor levels without complying with a condition attached to planning permission Ref 15/00336/FUL, dated 23 November 2015.
 - The condition in dispute is No.5 which states that: The premises shall be used for B1 (a) (c) or D1 (Medical or Health services) and for no other purpose (including any other purpose in Class B and D of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - The reason given for the condition is: In order to safeguard the amenities of the occupiers of neighbouring properties, visual amenity and highway safety in accordance with Policies CS5 and CS16 of the Core Strategy 2007 and Policy DM25 of the Development Management Policy Document 2015.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a part single/part three storey building providing 230 sqm of commercial floorspace at ground floor and 2 three bedroom, 2 two bedroom and 2 one bedroom flat units at upper floor levels at Land rear of 44 – 48 Stoneleigh Broadway, Stoneleigh, Surrey, KT17 2HS in accordance with the application Ref 17/01320/REM, dated 1 December 2017, without compliance with condition number 5 previously imposed on planning permission Ref 15/00336/FUL, dated 23 November 2015 and subject to the conditions set out in the schedule attached to this decision.

Preliminary matters

2. Since the planning application was refused the National Planning Policy Framework has been replaced twice, most recently in February 2019. Both the Appellant and the Council had the opportunity to comment of the changes introduced in the National Planning Policy Framework 2018 in their Appeal

statements. The National Planning Policy Framework 2019 (the Framework) has not introduced any material changes which affect the consideration of this Appeal.

3. At the time of my site visit the site had been fenced off and the previous buildings on the appeal site had been demolished and the site levelled. The Council have indicated that the demolition works started on 1 November 2018.
4. Notwithstanding this, condition 6 of planning permission 15/00336/FUL required details of a Construction Transport Management Plan to be agreed by the Council prior to the commencement of any development including any works of demolition or preparation works prior to building operations. No evidence has been provided to me to suggest that this condition has been discharged.
5. That said, no evidence has been provided by the Council which would suggest that the original permission has not been lawfully implemented. I have therefore determined the appeal on this basis.

Main Issues

6. The first main issue is whether Condition 5 is necessary and reasonable to avoid additional parking pressures in the locality and to protect the living conditions of local residents. The second main issue is whether the proposal should make provision for affordable housing.

Reasons

Condition 5

7. The original planning permission reference 15/00336/FUL was for a three storey building with 230 square metres of commercial floorspace at ground floor level and six flats at first and second floor levels.
8. As written, condition 5 restricts the use of the whole of the premises to a use within B1 (a), Class B1 (c) or Class D1 (Medical or Health services) of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). This was clearly a drafting error, as the condition should have only related to the commercial uses on the ground floor and not to the residential element above.
9. The Appellant has stated that the reason for providing a wider range of uses is to attract potential occupiers. The application therefore sought to vary the use of the ground floor of the premises by allowing for any Class D1 (non-residential institutional uses). This would allow for educational, religious, cultural, meeting and other municipal uses. At the same time the Appellant seeks to correct the drafting error relating to the use of the whole building in condition 5.
10. In addition, when assessing the need for and reasonableness of condition 5 it is necessary to consider whether all restrictions imposed by condition 5 meet the six tests set out in the conditions section of the Planning Practice Guidance (PPG). It states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects.

11. The Appeal site is located to the rear of Stoneleigh Broadway, which is one of the two largest local centres in the borough. The site fronts onto and is located midway along Dell Lane and immediately to the west of the Appeal site is a narrow access road that links Dell Lane to Stoneleigh Broadway. Dell Lane is a private narrow road, with no pavements and is flanked by an ad-hoc mixture of rear service yards, parking areas, commercial and other buildings, which project close to the back edge of the highway.
12. Stoneleigh Broadway appears to be a busy local centre. There is on-street parking on both sides of the road and within the slip roads sited on either side of the main highway. The pavements are wide and have cycle racks sited within them and Stoneleigh railway station is located to the west of the local centre. There is a privately-operated pay and display car park at the western end of Dell Lane and another pay and display car park outside the railway station. There are regular bus services which run close to the site. In addition, the Appeal site and the local centre are within easy walking and cycling distance of a large residential catchment area.
13. The Appellant has referred to the 2011 Census, which shows that at that time some 28.6% of residents used public transport, which compared to 18.6% within Surrey as a whole. In addition, 23.3% of households living in flats did not own a car/van. Whilst this information is not up to date it reflects the good accessibility of the borough in general.
14. The approved scheme does not include any on-site parking, although cycle storage is provided within the proposed building. The vehicle movements likely to be generated by the proposed flats would not change with the proposal. With regard to the proposed commercial floorspace, as pointed out by the Appellant, offices, drop-in clinics and surgeries all have the potential to generate significant numbers of vehicle trips. Also, currently there are no restrictions on the operating hours of the proposed commercial uses.
15. Parking standards are designed to reflect the likely demand for parking that would be generated by different uses. The Appellant has advised that in accordance with the Surrey County Council Parking Standards (2018), the parking standard for some of the proposed D1 uses would be the same as for the permitted uses. The parking standard for other D1 uses would be higher and would equate to four additional parking spaces, when compared to the approved development.
16. At the time of the Appeal site visit there were a significant number of on-street and off-street parking spaces available. This included vacant on-street parking spaces along all sections of Stoneleigh Broadway, a few spaces in the car park next to the railway station and almost all of the spaces in the car park to the west of Dell Lane were available.
17. It is also noted that between the hours of 0830 and 1830 hours the users/occupiers of the proposed commercial unit(s) would be unable to park in the surrounding streets due to the parking restrictions. The parking time limitations (2 hours) with Stoneleigh Broadway would discourage staff and people visiting the premises for prolonged periods from using the on-street parking spaces.

18. To my mind, there would be ample spaces available in the area to meet any additional need arising from the potential traffic generated by the approved and proposed uses as outlined by the Appellant.
19. In coming to this view, I acknowledge that my visit was only a snapshot in time. I also acknowledge that there are some parking restrictions on the surrounding road network. However, little evidence has been provided to me that would indicate that sufficient spaces would not be available to accommodate the future demands of the commercial use together with the residential accommodation above.
20. To that end, I consider that the use of the ground floor of the building for other uses within Class D1 would not cause any significant parking issues, nor would it adversely impact on highway safety or the living conditions of local residents.
21. In addition to the above, I note that the original application did not specify the exact uses proposed for the ground floor element of the development with the description of the development referring to 'commercial' floorspace.
22. In considering the restriction imposed by condition 5, there is little justification why Class B1 (b) (research and development) uses were excluded from the uses authorised by the permission especially as arguably more intrusive uses within Class B1 (c) could be operated within the terms of the permission. To that end, I consider that there are no planning reasons why such a use would not be appropriate when considered against the extant planning permission.
23. I have also considered the possibility of other commercial uses such as those falling within Part A (Classes A1 and A2) and Class D2 of the schedule of the UCO.
24. In respect of Class A2 uses, I note that this would have similar characteristics in servicing arrangement to a Class B1 use. Whilst a Class A2 use would attract a level of public access, this would be unlikely to be any greater than a use within Class D1. In that sense, I see no reason why a Class A2 use would not be appropriate.
25. Turning to uses within Class A1 and Class D2, they have the potential to attract significant numbers of people and/or require good servicing facilities. On the basis of the information submitted I am not satisfied that adequate servicing and pedestrian access would be provided, in the interests of pedestrian and vehicular highway safety. Also, some D2 uses could have the potential to have an adverse impact on the living conditions of local residents due to noise and disturbance. I therefore consider that such uses would not be appropriate.
26. For the above reasons I consider that condition 5 of permission 15/00336/FUL is unduly restrictive. The use of the ground floor commercial unit for any use within Classes A2, B1 and D1 uses would not result in any parking or highway safety issues, nor would such uses adversely affect the amenity of the occupiers of the existing and proposed residential properties. The development would therefore accord with Policy CS16 of the Epsom & Ewell Borough Council Core Strategy 2007 (CS) and Policies DM10 & DM37 Epsom & Ewell Borough Council Local Plan Development Management Policies Document 2015, which amongst other matters seek to encourage locating development in accessible locations; encourage a shift of emphasis to non-car modes as a means to access services and facilities; minimising the need to travel through measures

such as travel plans; and ensuring that vehicular traffic generated does not create or exacerbate existing on-street parking problems. In addition, there policies seek to ensure that new development has regard to the living conditions of the occupiers of the proposed and neighbouring properties and ensure a high standard of amenity for existing and future users. The development would also accord with the overarching aims of the Framework.

Affordable Housing

27. The Council has confirmed that in relation to the original proposal (planning permission 15/00336/FUL), the Council required the provision of a one bedroom affordable flat and a commuted financial contribution in lieu of 0.2 of an affordable unit. This was in accordance with Policy CS9 of the CS and the Council's Revised Developer Contributions Supplementary Planning Document (SPD) and is to be secured by way of an appropriate legal agreement.
28. To accord with Policy CS9 and the SPD the Appeal proposal would similarly need make the same provisions for affordable housing. However, the CS and the SPD both pre-date the Framework and the proposal is not for a major development, as defined in the Framework. Paragraph 63 of the Framework clearly states that provision for affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas. Accordingly, in this respect, Policy CS9 of the CS and the SPD are inconsistent with the Framework.
29. In relation to the Appeal proposal the degree of conflict between the Framework and Policy CS9 of the CS and the SPD is significantly more than limited. Paragraph 213 of the Framework advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. As such in this one respect I find that paragraph 63 of the Framework, carries more weight than Policy CS9 of the CS and the SPD.
30. The proposal involves the re-use of brownfield land and is for just six flats. The Council has provided very limited evidence to demonstrate why an affordable housing contribution is still necessary, having regard to the modest size of the scheme and paragraph 63 of the Framework.
31. I therefore conclude on the second main issue that a need for the proposal to make a contribution for affordable housing has not been demonstrated and that the proposal accords with the Framework and in particular paragraph 63. This clearly outweighs the conflict with Policy CS9 and the SPD.

Conditions

32. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
33. In allowing this Appeal this would result in the granting of a new planning permission. However, as the original permission has already been implemented it is not necessary to include a standard time limit condition.
34. I have considered all of the other conditions from permission 15/00336/FUL and I agree that all of the conditions (save for condition 5) are necessary and

reasonable, although some would require adapting to take account of the fact that the site has already been cleared. These conditions are necessary to ensure the scheme respects the character and appearance of the locality; to protect the living conditions of local residents; to ensure the development makes effective use of energy, water and materials; in the interests of highway safety; and in the interests of certainty.

35. As outlined above, amendments to condition 5 are required to address the original drafting error and to widen the scope of acceptable uses for the proposed ground floor commercial unit.
36. The Appellant has suggested planning conditions which would require the implementation of a travel and car parking management plan and the provision of additional cycle parking spaces. However, the Appeal site is located in an accessible location and the approved scheme already makes provision for cycle parking. As such, I do not consider that either of these conditions are necessary.
37. The Appellant has also suggested the imposition of a condition which would restrict the occupation of the proposed commercial unit to 0800 and 2130 hours on any day. With the current approval there is no hours of operation restriction. Little evidence has been submitted to demonstrate that the proposed D1 uses would be likely to generate more noise and disturbance than the approved uses. Similarly, there is no obvious reason why a Class A2 use would generate more noise and disturbance than a Class B1 use. As such I consider that the suggested hours of occupancy condition is unnecessary.

Conclusion

38. Taking all matters into consideration, I conclude that the appeal should be allowed.

Elizabeth Lawrence

INSPECTOR

Conditions schedule

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: TBS/P15/04 REV A; TBS/P15/05 REV A; TBS/P15/06 REV A; TBS/P15/07 REV A; TBS/P15/08 REV B; TBS/P15/09 REV C; and TBS/P15/11 REV A.
- 2) The development shall be carried out in accordance with the details of the approved materials to be used for the external surfaces of the development pursuant to permission 15/00336/FUL.
- 3) Prior to the occupation of any part of the development hereby permitted privacy screens to the balconies/terraces shall be erected as per the approved plans. The development shall be carried out in accordance with the approved details and the screens shall be retained.

- 4) The development shall be carried out in accordance with the details of the approved hard and soft landscaping scheme pursuant to permission 15/00336/FUL.
- 5) The commercial floorspace on the ground floor of the premises hereby permitted shall only be used for Class A2, B1 or Class D1 uses (as defined in the Schedule to the Town and Country Planning (Use Classes) Order 1987 as (as amended) or in any provision equivalent to those Classes in any statutory instrument revoking and re-enacting that Order with or without modification) and shall not be used for any other purpose.
- 6) No further development shall take place until a Construction Transport Management Plan has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period and shall include:
 - a) Parking for vehicles of site personal, operatives and visitors
 - b) Loading and unloading of plant and materials
 - c) Storage of plant and materials used in constructing the development
 - d) Programme of works (including measures for traffic management)
 - e) Wheel washing facilities
 - f) Measures to control the emissions of dust and dirt during construction
 - g) A scheme for the recycling/disposing of waste resulting from the construction works
 - h) Details relating to the maintenance and retention of the existing boundary security hoarding.
- 7) The development shall be carried out in accordance with the details of the sustainability measures of the development pursuant to permission 15/00336/FUL prior to the first occupation of the building. Thereafter, the sustainability measures shall be maintained and no change shall take place without the prior written approval of the local planning authority.
- 8) Access to the flat roof area of the development hereby permitted shall be for maintenance or emergency purposes only and the flat roof shall not be used as a balcony, roof garden, patio or similar amenity space.