



Appeal Decision

Site visit made on 26 May 2020

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th June 2020

Appeal Ref: APP/L5810/W/19/3243287

Land to rear of 3-7 Third Cross Road, Twickenham

- 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 Pittock, Karbownik, Arnold (Dqar and Pizarro Ltd.) against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref: 19/1182/FUL dated 9 April 2019, was refused by notice dated 3 July 2019.
 - The development proposed is erection of three-bedroom dwelling/house (ground floor with basement) with associated access, parking, hard and soft landscaping and cycle and refuse stores.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of three-bedroom dwelling/house (ground floor with basement) with associated access, parking, hard and soft landscaping and cycle and refuse stores at land to rear of 3-7 Third Cross Road, Twickenham, in accordance with the terms of the application, Ref: 19/1182/FUL dated 9 April 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The appellants have submitted three alternative signed and dated unilateral undertakings with the appeal (A, B and C), containing planning obligations regarding a parking permit (A) and the payment of alternative financial contributions towards the provision of affordable housing (B) and (C). The Council has had the opportunity to comment on obligations (A) and (C) and I return to all three below.
3. The appellants refer to the emerging London Plan¹. The Mayor of London has issued his intention to publish the new London Plan, incorporating changes in response to the Panel Inspectors' recommendations, and the Secretary of State has responded with directions for modifications to the Plan. The final version of the new Plan has yet to be published. I have had regard to the latest version of the new London Plan in the determination of this appeal, according it substantial weight in accordance with paragraph 48 of the National Planning Policy Framework (the Framework) and return to it below.

Main Issues

4. The main issues are the effects of the proposed development on:

¹ The Spatial Development Strategy for Greater London

- the character and appearance of the area;
- the living conditions of the occupiers of neighbouring properties;
- the safety and convenience of users of the adjacent highway network;
- the supply of employment land.

Reasons

Background

5. The appeal proposal follows the refusal of a scheme for a 2-storey house on the site in 2017 and seeks to address the reasons why that scheme was found to be unacceptable. The proposal before me differs from the previous proposal principally in that it is single-storey above ground but includes a basement.

Character and appearance

6. Third Cross Road is primarily residential, although with some offices and an entrance to Trafalgar Junior School. The dwellings are principally terraced or semi-detached and of 2-storeys, some with rooms in the roof space. The south-eastern end of Third Cross Road has been subject to change with the intervention of more modern development. As a consequence, the dwellings are more varied in age, style and materials and with an irregular pattern of development.
7. Being behind properties on Third Cross Road, the appeal site is largely hidden from Third Cross Road itself but is visible from Louisa Court, a 2-storey block of flats to the south of the appeal site, and a number of properties on Third Cross Road. The site is open to the car park for Louisa Court, with a fence to the rear boundaries of the neighbouring properties on Third Cross Road and a brick wall to the other two boundaries. The site accommodates a metal-framed building and a brick building to the rear and a small tree in the eastern corner. It is overhung by two large trees just outside its boundaries. The openness of the majority of the site contributes to the sense of space between the built development around it, but otherwise, in its present condition, the site detracts from the character and appearance of the area.
8. The appeal site is smaller than the plots of the older properties at the other end of Third Cross Road. The proposed development would occupy a more substantial proportion of the plot than is characteristic of the majority of other dwellings in the area and it would have little room for ground level planting to soften the appearance of the dwelling. In addition, its proximity to the outbuildings at the end of the gardens of neighbouring properties on Third Cross Road and Second Cross Road would not reflect the relationship between those properties and their outbuildings.
9. However, the appeal site appears larger than the plots of the nearby contemporary dwellings to the north-west. The central positioning of the dwelling on the plot would provide some space around the building, even with the lightwell railings. Furthermore, being single-storey, the development would still allow a significant degree of spaciousness to remain between the higher built development around the site. Although the upper part of the dwelling would be visible from surrounding properties, it would be largely hidden from public view and thus reasonably discreet.

10. The proposed dwelling would be single-storey above ground with a flat 'green' roof. Although 'green' roofs are not characteristic of the area, flat roofs are to be found on the flats at the south-east end of Third Cross Road and the offices of Schurlock Place, immediately to the north-west of the appeal site. The horizontal emphasis of the dwelling would reflect, albeit at a smaller scale, that of Louisa Court and Schurlock Place.
11. The contemporary appearance of the dwelling would not be wholly incongruous given the variety of properties in the area, including more recent developments on Third Cross Road close to the appeal site. The proposed use of brick for the walls would reflect the predominant walling material in the area. I therefore consider that the proposed dwelling would be of an acceptable design, appearance and materials in this context.
12. The existing trees on and adjacent to the site contribute positively to the area's character and are valued by surrounding occupiers. However, the one that would be lost is of minimal amenity and while others would be cut back, there is nothing to suggest that they would be lost or unduly harmed by the proposed development. Were permission to be granted, a condition could be attached to secure the protection of the trees during the construction phase.
13. I therefore conclude that the proposed development would not be unacceptably harmful to the character and appearance of the area. Indeed, given the current condition of the site the proposal, with appropriate landscaping that could be secured by a condition, the scheme would enhance its appearance.
14. Accordingly, I find no conflict in this respect with Policies LP1, LP16 and LP39 of the Local Plan (2018) which, in combination, require all development to be of high architectural and urban design quality, existing trees to be protected and infill / back land development to reflect the character of the surrounding area. Policy LP38 is not applicable to this proposal as it relates to the loss of housing.
15. The proposed development would accord in this respect with the guidance in the Council's Design Quality and Small and Medium Housing Sites Supplementary Planning Documents (SMHSSPD) (both 2006). I find no conflict with the objectives or guidance of the Character Area Village Planning – Twickenham Supplementary Planning Document (2018). The proposal would also accord with paragraph 127 c) of the Framework which requires planning decisions to ensure that developments are sympathetic to local character, and with paragraph 130 as the proposal would not be of a poor design and would enhance the character and quality of the area.

Living conditions

16. The proposed dwelling would have windows to a stairwell, bathroom and an open plan utility / kitchen in its south-east elevation. Given the level of activity within the utility / kitchen I consider this to be a habitable room. However, the windows in the dwelling would face towards parking spaces and stores for Louisa Court with only oblique views towards any habitable rooms in that building. Therefore, the proposed dwelling would not result in an unacceptable loss of privacy for the occupiers of Louisa Court.
17. The proposed dwelling would be significantly higher than the boundary fencing and wall to three sides of the appeal site. However, Nos. 3, 5 and 7 Third Cross Road and Nos. 12 and 14 Second Cross Road have long gardens with

- outbuildings at the end of them. The dwelling would be set back from these boundaries and the dwelling would therefore not be overbearing for the occupiers of these properties. Neither would it completely obscure the views of the trees in the rear gardens of nearby properties on Second Cross Road or unacceptably harm the outlook from any of the other neighbouring properties.
18. The proposed dwelling would have glazed openings to the dining and living areas in both the south-west and north-east elevations. Given their height relative to that of the fence to the rear boundaries of 3-7 Third Cross Road, there would be some limited loss of privacy. However, given the distance to the rear elevations of these properties they would not be sufficiently close to give rise to harmful loss of privacy such as to warrant the withholding of planning permission.
19. I therefore conclude that the proposed development would not be unacceptably harmful to the living conditions of the occupiers of neighbouring dwellings, including those of Louisa Court. I therefore find no conflict in this respect with Policy LP8 or clause A.7 of Policy LP39 of the Local Plan or the SMHSSPD which, amongst other things, seek to protect the living conditions of occupants of existing neighbouring properties. In addition, the development would accord in this respect with paragraph 127 f) of the Framework, which requires planning decisions to ensure that developments create places with a high standard of amenity for existing and future users.

Safety and convenience of the users of the highway network

20. Policy LP45 of the Local Plan requires new development to provide for car parking in accordance with the standards set out in Appendix 3 of the Plan. For dwellings with 3 or more bedrooms in locations with a PTAL of 0-3, as the appeal site is, the standard is 2 parking spaces. Whilst the supporting text to Policy LP45 refers to the standards as 'maximum' parking levels it sets out that car parking provision should not be at a level less than these standards, unless an exceptional circumstance is demonstrated. No such circumstance has been demonstrated in this appeal and so the proposed development's provision of one off-street parking space falls short of the development plan's requirements.
21. Although of a reasonable size, the proposed parking space would not meet the standard for sight lines and visibility splays set out in the Council's Front Garden and Other Off-Street Parking Supplementary Planning Document (PSPD). However, the exit from the proposed property would be onto the existing car park for Louisa Court rather than directly onto the highway. Given the likely limited vehicle movements from the property and there being little need for pedestrians to pass close to the frontage of the proposed dwelling, the potential for conflict between vehicles entering or exiting the proposed development and other vehicles or pedestrians would be low. Therefore, the restricted visibility would not result in a material impact on road or pedestrian safety.
22. I observed during my site visit that the site is within walking distance of a range of local and public transport services. I find the appellants' evidence that future occupiers of the proposed dwelling would be likely to have only one car persuasive. If that were the case, whilst not meeting the standard set out in the development plan, the proposal would make adequate provision for parking. Even if future occupiers did own and use more than one car, whilst I observed during my site visit that parking availability was very limited on Third

Cross Street, the majority of which has been designated a Controlled Parking Zone (CPZ), the evidence before me indicates that there would be some capacity for overspill on-street parking.

23. Although a concern expressed by local residents, the Council has not provided any substantive evidence that any overspill on-street parking that did occur as a result of the proposed development would result in significant inconvenience for current residents wishing to park in the area or adversely affect highway safety. I am not persuaded therefore that either would be the case.
24. The appellants have submitted a unilateral undertaking (UUA) undertaking not to dispose of, occupy or allow to be occupied the proposed dwelling unless a notice has been served that, in summary, the occupier would not be entitled to be granted a Resident's Parking Permit (unless they are or becomes entitled to a Disabled Person's Badge). However, in the light of my conclusion above, I do not find this necessary to make the development acceptable and I have therefore not taken it into account in my decision.
25. I therefore find that the proposed development would not be unduly harmful to the safety or convenience of users of the highway network. Although the proposal would not fully accord with Policy LP45 in terms of parking provision, I find no conflict in respect of highway safety or convenience with Policy LP44 of the Local Plan which, amongst other things, seeks to ensure that new development does not have a severe impact on the operation, safety or accessibility to the local or strategic highway networks. Whilst the development would not fully accord with the PSPD, this is guidance rather than policy and I cannot give it the same weight as policies of the development plan.

Employment land

26. Planning permission was granted in 1955 for the use of the land for storage purposes and the erection of a garage and store. Notwithstanding the appellants' contentions on this matter, on the evidence before me, it is employment land.
27. Policies LP40 and LP42 of the Local Plan, in combination, seek the retention of land in employment use in such use and presume against the loss of industrial land, which includes land used for storage / B8 uses. Policy LP42 only allows the loss of industrial space where robust and compelling evidence is provided which clearly demonstrates that there is no longer demand for an industrial based use in this location. No such evidence was submitted with the application.
28. I therefore conclude that, notwithstanding the current condition of the site and the potential vehicle movements associated with an employment use, the proposed development would result in the loss of employment land. In this respect it conflicts with Policies LP40 and LP42 of the Local Plan.

Other Matters

29. Planning law requires that decisions are made in accordance with the development plan, unless material considerations indicate otherwise. Policy LP36 of the Local Plan requires the payment of a financial contribution towards the provision of affordable housing for developments of less than 10 dwellings.

30. However, paragraph 63 of the Framework, which post-dates the adoption of the Local Plan, states that such provision should not be sought. The Framework is a material consideration of significant weight. Furthermore, the Secretary of State has directed the Mayor of London to delete paragraphs 4.2.12 and 4.2.13 of the new London Plan relating to affordable housing contributions from developments of nine or fewer units to ensure consistency with the Written Ministerial Statement (HCWS50) of November 2014 and to avoid confusion.
31. The Council did not refuse the proposed development due to the lack of a financial contribution towards the provision of affordable housing and has not presented any evidence with the appeal that one is justified. I note that the appellants have provided two unilateral undertakings (UUB and UUC) offering different contributions. However, I am not satisfied that either would meet the tests of Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended) and paragraph 56 of the Framework. I have therefore not taken either UUB or UUC into account in my decision.
32. Noise and disturbance during construction, whilst regrettable, is not a justification for preventing a development that would be acceptable once built. However, a condition requiring adherence to a Construction Method Statement would limit the temporary harm that is inevitable during the construction period.
33. I have had regard to the representations made by local residents and the Trustees of The Roberts Foundation on other matters including the right to access the appeal site, the weight limit for the car park to Louisa Court, the effect on neighbouring properties and to trees within their gardens from the excavation of the basement, the storage of refuse, the potential letting of the dwelling to students and a lack of engagement by the appellants with the Trustees of The Roberts Foundation. However, none of these matters have been determinative in this case.

Planning Balance

34. Notwithstanding the appellants' contention that the Council is unable to demonstrate a 5-year supply of deliverable housing sites, the evidence before me, based on the Council's Local Plan Authority Monitoring Report Housing 2018/19 (AMR) and accompanying spreadsheet, indicates that there is no shortfall. Nevertheless, the Government is seeking to significantly boost the supply of housing and the construction of a dwelling on this site would have associated social and economic benefits, although they would be modest.
35. Policy H2 of the new London Plan requires Boroughs to actively support well-designed new homes on small sites and the accompanying Table 4.2 sets a ten-year minimum target for the Borough of 2,340 net housing completions on small sites. Policy LP35 of the Local Plan, to which the appellants draw my attention, sets out that development should generally provide family sized accommodation. The AMR indicates that the proportion of family housing of all completions remained low in 2018/19 and the Secretary of State has emphasised the need for family homes in his Directions to the Mayor of London.
36. I have found that the proposed development would not harm the character and appearance of the area or the living conditions of occupants of nearby

dwelling, nor would it be detrimental to highway safety and convenience. Whilst I have also found that the proposal would conflict with Policies LP40 and LP42 of the Local Plan, given the condition of the main building on the site and the potential nature and frequency of vehicle movements associated with any future employment use, I give only limited weight to the conflict with the development plan in this respect. Although the proposal would not fully accord with Policy LP45 in terms of parking provision, I have found, on the evidence before me, that this would not result in undue harm to the safety or convenience of users of the highway network.

37. On balance, I consider that the benefits of an additional dwelling to the Borough's housing stock and the enhancement to the appearance of the site outweigh the limited conflict with the development plan I have identified above. It follows that, in the particular circumstances of this case, I am satisfied that the application for planning permission should be determined other than in full accordance with the development plan. Planning permission should, therefore, be granted subject to the conditions I have set out and as justified below.

Conditions

38. In addition to the standard commencement condition, the Council has suggested conditions were planning permission to be granted. I have considered these conditions in the light of the tests set out in paragraph 55 of the Framework, amending them where necessary for the sake of clarity and precision and setting them out in a logical order. I have simplified the conditions on landscaping and tree protection to reasonably reflect the small-scale nature of the proposed development. I have concluded above that a unilateral undertaking in relation to parking permits is not necessary and so a condition requiring the submission of such an obligation does not meet the tests of paragraph 55.
39. A condition requiring compliance with the approved plans is necessary in the interests of certainty. Pre-commencement conditions are necessary in respect of a Construction Method Statement, contamination and tree protection to ensure that the construction is undertaken in a satisfactory manner, to protect future users of the site and the environment and in the interests of the character and appearance of the area. The appellant has agreed to the wording of these conditions².
40. The approval of external materials and a landscaping scheme are necessary in the interests of the character and appearance of the area. Control over means of enclosure and provision for refuse and waste are necessary in the interests of the appearance of the property and the living conditions of the occupiers of neighbouring properties.
41. The provision of a parking space is necessary in the interests of highway safety and convenience and the provision of cycle parking is necessary to encourage the use of modes of transport other than the private car. A condition requiring the dwelling to be constructed in accordance with Building Regulations Optional Requirement M4(2) is necessary in the interest of inclusive access in accordance with Policy CP14 of the Local Plan. Conditions regarding carbon dioxide reduction and water use are necessary to ensure compliance with the Council's policies on energy and water efficiency.

² Letter received with e-mail dated 18 June 2020.

42. The restriction of permitted development rights for external alterations or extensions, buildings or enclosure falling within Part 1, Class E, and the use of the roof of the dwelling as a balcony or terrace is justified, exceptionally, in the interests of the character and appearance of the area and the living conditions of the occupiers of neighbouring properties.

Conclusion

43. For the reasons given above, and having regard to the other matters raised, the appeal is allowed, and planning permission is granted subject to conditions.

Martin Small

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall not be carried out other than wholly in accordance with the following approved plans received on 9 April 2019:
Drawing Nos:

01 0001 P3 Location Plan
01 0100 P3 Existing Site Plan
01 0200 P3 Existing Ground Floor Plan
01 0201 P3 Existing Roof Plan
01 0400 P3 Existing Elevations South West & South East
01 0401 P3 Existing Elevations North West & North East
01 0500 P3 Existing Sections AA & BB
01 0501 P3 Existing Sections CC
03 0100 P3 Proposed Site Plan
03 0199 P3 Proposed Basement Floor Plan
03 0200 P3 Proposed Ground Floor Plan
03 0201 P3 Proposed Roof Plan
03 0400 P3 Proposed Elevations South West & South East
03 0401 P3 Proposed Elevations North West & North East
03 0500 P3 Proposed Sections AA & BB
03 0501 P3 Proposed Sections CC & DD

- 3) No development shall take place, including any works of demolition, until a Construction Method Statement (to include any demolition works) has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall include:
 1. The size, number, routeing and manoeuvring tracking of construction vehicles to and from the site, and holding areas for these on/off site;
 2. Details and location of parking for site operatives and visitor vehicles (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 3. Details and location where plant and materials will be loaded, unloaded and stored and the location of skips on the highway if required;
 4. Details of a scheme for recycling/disposing of waste resulting from demolition and construction works (including excavation, location and emptying of skips);
 5. Details of measures that will be applied to control the emission of noise, vibration and dust including working hours. This should follow Best Practice detailed within BS5288:2009 Code of Practice for Noise and Vibration Control on Construction and Open Sites;

6. Details of the phasing, programming and timing of works, including hours of operation;
 7. A construction programme including a 24-hour emergency contact number.
- 4) 1 No. development shall take place, except with the prior agreement of the Local Planning Authority, until:
- a) a desk study detailing the history of the site, hazardous materials, substances used together with details of a site investigation strategy based on the information revealed in the desk study has been submitted to and approved in writing by the Local Planning Authority
 - b) an intrusive site investigation has been carried out comprising: sampling of soil, soil vapour, ground gas, surface water and groundwater. Such work to be carried out by suitably qualified and accredited geo-environmental consultants in accordance with the current U.K. requirements for sampling and testing.
 - c) written reports of i) the findings of the above site investigation and ii) a risk assessment for sensitive receptors together with a detailed remediation strategy designed to mitigate the risk posed by the identified contamination to sensitive receptors have been submitted to and approved in writing by the Local Planning Authority.
2. The dwelling hereby permitted shall not be occupied until:
- a) the remediation works approved as part of the remediation strategy have been carried out in full and in compliance with the approved strategy. If during the remediation or development work new areas of contamination are encountered, which have not been previously identified, then the additional contamination should be fully assessed in accordance with condition [1(b, c)] above and an adequate remediation scheme shall be submitted to and approved in writing by the Local Planning Authority and fully implemented thereafter.
 - b) a verification report, produced on completion of the remediation work, has been submitted to and approved in writing by the Local Planning Authority. Such report to include i) details of the remediation works carried out and ii) results of verification sampling, testing and monitoring and iii) all waste management documentation showing the classification of waste, its treatment, movement and disposal in order to demonstrate compliance with the approved remediation strategy.
- 5) No site clearance, preparatory work or development shall take place until a scheme for the protection of the trees whose canopies overhang the site (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of the retained trees shall be carried out as approved. All tree work shall be carried out in accordance

with British Standard BS 3998: Tree work: Recommendations (or an equivalent British Standard if replaced).

- 6) No development above existing ground level shall take place until details and samples of the materials for the external surfaces (including fenestration) of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 7) The dwelling hereby permitted shall not be occupied until full details of both hard and soft landscaping works have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwelling or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) The dwelling hereby permitted shall not be occupied until a suitable means of enclosure has been erected along the boundaries of the site to the satisfaction of the Local Planning Authority and in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. Thereafter all means of enclosure shall be permanently retained in accordance with the approved details.
- 9) The dwelling hereby permitted shall not be occupied until arrangements for the storage and disposal of refuse/waste have been made in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 10) The dwelling hereby permitted shall not be occupied until the Building Regulations Optional Requirement M4(2) has been complied with.
- 11) The dwelling hereby permitted shall not be occupied until the parking space as indicated on Drawing 03 0200 P3 Proposed Ground Floor Plan has been constructed to the satisfaction of the Local Planning Authority and it shall at no time be used other than by occupiers/callers to the premises and for no other purpose.
- 12) The dwelling hereby permitted shall not be occupied until cycle parking facilities have been provided in accordance with drawing 03 0200 P3 Proposed Ground Floor Plan and details to be submitted to and approved in writing by the Local Planning Authority, including the position, design, materials and finishes thereof.
- 13) The dwelling hereby permitted shall not be occupied until a 35% reduction in carbon dioxide emissions beyond Building Regulations requirements (2013)

has been achieved and details of achievement provided to the Local Planning Authority.

- 14) The dwelling hereby permitted 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.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order, with or without modification) no external alterations or extensions shall be carried out to the dwelling hereby permitted, nor any building or enclosure falling within Part 1, Class E, be erected on any part of the land, nor shall any part(s) of the roof of the dwelling hereby permitted be used as a balcony or terrace nor shall any access be formed thereto.

End of Schedule