



Appeal Decision

Site visit made on 10 March 2020

by J P Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 30 April 2020

Appeal Ref: APP/L5810/W/19/3238842

19 The Green, Richmond TW9 1PX

- 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 Dr Miguele Bocti against the decision of the Council of the London Borough of Richmond upon Thames.
 - The application Ref: 18/4268/FUL, dated 24 December 2018, was refused by notice dated 6 June 2019.
 - The development proposed is change of use from medical surgery to residential (private house). No external alteration.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal property is a Grade II listed building. The appeal relates to the refusal to grant planning permission, but the Council advises that a separate listed building consent application¹, also refused, was submitted in conjunction with the appeal scheme. However, the listed building consent refusal has not been appealed. Therefore, this appeal relates solely to the application for planning permission and I have considered it on that basis.
3. The description of development in the planning application, although altered slightly by the Council in its decision notice, confirms that no external alterations to the listed building are proposed. The submitted plans and appeal documentation confirm the same and indicate that the exterior appearance of the building would not be affected.
4. Internal alterations are indicated on the submitted plans and are referred to in the appellant's appeal submissions. The Council Officer's Report, which considered both the planning application and the separate application for listed building consent together, also refers to internal changes. However, s.55(2)(a) of the Town and Country Planning Act 1990 (TCPA) excludes from the definition of 'development' works for the maintenance, improvement or other alterations of any building which – (i) affect only the interior of the building, and (ii) do not materially affect the external appearance of the building.
5. Therefore, in relation to the planning application, which is the subject of this appeal, the internal alterations are not directly relevant. However, given the listed status of the building, they would require listed building consent, which is

¹ Ref: 19/0489/LBC

a separate legislative process outside the bounds of this appeal. Accordingly, I reiterate that this appeal relates solely to the application for planning permission for the change of use, which does fall within the definition of development within s.55(1) of the TCPA.

Main Issues

6. The main issues are:

- whether a financial contribution towards the provision of affordable housing is necessary; and,
- the effect of the proposed change of use on the special interest of the Grade II listed building, 19 The Green, and on the character or appearance of the Richmond Green Conservation Area (RGCA).

Reasons

Affordable housing

7. As stated in paragraph 2 of the National Planning Policy Framework (the Framework)²: *'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.'*³ The Framework is a significant material consideration in planning decisions. Nevertheless, the starting point for decision making remains the development plan.
8. The Written Ministerial Statement (WMS) of November 2014 dealt with the matter of thresholds beneath which affordable housing contributions should not be sought from small scale and self-build development. However, this statement of national planning policy has now been overtaken by the similar threshold specified in paragraph 63 of the Framework. This indicates that provision for affordable housing should not be sought for residential developments that are not major developments (i.e. less than 10 homes being provided and on a site under 0.5 hectares).
9. However, Policy LP 36 of the Council's Local Plan (LP)⁴ indicates, at part 'B', that: *'A contribution towards affordable housing will be expected on all housing sites.'* At part 'B. c', it requires: *'on sites below the threshold of 'capable of ten or more units gross', a financial contribution to the Affordable Housing Fund commensurate with the scale of development, in line with the sliding scale set out below and in the Affordable Housing SPD.'*⁵
10. Therefore, on the face of it, there is inconsistency in approach between the LP and the Framework. However, the Council refers to paragraph 9 of the Framework which states, in general terms, that: *'Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.'*⁶ That indicates some flexibility in approach is appropriate dependent on local circumstances, including the particular needs of an area.

² February 2019

³ S.38(6) Planning and Compulsory Purchase Act 2004 and s.70(2) Town and Country Planning Act 1990.

⁴ Adopted 3 July 2018

⁵ London Borough of Richmond upon Thames - Supplementary Planning Document: Affordable Housing, adopted 6 March 2014.

⁶ Paragraph 38

11. The Council also refers me to the Inspector's Report on the Examination of the Richmond upon Thames Local Plan, dated 26 April 2018 (the Report). Although this Report pre-dated the publication of the revised National Planning Policy Framework in July 2018,⁷ the Inspector takes account of the WMS and its aims and thresholds intended to reduce the potentially disproportionate burden of affordable housing contributions on small scale developers, which was subsequently included in the Framework, albeit with minor alteration.
12. Notwithstanding the WMS, when considering the content of Policy LP 36, the Inspector finds that there is a persuasive local evidential basis *'for requiring affordable housing (either through the provision on site or via a financial contribution to the established Affordable Housing Fund) on all sites, including those below a capacity of 10 or more units.'*⁸ The Inspector also considers that: *'The Council's viability evidence illustrates the relatively high land value within the Borough'* and notes: *'The policy allows for the consideration of development viability such that I am satisfied it is sufficiently flexible to be effective in implementation. Whilst I am mindful of the weight to be afforded to national policy, the evidenced local circumstances of the Borough exceptionally warrant the content of LP 36 in this regard.'*⁹
13. Therefore, given the approach to affordable housing in the current Framework is broadly similar to that articulated in the earlier WMS, I am satisfied that the reasoning contained in the Inspector's Report, which found the draft Local Plan sound and led to its subsequent adoption in July 2018, remains relevant and applicable. It has not been suggested that the clear level of affordable housing need within the Borough has significantly altered since then. The Council advises that as the supply of larger housing sites fluctuates and in some years completions from large sites have fallen to as low as 7%, it remains reliant on small site contributions to meet affordable housing policy objectives. That has not been disputed by the appellant.
14. Consequently, while I have had regard to the Framework's approach to affordable housing, which is a significant material consideration, it does not outweigh the substantial weight which I attach to local evidence of affordable housing need and to the provisions of policy LP 36 of the relatively recently adopted LP. Furthermore, that approach is consistent with numerous other appeal decisions, relating to various small-scale housing proposals in the Borough, referred to by the Council.¹⁰
15. Based on the sliding scale in the table within LP Policy LP 36 and the Affordable Housing SPD, the Council has calculated that a financial contribution of £37,536 would be appropriate, in relation to the proposed change of use of this building from a medical surgery to a single dwelling. The Council has provided details of its market research, on which it has based the estimated open market value of the property, and of its calculation of the contribution required, which have not been specifically questioned by the appellant. However, the appellant maintains that relevant policy does not require an affordable housing contribution to be made at all.

⁷ The National Planning Policy Framework was subsequently updated in February 2019 but without changes in the approach to affordable housing.

⁸ Paragraph 38

⁹ Paragraph 39

¹⁰ Including: APP/L5810/W/18/3215027, APP/L5810/W/18/3217893, APP/L5810/W/18/3215734, APP/L58110/1124/FUL and

16. The appellant advises that the building was originally constructed as a house and has subsequently been altered and used as a place of worship, then as offices with upper floors retained for residential use, and most recently as a doctor's surgery with the whole building, including the upper floors, used for that purpose. Several of those changes of use are also referred to by the Council and noted in the planning history section of the Council Officer's Report. The appellant advises that having purchased the property in 1994, it was leased to the National Health Service for 25 years for use as a doctor's surgery. However, as the lease has come to an end and the medical practice has merged with another practice at a site nearby, the appellant wishes to use the appeal property as her family home in her retirement.
17. In light of the above, it is contended by the appellant that the proposed change of use of the property, back to its original residential use, should not require an affordable housing contribution. The appellant indicates that policies requiring such contributions are *'designed to levy from Developers making a profit from Developments of a vacant site, or where one of more buildings can be demolished to make a new site for dwellings or an existing building is suitable for division and/or extension/s upwards, outwards or downwards with basements to create dwellings.'*
18. While I note the appellant's views, those criteria are not stated in LP Policy LP 36, which simply refers to a contribution being *'expected on all housing sites.'* Indeed, the table set out within the policy refers to conversions and reversions, while the supporting text, which it is legitimate to consider in interpreting policy content, indicates that: *'The policy applies to all new housing development, including changes of use for wholly residential and mixed use sites incorporating residential use, where planning permission is required.'*¹¹ That is also stated within the Affordable Housing SPD.¹²
19. The appellant takes issue with the description of 19 The Green as a 'site' by the Council, presumably with reference to the use of the term 'housing sites' within LP policy LP 36. However, with the proposed change of use, the location would be the site of a house. Therefore, it would become a housing site, where the provisions of policy LP 36 would be applicable, as confirmed by the supporting text already referred to above.
20. It is also submitted by the appellant that the proposal is not 'development', but the proposal is for a material change of use from a medical surgery (Class D1) to a residential dwelling (Class C3), which constitutes development for the purposes of s.55(1) of the TCPA.
21. The appellant refers to the various appeal decisions cited by the Council but says that they are either new build, new extensions requiring building works, or interior conversion works to provide flats for sale or rent and are, therefore, of limited relevance to the proposed change of use of the appeal property. However, the appeal decisions were mainly cited by the Council in support of its case that requiring affordable housing contributions, as per LP Policy LP 36, for sites of less than 10 homes is legitimate, given the local circumstances in the Borough, notwithstanding apparent inconsistency with paragraph 63 of the Framework. Therefore, as the appeal proposal involves a change of use to create one home, the appeal decisions are relevant in that context.

¹¹ Paragraph 9.3.2

¹² Paragraph 2.1.1

22. The appellant seeks to draw distinctions between the types of work involved and the purposes of those appeal schemes and the change of use in the appeal proposal before me. However, as explained above, Policy LP 36 applies to changes of use which result in a new housing unit where planning permission is required, which would include this appeal proposal. Therefore, while not identical to the appeal proposal, the numerous appeal decisions cited by the Council have sufficient similarities with it to support the principle of seeking a financial contribution towards affordable housing in this case, in accordance with relevant development plan policy.
23. At the final comments stage, the appellant referred to a planning permission, relating to 204 Upper Richmond Road, SW15 6TD, to convert one flat into two flats, where the appellant says that there was no requirement to pay an affordable housing contribution, because the proposal involved no enlargement of the building. However, limited evidence is provided in support of that contention. Moreover, it would appear that the relevant site in that case is located in a different London Borough, the London Borough of Wandsworth, which would have its own local plan policies against which planning applications in that area are determined. Therefore, it is not directly relevant to the appeal proposal before me, which is assessed against the London Borough of Richmond upon Thames LP, which includes Policy LP 36.
24. Although the appellant contests the requirement for an affordable housing contribution and maintains that the sum of £37,536 would render the conversion of the property to residential unviable, the appellant has offered a sum of £5,000 as a gesture of good will. However, in the absence of appropriate supporting financial appraisal information or a viability statement as required by Policy LP 36, where a reduction in the affordable housing contribution is sought, I agree with the Council that the appellant has not satisfactorily addressed the issue.
25. On the evidence before me, I conclude that a financial contribution towards the provision of affordable housing is necessary. In the absence of any agreement between the parties on the sum appropriate and the lack of any legal agreement to secure a contribution, the proposal would conflict with the requirements of Policy LP36 of the LP and the Affordable Housing SPD, which are intended to help to meet the identified affordable housing need in the area.
26. It would not be appropriate to seek to resolve this matter by means of a condition, as the appellant contests the policy requirement for a contribution. Although a sum has been offered as a good will gesture, the appropriateness of that sum has not been sufficiently justified or agreed between the parties. Therefore, in this case, a condition would fail the tests detailed in paragraph 55 of the Framework and the Planning Practice Guidance (PPG). Moreover, the PPG indicates that planning permission should not be granted subject to a positively worded condition requiring the payment of money or other consideration.¹³ Additionally, the PPG says that a positively worded condition which requires the appellant to enter into a planning obligation or other agreement is unlikely to pass the test of enforceability.
27. Furthermore, the PPG advises that: *'A negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases.'*

¹³ Paragraph: 005 Reference ID: 21a-005-20190723

*Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.*¹⁴

28. The PPG also advises: '*...in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). In such cases the 6 tests should also be met.*'¹⁵ However, the appeal scheme does not fall into the category of a particularly complex development scheme and the 6 tests, as referred to in paragraph 55 of the Framework, would not all be met. Therefore, in this case, it is not possible to deal with the matter by means of a condition.

Listed building and conservation area

29. As the appeal relates to a listed building within a conservation area, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I have also taken account of the guidance within section 16 of the Framework.
30. Located on the south eastern side of Richmond Green, the appeal property is currently used as a medical surgery but was originally constructed for residential use. It is a Grade II listed building, first listed in 1950. The list description indicates that this 3-storey house dates originally from the 18th century but was altered in the 19th century.¹⁶ It has an attractive redbrick façade which is two windows wide, with a rounded arched doorway and round-headed window in a complementary style. The front elevation resolves at a cornice and parapet with a pitched slated roof behind. Given the above, I find that the special interest of the listed building, insofar as it relates to this appeal, to be primarily associated with the architectural quality and form of its façade.
31. The proposal does not involve any changes to the exterior of the building. The interior of the building has already been subject to various internal alterations over time related to previous uses as a place of worship and more recently as a medical surgery. While some internal changes are referred to in the appeal submissions, including the removal of partitions, those changes are governed by the listed building consent (LBC) regime and LBC would be required for them, irrespective of the outcome of this appeal.
32. The proposed change of use, from a medical surgery (Class D1) to residential use (Class C3), would return the building to its original use as a house. Given the lack of external changes and in light of the above factors, I conclude that the special interest of this Grade II listed building would be preserved, in relation to the planning application which is subject to this appeal.
33. Although not part of the Council's reasons for refusal, I have a statutory duty to consider the effect on the character or appearance of the RGCA, as the site

¹⁴ Paragraph: 010 Reference ID: 21a-010-20190723

¹⁵ As in Footnote 14

¹⁶ Although the appellants also refers to alterations in 1904

falls within it. The significance of the RGCA, insofar as it relates to the appeal proposal, is principally derived from the character and quality of the late 17th and early 18th century terraces of townhouses, which overlook Richmond Green. Those aspects are confirmed in the Central Richmond, Richmond Green and Richmond Riverside Conservation Area Study.¹⁷ The appeal property forms part of such a terrace.

34. As the proposal relates to the change of use of the building back to its original residential use and does not involve any external changes, I conclude that it would preserve the character and appearance of the RGCA.
35. Given the above factors, the proposed development would comply with Policies LP 1 and LP 3 of the LP, which require development to be of high architectural quality, that is compatible with local character, and seek to protect the significance of listed buildings and conservation areas. It would also comply with relevant considerations within chapter 16 of the Framework.

Conclusion

36. Although I have found that the proposal would not harm the special interest of the listed building and would preserve the character and appearance of the RGCA, the absence of an appropriate secured financial contribution towards the provision of affordable housing in the area, and the consequent conflict with the development plan, is decisive.
37. While I am sympathetic to the appellant's wish to use the appeal property as her family home in her retirement, there are no material considerations sufficient in this case to lead me to determine the appeal otherwise than in accordance with the development plan.
38. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR

¹⁷ Published January 2001