



Appeal Decision

Site visit made on 17 February 2020

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th March 2020

Appeal Ref: APP/L5810/W/19/3238391

159 Heath Road, Twickenham TW1 4BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Portdevon Holdings LLP against the Council of the London Borough of Richmond-upon-Thames.
- The application Ref 19/1107/VRC is dated 3 April 2019.
- The application sought planning permission for a development described as 'Demolition of existing office building with two residential units and erection of a part single, part three, part four storey building providing ground floor commercial uses (A1(non-food retail, A2, B1, D1 & D2) and 21 No. 1 and 3 bedroom flats (6 social rent affordable units and 15 private sale units) with associated access, parking and landscaping' without complying with conditions attached to planning permission Ref 17/2109/VRC, dated 20 November 2017.
- The conditions in dispute are Nos U34022, U34023, U34046, U34043, U34045 and U34047 which state that:
- U34022 - Staff shall not be present on the premises in A1 (non-food retail)/A2/B1/D1 uses hereby approved more than 30 minutes before 07.00 or after midnight on any day. Staff shall not be present on the premises in D2 uses hereby approved more than 30 minutes before 09.00 or after 18.30 on any day
- U34023 - No customers shall be present on the premises in any A1/A2/B1/D1 use hereby approved before 07.00am or after midnight on any day. No customers shall be present on the premises in the D2 use hereby approved before 09.00 or after 18.30 on any day. A notice to this effect shall be displayed at all times on the premises so as to be visible from outside
- U34046 - In relation to a D2 use with the extended hours approved by this notice, 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 within 3 months of the commencement of use. Within 12 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 whilst the premises remain in occupation by a D2 use.
- U34043 - Notwithstanding conditions NS14 (Staff on the Premises) and NS15 (Customers on the Premises), for a limited period of 2 years from the commencement of use of the premises for a D2 Use, staff shall not be present on the premises in a D2 use more than 30 minutes before 06:30 or after 22:00 on any day apart from Sunday.

On Sunday staff shall not be present on the premises in a D2 use more than 30 minutes before 08:00 or after 20:00. No customers shall be present on the premises in a D2 Use before 06:30 or after 22:00 on any day apart from Sunday. On Sunday no customers shall be present on the premises in a D2 use before 08:00 or after 20:00. A notice to this effect shall be displayed at all times on the premises so as to be visible from the outside. The operating hours hereby permitted shall be discontinued 2 years after the commencement of use of the premises for a D2 Use and revert to the operating hours under conditions NS14 and NS15 unless otherwise agreed in writing by the Local Planning Authority.

- U34045 - The D2 use shall operate a system whereby all classes are pre-booked by customers either on-line or via the telephone unless otherwise agreed in writing by the Local Planning Authority.
 - U34047 - No more than 30 customers shall be on the premises to attend a D2 Use hereby approved at any one time.
 - The reasons given for the conditions are:
 - U34022 - To protect the amenities of nearby residential properties
 - U34023 - To protect the amenities of nearby residential properties
 - U34046 - In order to comply with the objectives of national and local Planning Policies which promote sustainable development with particular regard to transport
 - U34043 - To allow a suitable period of monitoring of the impacts of the extended hours on residential amenity, parking and highway conditions.
 - U34045 - To safeguard the amenities afforded to local residents and the free flow of traffic and public safety on the adjoining highway by reducing the likelihood of high levels of demand for kerbside parking at peak times.
 - U34047 - To safeguard residential amenity and local parking and highway conditions
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing office building with two residential units and erection of a part single, part three, part four storey building providing ground floor commercial uses (A1(non-food retail), A2, B1, D1 & D2) and 21 No. 1 and 3 bedroom flats (6 social rent affordable units and 15 private sale units) with associated access, parking and landscaping at 159 Heath Road, Twickenham TW1 4BH in accordance with the application Ref 19/1107/VRC dated 3 April 2019, without compliance with condition Nos U34022, U34023, U34046, U34043, U34045 and U34047 previously imposed on planning permission Ref 17/2109/VRC, dated 20 November 2017 and subject to the conditions in the attached schedule.

Preliminary Matters

2. The development the subject of this appeal has already taken place. Therefore, in allowing this appeal a standalone planning permission is granted for the development without the disputed conditions imposed. The description of development for application 17/2109/VRC does not set out the act of development. Accordingly, in the interests of clarity I have described the proposal with reference to the act of development, taking my wording from the original permission – reference 13/4019/FUL.

Background and Main Issues

3. The development was originally granted planning permission (Ref 13/4019/FUL) in 2015 and completed in 2017. Subsequent applications have been made to undertake the development without complying with some of the conditions imposed. In 2017 a standalone planning permission was granted which extended the potential operating hours for any use falling within Class

D2 (Assembly and Leisure) of the UCO¹. The hours were extended from 0900 – 1830 to 0630 – 2200 (Mon – Sat) and 0800 to 2000 on Sundays. The Council approved this for a temporary period and subject to further conditions limiting the number of customers, requiring a booking system to be in operation and a travel plan to be devised and monitored.

4. The appellant is now seeking a new planning permission with the operating hours permanently increased to 0630 – 2200 (with half an hour either side for staff) seven days a week and without restrictions on the number of customers and requiring classes to be pre-booked. The appellant is also seeking to amend the travel plan condition to permit a longer reporting period.
5. The Council failed to determine the planning application within the prescribed period and therefore the appellant submitted this appeal. The Council has confirmed that, had it been in a position to do so, it would have refused the proposal due to concerns that the extended operating hours without the disputed conditions would harm highway safety and living conditions.
6. Accordingly, the main issues in this appeal are: The effect of the proposed development, without the disputed conditions, on 1) The living conditions of the occupants of nearby properties with particular reference to noise and disturbance and 2) Highway safety with particular reference to parking.

Reasons

The effect on living conditions

7. The scheme approved in 2017 (Ref 17/2109/VRC) includes conditions relating to the sound proofing and sound testing of the commercial unit. These conditions are aimed at preventing a harmful level of internal sound transmission to the upper floor homes, such as that from music or the ambient noise of customers. There is nothing of substance before me to suggest these conditions would be ineffective and it is not uncommon for commercial uses to be sited on ground floors subject to such mitigation. Instead, the Council's concerns relate to comings and goings in the early morning and late evening and the disturbance this could cause to nearby residents.
8. The appeal site is located along Heath Road at the corner with Heath Gardens. The ground floor commercial unit is vacant and has been empty since it was completed. Heath Road is a busy thoroughfare where several commercial properties lining its route or close by. The area can reasonably be described as vibrant, busy and urban. The effect of approving the scheme without the disputed conditions needs to be considered in this context.
9. To this end, the appellant has commissioned a review of potential noise impacts relative to background noise levels. This has considered the potential noise impact of sixty customers waiting on Heath Road outside the ground floor commercial unit. The assumption is that twenty people in this hypothetical group would be talking at a normal conversational level. This is a reasonable assumption because it is unlikely, they would all be talking at once. Moreover, as they would be queuing outside there would be little reverberant sound build-up and therefore the 'Lombard Effect' would not be significant.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

10. The scenario enables an impression of the impacts from comings and goings early in the morning and late into the evening. However, it is very much a worst case, as it is highly unlikely this number of customers would need to wait in the street given the capacity of the commercial unit (of a round 40 customers attending a class). In any event, it is unlikely the operators would want their customers to wait outside, particularly in inclement weather.
11. The noise assessment concludes that if the scenario described above occurred then the change in background noise levels for the upper floor residents would be an increase of around 2.6db. This would be a 'slight impact' falling within the 'No Observed Adverse Effect Level' category when applying the Noise Policy Statement for England (NPSE). The NPSE explains that no specific measures are required in dealing with such an impact, which may be noticeable but not intrusive. Moreover, the upper floor residential properties have high performance insulation and glazing installed to prevent harmful road noise.
12. Given that this unlikely 'worst case' scenario would not result in a harmful noise impact, it would be unnecessary to impose conditions limiting the opening hours to a temporary period to allow further monitoring. There is nothing before me to suggest local circumstances would change at the end of the temporary period. Moreover, it would be unnecessary to place a ceiling on the number of customers that can attend the site at any one time because the unit capacity when in a D2 use is unlikely to exceed sixty people. This also negates the need for customers to pre book classes. In respect of the latter, pre booking classes would not prevent customers arriving at the same time. Nor would it limit the comings and goings of customers not taking part in set classes. In fact, a sudden in-flux of pre-booked customers at one time would not prevent the impacts the Council is seeking to control. As such, the condition is unnecessary.
13. In addition, the permitted opening hours of 0700 to midnight for A1 (non-food retail)/A2/B1 and D1 uses exceed the evening controls the Council is seeking to place on a D2 use and are similar to the early morning operating hours being sought by the appellant. These uses could result in patrons congregating in the street and high levels of comings and goings being generated. The Council has not provided substantive evidence to demonstrate that a D2 use would generate materially greater noise and disturbance thereby requiring higher levels of control than the permitted uses. Given this 'fall back' position it would be unreasonable to place extra controls on D2 uses, even on a Sunday. In any event, the evidence before me demonstrates the extended operating hours would not result in a harmful noise and disturbance impact and consequently there would be no need for residents to have respite from activity on Sundays, a break which would not occur if any of the other permitted uses took place.
14. I therefore conclude that altering the operating hours of a D2 use to 0630 – 2200 (with 30 minutes either side for staff) would not harm the living conditions of nearby residents and therefore a conflict with Policy LP8 of the Local Plan 2018 (LP) would not occur. It therefore follows that Conditions U34047 (No. of Customers), U34045 (Pre-booked Classes) and U34043 (Temporary Gym Opening Hours) are unnecessary and thus imposing them would be unreasonable.

The effect on highway safety

15. Heath Gardens is a predominately residential street with a compact form that requires residents to park in the road. There appears to be high demand for kerbside parking and consequently the area is subject to a controlled parking zone. Given these circumstances, careful consideration should be given to any proposal that may increase the demand for kerbside parking, particularly outside the controlled hours.
16. Permanently permitting the operating hours of any D2 use to increase to 0630 to 2200 (with staff being present 30 minutes either side) would increase the pressure for on street parking outside the times when kerb side parking is controlled. I share the view of the Council that this is most likely to be experienced in the evening because local residents are more likely to already have their cars parked in the morning or will have set off for work.
17. In considering application 17/2109/VRC, the Council's Highway Officer did not raise objections to the increased hours, even in the evening, being of the view that a D2 use would not generate significantly more car trips than the other uses permitted, which could take place from 0700 until midnight. In addition, parking surveys had demonstrated that the likely parking demand associated with a D2 gym use could be accommodated in available spaces on and off site. I have seen nothing to suggest this view from a highway expert has changed.
18. These conclusions were informed by a technical analysis in the appellant's Transport Note, whereby the TRICS² database was interrogated. This demonstrates that a low percentage (10%) of visitors would likely drive to the appeal site if it was in use as a gym. This is due to its town centre location and the availability of public transport. The dense nature of the area also means many potential customers would be within walking distance. The Council has not indicated that other D2 uses would generate vastly different outputs from TRICS. The appellant has therefore concluded that a gym use would generate around 3-5 vehicle trips based on a capacity of 30 customers. The Council has not provided alternative technical evidence, so I have relied on these figures.
19. The number of trips likely to be generated by a gym use would be notably less than a B1 use, where around 41% of workers travelling by car. A retail use would also generate more trips including greater servicing demands. These uses are already permitted to take place from the commercial unit outside the Controlled Parking Zone times. Therefore, it is highly unlikely that a D2 use would generate parking demands that could not be accommodated or would be greater than the other uses permitted to take place at the appeal site.
20. Removing the ceiling on the number of customers that could attend the site could result in greater parking demands if the number of patrons greatly exceeded the estimated capacity of 30 customers. However, even if it were to double, thereby doubling the parking demand, the parking surveys demonstrate that there would still be capacity on-street in the uncontrolled times for the associated parking demands derived from the extended opening hours. Requiring a pre booking system would be more likely to result in parking problems as customers arrive on mass rather than being staggered.

² Trip Rate Information Computer System

21. As such, it is unnecessary to place greater controls on a D2 use, such as a gym, in order to prevent harmful impacts on parking. This is particularly so because a condition can be imposed requiring a travel plan, which would assist in reducing car journeys by customers and staff. A two-year monitoring period for the travel plan would be proportionate because the appeal scheme falls below the threshold in Transport for London Guidance relating to situations where a travel plan is necessary.
22. I therefore conclude that altering the operating hours for D2 uses to 0630 – 2200 (with 30 minutes either side for staff) would not harmfully prejudice the availability of on street parking and therefore the safety of the highway would be preserved. Thus, a conflict with Policies LP44 and LP45 of the LP would not occur. It therefore follows that Conditions U34047 (No. of Customers), U34045 (Pre-booked Classes) and U34043 (Temporary Gym Opening Hours) are unnecessary and thus imposing them would be unreasonable.

Conditions

23. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 of the Act should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant as listed by the Council and agreed by the appellant. If some have in fact been discharged or are no longer relevant, then this can be addressed by the parties.

Conclusion

24. The appeal scheme, without the disputed conditions, would adhere to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should succeed.

Graham Chamberlain
INSPECTOR

Schedule of Planning Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans and documents, where applicable:

Drawing nos. 00717_M_00 P01 received 19th May 2014,

00717_P_01_A P1, 00717_P_02_A P1, 00717_P_03_A P1, 00717_P_04_A P1, 00717A_E_01_A P1, 00717A_E_03_A, P1 received 20th July 2015,

BR_TW_SD_070R1 Rev 1 received on 17 November 2016

Acoustic report submitted by Pace Consult reference PC-13-0255-RP1 dated 02/10/2013

2. 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.
3. The dwelling(s) hereby approved shall achieve a 35% reduction in Carbon dioxide emissions beyond Building Regulations requirements (2013).
4. The dwelling(s) hereby approved shall not be occupied other than in accordance with the water consumption targets of 105 litres or less per person per day, and 5 litres or less per head per day for external water use.
5. The landscape maintenance scheme shall be implemented in accordance with details approved under 13/4019/DD07 from the date of completion of the landscaping scheme as part of the development.
6. A key fob shall be issued to the each residential and commercial units.
7. The ground floor commercial premises shall be solely used for either:
 - a) a medical/health services/museums/exhibition space and for no other purpose within Use Class D1 as specified in the schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision revoking or reenacting that order or/and
 - b) a non-food retail use and for no other purpose within Use Class A1 as specified in the schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision revoking or re-enacting that order or/and.
 - c) an A2, B1 or D2 Use as specified in the schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision revoking or re-enacting that order
8. The B1 (office) and A1 (non-food retail) use hereby approved shall not benefit from the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order) for the change of use to C3 (residential) use.
9. Sound insulation of the floor/ceiling to the proposed ground floor & first floor of the development to reduce the transmission of noise from the commercial element to the residential element of the development shall be implemented in accordance with details approved under 13/4019/DD05 before the use, hereby permitted, commences. The works and scheme shall thereafter be retained in

accordance with the approved details. No alteration to the structure, roof, doors, windows or external facades shall be undertaken without the grant of further specific consent of the local planning authority.

10. The A1 (non-food retail)/A2/B1/D1/D2 uses hereby approved shall not be occupied until the arrangements for the storage and disposal of refuse/waste associated with the use/s have been made in accordance with details approved under 13/4019/DD05. The approved details to be retained thereafter.
11. The applicant shall prepare a service management plan for each of the A1/A2/B1/D1/D2 use hereby approved identifying the size, number and frequency of vehicles to be used for the servicing of the premises, times and duration of deliveries/collection, area of roadside to be used and staff responsibilities in connection with the enforcement of the service management plan; such plan to be submitted to and approved in writing by the Local Planning Authority prior to the A1/A2/B1/D1/D2 use/s commence and such plan to be complied with as part of the development thereafter.
12. The scheme shall be undertaken in accordance with Arboricultural Method Statement approved under 13/4019/DD01 unless otherwise agreed in writing with the Local Planning Authority.
13. The green roof shall be installed in accordance with the details approved under 13/4019/DD05 prior to occupation of the building and maintained permanently thereafter.
14. One on-site parking space shall be at all times assigned to each of the 21 residential flats hereby approved and made available for use solely by the occupiers thereof and shall at no time be used for any other purpose, in particular customers/staff of the ground floor commercial unit.
15. No fewer than 3 no. on-site car parking spaces shall be provided for use by occupiers/customers of the commercial unit(s) at ground floor. These spaces shall be made available at all times.
16. 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).
17. No building/dwelling/part of the development shall be occupied until the parking indicated on Drawing No. BR_TW_SD_070R1 Rev 1 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.
18. Staff shall not be present on the premises in A1 (non-food retail)/A2/B1/D1 uses hereby approved more than 30 minutes before 07.00 or after midnight on any day. Staff shall not be present on the premises in D2 uses hereby approved more than 30 minutes before 06.30 or after 22.00 on any day.
19. No customers shall be present on the premises in any A1/A2/B1/D1 use hereby approved before 07.00am or after midnight on any day. No customers shall be

present on the premises in the D2 use hereby approved more than 30 minutes before or after 06.30 or 22.00 on any day. A notice to this effect shall be displayed at all times on the premises so as to be visible from outside.

20. The green roof, windows/balconies and surrounds (including colour, rainwater goods, glazing, entrances to flats, doorways, shop front details) shall be constructed in accordance with details approved under 13/4019/DD05 and be retained thereafter.
21. The scheme providing for the specification of building envelope & facade insulation & associated ventilation hereby permitted shall be installed in strict accordance with the details provided in section 7 of the acoustic report submitted by Pace Consult reference PC-13-0255-RP1 dated 2/10/2013. The building envelope & facade insulation & associated ventilation works shall thereafter be retained as approved.
22. Mixed Use Commercial (A3,A4,A5) / Residential Units - performance standards for separating walls, separating floors, and stairs that have a separating function.

Proposed built Mixed Use	Airborne sound insulation
DnT,w+Ct dB	
Development	(Minimum values)
Walls Floors and Ceiling	53-58

In order to show that the above sound insulation requirements have been satisfied post completion testing must be undertaken in accordance with the guidance set out in Approved Document E: Resistance to the passage of sound, Building Regulations 2000 (As amended) and be submitted to and approved in writing by the Local Planning Authority.

23. Mechanical services, air conditioning and refrigeration plant hereby permitted shall be installed in strict accordance with the details provided in section 7 of the acoustic report submitted by Pace Consult reference PC-13-0255-RP1 dated 2/10/2013. The Mechanical services, air conditioning and refrigeration plant shall thereafter be retained as approved.
24. None of the buildings hereby approved shall be occupied until the means of enclosures have been erected within the site in accordance with details approved under 13/4019/DD07 and be retained thereafter.
25. All hard and soft landscape works shall be carried out in accordance with the details approved under 13/4019/DD07 prior to the occupation of any part of the development.
26. The allocation of parking spaces shall be made in accordance with the parking management plan approved under 13/4019/DD08. The approved management plan shall be adhered to at all times.
27. The arrangements for the storage and disposal of refuse/waste shall be made in accordance with details approved under 13/4019/DD05 and be retained thereafter.

28. Sample panels of facing brickwork shall be provided in accordance with details approved under 13/4019/DD04.
29. The external surfaces of the building(s) (including fenestration) and, where applicable, all areas of hard surfacing shall be constructed in accordance with details approved under 13/4019/DD04.
30. External illumination of the premises shall be implemented in accordance with details approved under 13/4019/DD05 and be retained in accordance with the approved details thereafter.
31. Ground investigation shall be undertaken in accordance with details approved under 13/4019/DD02.
32. The scheme shall be constructed in accordance with the Construction Management Statement approved under 13/4019/DD03.
33. Prior to occupation of the residential units the 22 residential cycle parking spaces shall be provided in accordance with the details approved under 13/4019/DD08 and retained thereafter.
34. Recycling facilities shall be provided as part of the development hereby approved in accordance with details approved under 13/4019/DD05 and be retained thereafter.
35. The commercial unit(s) shall not be occupied until cycle parking facilities for the commercial units have been provided in accordance with detailed drawings to be submitted and approved in writing by the Local Planning Authority, such drawings to show the position, design, materials and finish. The approved details shall be retained thereafter.
36. A sound limiting device shall be fitted to/used by any in-house or peripatetic musical amplification system/s used at the premises and set at a level that shall at all times achieve the entertainment music noise criteria detailed in the table 2 below. The limiter shall be set and secured so that it cannot be overridden by staff or other persons other than house engineers or other appointed sound system engineers. The limiter shall not be altered without prior agreement of the Local Planning Authority.

An acoustic assessment and report shall be submitted to and agreed by the Local Planning Authority, within 8 weeks of the first commencement of use which demonstrates how the gym facilities and sound limiting device has been set in order to achieve the requirements of the entertainment noise control criteria below:

Table 2
Time of Day
Day/Eve

Entertainment Noise Limit Levels.
External Criteria
Entertainment Noise level (EN) Leq,
5min shall be no greater than the
(WEN) residual noise by more than
3dB(A)

Day/Eve	Internal Criteria Entertainment Noise level (EN) Leq,5min shall be no greater than the Noise Rating Level NR 20 (Leq,5minutes)
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Note: Entertainment noise level (EN) = Representative, or predicted, entertainment noise level, measured or predicted 1 m from the facade of noise-sensitive premises or within noise-sensitive premises. Residual Noise level (WEN) = Representative noise level without the entertainment noise, measured or predicted 1 m from the facade of noise-sensitive premises or within noise-sensitive premises.

37. In relation to a D2 use with the extended hours approved by this notice, 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 within 3 months of the commencement of use. Within 12 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 first two anniversaries of its first approval and shall thereafter continue to be implemented in full accordance with the details approved pursuant to this condition for the life of the Travel Plan and any replacement of it.