



Appeal Decision

Site visit made on 4 June 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2019

Appeal Ref: APP/Z5630/W/19/3225717

Hollingsworth Court, Lovelace Gardens, Surbiton KT6 6SH

- 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 Thomas Hickman of Gravitas 1061 Ltd. against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 18/16633/FUL, dated 7 September 2018, was approved on 13 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is application under S73 to vary condition 1 (approved plans) of planning permission 4185 (30 flats and 33 garages) to amend orientation of two garages and reduce number of garages to 30.
 - The condition in dispute is No 2 which states that: The use of the garages hereby permitted shall be restricted solely to the garaging of motor vehicles for the sole benefit and personal enjoyment of the occupants of Hollingsworth Court and for no other purpose whatsoever; and shall be permanently retained for that use.
 - The reason given for the condition is: To ensure adequate off-street car parking facilities and to avoid the congestion of surrounding roads by parked vehicles in accordance with Policies DM9 (Managing Vehicle Use for New Development) and Policy DM10 (Design Requirements for New Developments including House Extensions) of the LDF Core Strategy Adopted April 2012.
-

Decision

1. The appeal is allowed and the planning permission Ref 18/16633/FUL, for application under S73 to vary condition 1 (approved plans) of planning permission 4185 (30 flats and 33 garages) to amend orientation of two garages and reduce number of garages to 30, at Hollingsworth Court, Lovelace Gardens, Surbiton KT6 6SH granted on 13 March 2019 by the Council of the Royal Borough of Kingston-upon-Thames, is varied by deleting condition No 2 and substituting it for the following condition:

Condition 2: The garages hereby permitted shall not be used for any other purpose other than for the garaging of private motor vehicles and for the storage of domestic paraphernalia.

Procedural Matter

2. The Council in its Statement has stated that the wording for the reason for imposing Condition 2 should be different to that shown in the banner above. Given that the wording shown above was taken from the Council's Decision Notice I can see no valid reason why this should be changed, and I have made my decision on that basis.

3. During my site visit I observed that fourteen garages have previously been constructed, under planning permission 4185.

Main Issue

4. The main issue is whether or not the occupation of the garages at Hollingsworth Court should be restricted to the occupiers of Hollingsworth Court.

Reasons

5. Hollingsworth Court comprises of three storey buildings, sub divided into self-contained flats, located on Lovelace Gardens. The existing 14 garages are located to the rear of the flats. The area is predominantly in residential use.
6. In granting planning permission to vary condition 1 to an extant planning permission¹ which dates back to 1960, the Council sought to impose condition No 2 in order to ensure that there would be adequate off-street car parking for the occupiers of Hollingsworth Court and to alleviate congestion to on street parking in the surrounding roads.
7. The appellant states that the approved development should not have a restriction on occupancy. Moreover, they say that the extant planning permission could be developed without any occupancy restrictions and by offering the garages to the wider community this would help alleviate the congestion on the surrounding streets.
8. The Council is of the opinion that the appellant has not robustly demonstrated that the residents do not wish to take up the use of the garages either for car use or domestic storage and as result would fail to comply with policies DM9 and DM10 of the Local Development Framework Core Strategy (2012) (CS); which when read together seeks schemes to provide car parking provision and to have regard to the amenities of occupants and neighbours in terms of noise and disturbance. However, policies DM9 and DM10 provide no guidance on what information would be required to satisfy such an assessment of demand.
9. Whilst it is not clear what the occupancy level of the garages is, the appellant states that none of the garages are currently occupied by any residents of Hollingsworth Close. Further, the appellant states that recent marketing efforts to interest the residents of Hollingsworth Court in the refurbished and new garages produced only two enquiries and no firm offers. They go onto say that an occupancy restriction would result in the garages being unused for the foreseeable future. Based on my site observations the existing garages did not appear to be frequently used and they had a dated appearance which could inhibit demand from prospective occupiers.
10. On the basis that the Council's intention was to avoid any congestion on the surrounding roads by restricting the use of the occupation of the garages, there is no clear evidence before me to indicate that Condition 2 would achieve this. At the time of my site visit there was no evidence of parking stress along Lovelace Lane and the surrounding roads. Whilst I acknowledge this may occur in the evenings and at weekends, I am not persuaded that by restricting occupancy of the garages to the occupiers of Hollingsworth Court, who currently do not use the garages and are not likely to want to do so in the

¹ Planning permission reference 4185

future, this would alleviate congestion on surrounding roads. In fact, by allowing the wider community to occupy the garages, this might provide some benefit and lessen the demand for on street parking in the area in accordance with CS policies DM9 and DM10. In this regard, the disputed condition is necessary, precise, enforceable and relevant to planning.

11. However, there is no evidence before me to indicate that allowing a wider use of the garages would encourage greater car movements to and from the site, which the Council states would be at odds with paragraphs 108 and 110 of the National Planning Policy Framework (the Framework). There is also no evidence that the use of the garages in this manner would cause additional noise and disturbance for the occupiers of Hollingsworth Court. It is a matter of fact that the use of the garages suggested by the appellant company would be no different to that of the extant planning permission. The disputed condition is therefore not reasonable.
12. Whilst I have had regard to the concerns of interested parties which include the condition of the garages, the attraction of commuters to use the garages, security and anti-social behaviour and the dimensions of the garages to suit modern vehicles, for the reasons set out above they do not alter my decision.
13. The appellant has proposed providing the occupiers of Hollingsworth Court with preferential treatment regards future occupancy. Whilst this adds weight to support for the proposal, imposing such a condition would not meet the tests of Framework paragraph 55 as there no mechanism is in place or is proposed to demonstrate how it could be monitored or enforced.
14. I conclude that the appellant company has ably demonstrated that there is no evidence of demand for the use of the garages by the residents of Hollingsworth Court either currently or in the future and that as the appellant company could construct the garages with no occupancy restriction. There is also no evidence that additional noise and disturbance would be caused to the occupiers of Hollingsworth Court.
15. I therefore conclude that condition 2 is not reasonable or relevant to the development to be permitted. While the disputed condition is necessary, precise, enforceable and relevant to planning, it does not meet all the test of Framework paragraph 55. However, I will replace the version of condition 2 that is subject of the appeal with one that does not link the garages solely to the occupants of Hollingsworth Court. The development would accord with policies DM9 and DM10 of the CS which jointly seek to manage vehicle use for new development and provide design requirements for new development. The effect of the change to condition 2 is to allow the appeal.

Conclusion

16. For the reasons set out above, I conclude that the appeal should succeed.

Paul Wookey

INSPECTOR