



Appeal Decision

Hearing Held on 10 September 2019

Site visit made on 10 September 2019

by J Ayres BA Hons, Solicitor

an Inspector appointed by the Secretary of

Decision date: 11 November 2019

Appeal Ref: APP/L5810/W/18/3213904

Land rear of 127 - 147 Kingsway, Mortlake, London

- 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 Space Solutions UK Limited against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/1507/FUL, dated 14 April 2016, was refused by notice dated 17 July 2018.
 - The development proposed is demolition of 38 garages including vehicle repair garage and the erection of six residential units (2x3 bed and 4x2 bed), incorporating two commercial (B1a offices) units (totalling 152 sq.m) with amenity space, off street parking and associated works.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) whether the proposal would provide a suitable and safe access to the development with particular regard for the emergency services, and future users of the site, and (ii) the provision of affordable housing.

Reasons

Access for the emergency services

3. The appeal site is located to the rear of a number of residential properties and is accessed by a track which at its widest point, measures slightly in excess of 3 metres. It is not disputed between the parties that it would not be possible for a fire engine to access the appeal site via this track as a minimum clearance of 3.7 metres is required for fire tenders.
4. During the hearing the concept where a number of dry risers would be located along the accessway into the site to provide for a fire engine to park on the highway, and still serve the proposed units in the event of an emergency was discussed at length. No technical details were submitted to illustrate how this would work for this scheme, however it was explored as a concept that has been used elsewhere in London, specifically for mews developments.
5. I have carefully considered the relative distances, the furthest units from the highway would be the commercial units which are in excess of 90 metres from

the site entrance. The residential units would then be located in a row facing into the site along the rear boundary. All units would be accessed via the single point of entry along the access track which is approximately 28 metres. Whilst I accept that an approach incorporating dry risers could be implemented in principle, I am not satisfied that it has been demonstrated such a concept would be appropriate for this site. I acknowledge that this approach has been used elsewhere, however I do not have specific details of those schemes that would allow me to make any meaningful comparisons. Furthermore, each site must be considered individually, and taking into account the seriousness of the issues a blanket approach to this concept would not be appropriate.

6. It is fundamental that development is provided in a manner that is safe for future occupants. The fire Brigade should be consulted at an early stage within the planning process to work alongside and confirm functionality of any proposals that would be used for this due to the site being inaccessible for fire tenders. There is no evidence to suggest that the appellant entered into consultation with the fire brigade either throughout the application or appeal process and therefore there is no confirmation from the fire brigade that this approach would be suitable for this particular development. Failure to provide adequate access for fire tenders, or to provide confirmation from the fire services that an alternative approach would be suitable, means that the development cannot demonstrate it would be safe for future occupiers.
7. As part of the hearing the use of a pre-commencement condition to secure the agreement of a Fire Safety Strategy to include the provision of dry risers was discussed. Conditions should be used to enable development to proceed by mitigating adverse effects of that development where it would otherwise have been necessary to refuse planning permission. With regards to the scheme before me, I am not satisfied that without prior consultation with the fire services in relation to the very particular circumstances of this site such mitigation can be achieved. Therefore, it is not possible for me to impose a condition that would meet the relevant tests, particularly those relating to enforceability and the need for precision.
8. As such, I cannot conclude that the proposal would provide a suitable access with particular regard to the ability of the emergency services to tend to the site. Accordingly, I find that the proposal would conflict with Policy LP44 of the London Borough of Richmond Upon Thames Local Plan 2018 (the Local Plan) with specific regard to the council's aim to promote safe, sustainable and accessible transport solutions.

Access for future users of the site

9. The appeal site would be occupied by those residing in the houses, and those working in the commercial units. The proposal would provide off street parking to serve the future residents along with visitor parking. It would be necessary for the access to be shared by both vehicles and pedestrians, and due to the width of the access there would be the potential for vehicles to come into conflict with pedestrians or cyclists.
10. In order to reduce this conflict between pedestrians and vehicles a pedestrian walkway would be painted along the road, and the access would be constructed with pavements which have been shown to slow traffic speeds. The access itself is straight along the stretch where it is narrow, and when standing at either end it is possible to see the full length of the track. Once committed to travelling

along the access there may be occasions when a vehicle would seek to travel along the track in addition to pedestrians. However, due to the straight character of the access, in manoeuvring to enter the track from either direction all parties would be able to see each other, and it would then be possible to take action to avoid conflict. The narrow width currently requires vehicles to move slowly, and I am satisfied that future users in evaluating the width and length of the track would be encouraged to keep vehicle speeds down.

11. An average time of 18 seconds to walk the length of the track was suggested, and I see no reason to find that even with children in tow it would take significantly longer than this. The travelling time for cyclists would be less than 18 seconds. Therefore any vehicle would not be stationary for a significant period of time whilst the access cleared. Kingsway is a residential road, with traffic travelling in one direction. Due to existing parking arrangements the road is relatively narrow and requires a slower speed for vehicles. Nevertheless there is good visibility travelling along the road, especially at this part of the highway, and therefore any vehicles that had to remain stationary to allow the access to clear would not result in a risk to the safe functioning of the highway for other users.
12. Additionally, the scheme would be served by a traffic light system which would regulate the flow of traffic into and out of the site. It would provide for the light into the appeal site to remain green and therefore avoid a build up of traffic on the highway. Any traffic leaving the site would be held until the light to exit turned green, allowing it priority along the accessway. This light system would not provide priority onto the highway, it would simply secure a right of way along the accessway and would ensure that vehicles conflicts did not result in a risk to the safe use of the access.
13. The cumulative result of the measures above would ensure that vehicles and pedestrians would be able to utilise the access safely and I am satisfied that, subject to the proposed measures, the access way would be suitable for the level of vehicle and pedestrian traffic that would be associated with the development. Accordingly, I find that the proposal would provide a suitable access for those occupying the site in accordance with Policy LP44 of the Local Plan which requires development to provide safe walking and cycling routes. It would also provide adequate parking in accordance with the requirements set out in Policy LP45.
14. However, this does not alter my finding in relation to the provision of a suitable access for the emergency services.

Affordable Housing

15. At the hearing a S106 Unilateral Undertaking was submitted to secure a financial contribution of £187,000 towards affordable housing within the Borough. The appellant has not disputed the need to provide a contribution towards affordable housing, and the figure reflects that required by the Council. I find that such a contribution would be fairly and reasonably related in scale and kind to the development proposed, and necessary to make the proposal acceptable in planning terms. The proposal would therefore comply with Policy LP36 of the Local Plan in this regard.
16. The appellant suggested that it would be appropriate to include a review mechanism within the S106 to allow a review of construction costs and to

provide for a claw back of part of the affordable housing contribution, should a review demonstrate that one was warranted.

17. Review mechanisms are usually used to allow for an increase in financial contributions, and this is clearly set out in paragraph 3.54 of the Londonwide Affordable Housing & Viability Supplementary Planning Document. In this case the level of housing contribution has been calculated in accordance with the council's development plan on the basis that the contribution is appropriate for this scheme. This has been subject to a considerable level of negotiation between the parties which included the assessment of the viability of the scheme.
18. The appellant has not put forward any circumstances that would suggest the scheme would not be viable, and paragraph 3.66 of the Supplementary Planning Guidance referred to above advises that review mechanisms should not be used to reduce the base level of affordable housing contributions that are required as part of the planning permission. As such, on the basis of the evidence submitted, I do not consider that a review mechanism would be appropriate in this case.

Other matters

19. Concerns were raised by nearby residents relating to issues including the pressure on on-street parking and disturbance during construction and future occupation.
20. Kingsway has been the subject of a pilot to consider the use of a control permit zone and the council indicated that this may become a permanent control. The proposal would include a restriction on the issue of permits, and therefore it would not be possible for users of the site to park on Kingsway. Whilst there may be some disturbance during construction this could be mitigated through a construction management plan and would be temporary in nature. Given the relatively modest number of proposed units, and the fact that a commercial operation already exists on the site, I do not consider that the future use of the site would result in a level of disturbance that would be harmful to surrounding residents such to warrant dismissing the appeal on these grounds.

Conclusion

21. The proposal before me has not shown that it would be capable of providing an access that would allow the emergency services to serve the future occupiers of the site. I therefore find that the proposal would conflict with the development plan when taken as a whole.
22. It would be possible to provide a suitable access for pedestrians and vehicles, and the level of affordable housing has been secured, furthermore the provision of additional homes is a benefit. However, these matters do not outweigh the fundamental conflict with the development plan.
23. Accordingly, for the reasons above the appeal is dismissed.

J Ayres

INSPECTOR

APPEARANCES

For the Appellant:

James Lloyd – Create Designs

Bryan Staff – Create Designs

Nick Ferguson – PMA Traffic

Sam Allpass – Space Solutions (UK) Ltd

Abigail Lindsay – PMA Traffic

For the Local Planning Authority:

Nicki Dale – London Borough of Richmond Upon Thames

Will Marshall – London Borough of Richmond Upon Thames

Lucia Sarisska – London Borough of Richmond Upon Thames

Interested Parties:

Mr and Mrs Offord – 125 Kingsway

Kerry McLaughlin

Kareena Patel

Documents submitted at the hearing:

Attendance List

Unilateral Undertaking