



Appeal Decision

Site visit made on 27 November 2020

by Michael J Muston BA(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2020.

Appeal Ref: APP/G5180/W/20/3251928

Burnhill House, 50 Burnhill Road, Beckenham BR3 3LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by TCA Beckenham Residential Ltd against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/20/00065/RESPA, dated 16 January 2020, was refused by notice dated 6 March 2020.
 - The development proposed is the change of use of offices (Class B1a) to form 22 apartments.
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Application for Costs

1. An application for costs was made by TCA Beckenham Residential Ltd against the Council of the London Borough of Bromley. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of offices (Class B1a) to form 22 apartments, at Burnhill House, 50 Burnhill Road, Beckenham BR3 3LA, in accordance with the application Ref DC/20/00065/RESPA, dated 16 January 2020, and the details submitted with it, pursuant to Article 3(1) and Schedule 2, Part 3, Class O, paragraph O.2, subject to the following condition:
 - 1) Prior to the arrival on site of any vehicle(s) in relation to implementing the development hereby permitted, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include measures of how construction traffic can access the site safely and how potential traffic conflicts can be minimised; the route construction traffic shall follow for arriving at and leaving the site and the hours of operation, but shall not be limited to these. The approved Construction Management Plan shall then be fully implemented in accordance with the agreed timescale and details.

Procedural Matters

3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), under Article 3(1) and Schedule 2, Part 3, Class O, paragraph O.2 require the local planning authority to assess the proposed development solely on the basis of its

transport and highways impacts, contamination and flooding risks on the site, and impacts of noise from commercial premises on the intended occupiers of the development. My determination of this appeal has been made on the same basis.

4. Since the refusal of the application, the Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 made the provision of natural light in all habitable rooms an additional prior approval matter. However, Part 5 of the Regulations sets out transitional and saving provisions which mean that this does not apply to applications made on or before 1 August 2020.
5. The Council has raised concerns as to whether the two flats that the appellants say are "*existing*" on the second floor of the appeal building are both lawful, and have questioned whether their existence makes the use of Class O inappropriate, as the building may have last been in mixed use, rather than solely for offices. In respect of the latter point, the GPDO makes clear in Article 2 that, for the purposes of most of the GPDO, including Class O, that "*building*" includes any part of a building.
6. The application form refers to the change of use to form 22 apartments, and does not refer to the other two units on the second floor. The submitted Unilateral Planning Obligation (UPO) also defines "*the proposed development*" as being "*the change of use of building(s) (or identified part of building) of offices (Class B1a) to form 22 apartments in accordance with the documents submitted with the Application*". It is true that some of the documents submitted by the appellants give the impression that the two second floor apartments are included in the proposal. However, I have dealt with this appeal on the basis that the application was submitted. The status of the second floor flats therefore falls outside of my remit.

Main Issue

7. I consider the main issue in this appeal to be the transport and highways impacts of the development.

Reasons

8. The appeal site is located in Beckenham Town Centre, within a controlled parking zone (CPZ). It has good connectivity by public transport, having a Public Transport Accessibility Level (PTAL) of 5. Bus and rail services are available nearby and the town centre itself contains a good range of facilities. In addition, the proposal would include a large area for cycle storage, which should help to encourage bicycle ownership and use. No off-street car parking is proposed as part of the development.
9. The appellants undertook a number of parking surveys, in 2015, 2018 and 2019, which suggest that the percentage of spaces available within the CPZ is sufficient to accommodate any additional demand for parking from occupiers of the converted Burnhill House. However, when I undertook my site visit at a little after 09:00 on a weekday morning, there were no spaces available on local roads, most of which were limited from 08:30 to 20:00 Mondays to Saturdays to those with permits and, in some areas, those paying to park.
10. The nearby Fairfield Road car park had spaces, being only about half full. However, the COVID-19 national lockdown at the time of my visit meant that

the adjacent supermarket was one of the few shops open, thereby reducing demand from shoppers. In any event, parking here is chargeable from 07:30 to 19:30 Mondays to Saturdays, which would not make it an attractive option for residents of the appeal site. My overall impression was that, apart from this car park, available parking spaces in the area were extremely limited. This accords with the Council's position.

11. In an effort to reduce the likelihood of occupiers of the development wishing to park cars in the local area, the appellants have, since the refusal of the application for prior approval, signed and dated a Unilateral Planning Obligation (UPO). In this, the appellants covenant with the Council that each new occupier of the development would be informed of the Council's policy that (unless they hold a disabled person's badge), they would not be entitled to be granted a resident's parking permit. This restriction would also be included in all material used for advertising or marketing the property.
12. The Council is concerned that this UPO would not necessarily guarantee a car free development, as it would not prevent occupiers owning cars, and that it would do nothing to alleviate problems arising from the parking of service and delivery vehicles.
13. The UPO should ensure that new residents are aware that they will not be entitled to residents' parking permits. It is true that there is nothing in that document that would prevent occupiers from owning cars, or from seeking to park within the CPZ during those times when nearby spaces are not limited to permit holders and those paying to park (including evenings and Sundays). However, those are precisely the times when the nearby Fairfield Road car park is also available free of charge, and when, freed from shoppers and employees using it, it should be readily able to accommodate any additional demand from those occupiers of the proposed development who may be determined to own and use a car, despite the lack of a parking permit.
14. In any event, I do not consider that the number of occupiers of the new flats who would still choose to own a car would be large. They would be aware before choosing to live on the appeal site that they would not be entitled to apply for a parking permit, and that they would be living within the town centre, with its shops, hospitality venues and employment opportunities close at hand. They would also be aware of the high availability of public transport options available to them. In these circumstances, most of those who chose to live on the appeal site would be likely to be those who, for various reasons, did not feel the need to own a car.
15. That part of Burnhill Road outside the entrance to the appeal premises is one way and narrow, with double yellow lines on both sides of the road, and the Coach & Horses public house opposite. It narrows further after passing the site. As a result, deliveries to the proposed flats would be likely to give rise to highway problems. Particularly with the increased popularity of the online ordering of groceries and internet shopping more generally, there are likely to be a not insignificant number of such deliveries on a daily basis.
16. Delivery drivers would probably park outside the entrance to the flats, or in the loading bay to the adjacent supermarket, and, whilst they do, would cause some disruption to the free flow of traffic along Burnhill Road and/or vehicles seeking to access the loading bay. However, most of these deliveries would be of relatively short duration. I am also aware that when the appeal site was

occupied as offices, the individual occupiers would also have received deliveries, albeit of a different nature. From the evidence before me, I am not convinced that any problems caused by deliveries to the converted flats would be materially worse than those that would have taken place when the offices were in use, or would result if the offices were once again to be occupied.

17. In a previous appeal decision in 2019 that included a decision on an identical proposal to that before me now (APP/G5180/W/19/3234009), the Inspector noted that a prior approval (Ref DC/16/02466/RESPA) for 14 residential units on the site was approved, including a very similar UPO to that before me now. He afforded significant weight to this previous decision and noted that "*there is nothing compelling within the evidence to suggest that the greater number of residential units being proposed in relation to these appeals would tip the balance towards a requirement for dedicated on-site parking provision.*"
18. However, in the current appeal, the Council has pointed out that this 14 unit scheme has not been completed within a period of 3 years starting with the prior approval date, as required by the GPDO Part O.2 (2). The appellants in their Transport Statement say that this scheme is "*in the process of being implemented*". However, the relevant step in relation to a prior approval is completion rather than commencement, and I do not have evidence before me that this scheme has been completed. Indeed, it was clear from my site visit that it has not. As a result, this earlier prior approval has expired.
19. This was also the case at the time of the last appeal in 2019. However, from the evidence before me, it does not appear that the Council had drawn the Inspector's attention to that fact. In the current circumstances, I would still afford that 2016 prior approval moderate weight, as an indication of the Council's lack of objection to a smaller scheme in 2016, but it cannot take the form of a 'fallback' position, should this appeal be dismissed.
20. Overall, I consider that the appellants' car parking surveys from 2015 to early 2019 do not present an accurate picture of the level of parking demand in late 2020, and that there is high demand for any available on-street parking spaces within walking distance of the appeal site. In addition, the Council has now adopted minimum parking standards (Policy 30 of the Bromley Local Plan 2019), which this development would not comply with. However, an assessment of the transport and highways impacts of this scheme must take into account those same impacts in relation to the existing lawful use of the site as offices.
21. Evidence submitted by the appellants suggests that 27 parking permits were issued to staff to park in the Fairfield Road car park. I am not convinced that these numbers would have been of a scale to fill the car park to capacity and force other users of the car park to look for spaces on surrounding roads. However, the fact that these 27 staff would no longer be occupying spaces within the car park would create additional capacity for any car borne visitors to the appeal development to park in the car park. Unlike permanent residents, visitors would probably be prepared to pay to park when required, during the day on weekdays and Saturdays.
22. I appreciate that the demand for parking spaces by residents is different from that of office workers and, without anything preventing occupiers from applying for parking permits, could have created significantly greater highway issues than the office use. However, the submission of a signed and dated UPO,

which should mean that every new occupier knows that they would not be eligible to apply for a resident's parking permit, now means that there are insufficient grounds to prevent this development going ahead, bearing in mind the limited range of issues that can be taken into account in this prior approval case.

Other Matters

23. The Council's statement of case draws my attention to other appeal decisions where Inspectors found the provision of "car-free" housing to be unacceptable. However, these were all appeals against a refusal of planning permission, where a far wider range of material considerations could be considered. In addition, the Crusader Hall decisions (APP/G5180/W/19/3228188 & 3228190) do not appear to have been supported by any legal agreement preventing the occupiers from applying for parking permits. The Council tell me that the appellant in those cases made it clear that he was prepared to accept a condition restricting the provision of permits. However, from the limited evidence before me, it may well have been that such a condition may not have passed the necessary tests.
24. In the Anerley Road cases (APP/G5180/W/17/3191084 & 3197895), the proposed "car free" housing would have been on vacant land, rather than replacing an existing traffic generating use/building. The final appeal decision cited by the Council (APP/G5180/W/17/3177650) dealt with the loss of the existing off-street parking in relation to one house, and the erection of another house. The Inspector's comments on housing without car parking were therefore in a very different context from that relevant to the current appeal.

Conditions

25. The GPDO, in Schedule 2, Part 3, paragraph W (13) says that "*the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.*" The same applies to my consideration of this appeal.
26. The Council has suggested, in the event that I allow the appeal, the imposition of a condition requiring the submission of a Construction Management Plan. It has suggested that the reason is "*in the interest of the amenities of the area*". However, the suggested wording makes clear that part of the reason for imposing the condition relates to minimising traffic conflicts. This relates to highways impacts and therefore falls within the subject matter of the prior approval. I have therefore imposed this condition, amended to reflect the advice in the government's Planning Practice Guidance, including that discouraging the use of pre-commencement conditions.
27. The imposition of the suggested condition requiring details of refuse and recyclables storage to be submitted is not necessary, as this is already shown on the submitted ground floor plan.
28. Finally, although not suggested by the Council at appeal stage, the Council's delegated report says that a condition requiring the provision of sound insulation works in accordance with the conclusions and recommendations of the Sound Analysis Acoustic Report 4257-FAC-ATN-2 would be necessary. This is to ensure that the occupiers of the appeal scheme are adequately protected from noise from the Coach & Horses public house on the opposite side of

Burnhill Road. This condition relates to the impacts of noise from commercial premises, which is related to the subject matter of the prior approval. However, the conclusion of this acoustic report is that the current structure is already achieving an appropriate level of noise reduction. A condition requiring compliance with this conclusion would achieve nothing; hence I have not imposed it.

Conclusion

29. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted subject to the condition.

Michael J Muston

INSPECTOR