



Appeal Decision

Site visit made on 7 September 2020

by Robin Buchanan BA (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2021

Appeal Ref: APP/L5810/W/20/3253387
672 Hanworth Road, Whitton, TW4 5NP

- 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.
 - The appeal is made by Mr Arif Sheikh, Linden Hill Capital Homes KUPG PROP Limited, against the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 19/2532/FUL, is dated 13 August 2019.
 - The development proposed is described as demolition of the existing structures and the erection of two buildings, consisting of a retail unit and community centre at ground floor and 16 residential units above, parking and associated hard and soft landscaping.
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Decision

1. The appeal is dismissed and planning permission is refused.

Application for Costs

2. An application for costs was made by Mr Arif Sheikh, Linden Hill Capital Homes KUPG PROP Limited, against the Council of the London Borough of Richmond-upon-Thames. This application is the subject of a separate Decision.

Preliminary Matters

3. I note the officer recommendation submitted with the Council's statement of case. While this is not the application decision, as jurisdiction over that was removed when the appeal was lodged, I have treated it as the decision that the Council would have made, had it been empowered to do so. It refers to five objections to the proposed development — design and scale, neighbouring impact, affordable housing, carbon off-set payment and air quality payment. The description of development in the banner heading above is taken from the planning application form. During the Council's consideration of the application amended plans were submitted and the description was altered to 15 residential units, with the appellant's written agreement. I have dealt with the appeal on this basis.
4. After the appeal was lodged, the appellant submitted an executed planning obligation in the form of a unilateral undertaking. The Council considers that it overcomes its objections to the proposed development having regard to carbon off-set and air quality. I deal with the unilateral undertaking in 'other matters' below.

Main Issues

5. The main issues are:

- Whether the proposed development would make adequate provision for affordable housing;
- Its effect on the character and appearance of the area;
- Its effect on the living conditions of the existing occupiers of 670 Hanworth Road, having particular regard to outlook and privacy; and
- Its effect on the living conditions of future occupiers, having particular regard to private external space and outlook.

Reasons

6. The appeal site is a vacant public house with outside seating area, service courtyard and outbuildings, and a surface car park. The public house is on the corner of the junction of Hanworth Road and Powder Mill Lane and the car park extends behind. It is in an area of mixed use development, including housing, retail (with flats above) and community uses. Buildings are varied in type and design, including terraces and tightly spaced semi-detached houses which give a reasonably dense arrangement of built form. Most are broadly two or two and a half storey in height, scale and massing with pitched roofs, though the public house is one and a half storey. The relatively wide roads and set back of buildings behind wide pavements and shopfront aprons give a tangible sense of spaciousness and some roadside trees give a verdant feel to the area.
7. The appeal site would be redeveloped to provide two detached buildings separated by a surface car park. Building A would be on the corner and contain retail use at ground floor, facing both road frontages, with flats above over two floors including in a contemporary flat roof design. Building B behind would contain a community centre at ground floor with flats in two floors above, including in a pitched roof facing Powder Mill Lane.

Affordable Housing

8. The LP indicates that the Council's borough has one of the highest average house prices in the UK and a continuing need for affordable housing (AH) given a net deficit approaching 1,000 affordable homes per annum in the period to 2033.¹ In this context, I agree that the AH need is therefore 'substantial'.
9. The appellant has not secured interest from a Registered Provider to deliver 50% of the flats as AH on the appeal site (as it would be too few units), but I note that the Richmond Housing Partnership (RHP) did offer to deliver 100% as AH on-site. The Council commissioned its own review of the appellant's commercial viability assessment and agrees that it would not ordinarily be viable for the appeal proposal to provide any AH on-site, or to make any financial contribution towards provision off-site elsewhere having regard to the benchmark land value and scale of negative residual land value. On the evidence before me, I have no reason to reach a different view in this regard.
10. Nonetheless, the Council explored offering the appellant a Housing Capital Grant to make the appeal proposal commercially viable at 100% AH provision

¹ Paragraph 9.3.1.

on-site, ie to 'bridge the gap' when combined with the offer from RHP. The appellant states that it has 'not been able to accept this position' for the reasons set out in the final comments.² However, I note that these reasons do not, as a matter of principle, reject a Council grant or the most recent RHP offer, nor is there any evidence before me that by these combined means the appeal proposal would not be commercially viable. Instead, the appellant refers to the absence of (as yet) agreed details such as necessary approvals from the relevant parties and other procedural requirements, including tenure mix and contractual terms, which it says would provide a necessary level of certainty in this regard.

11. I appreciate that the Council and the appellant have, it seems, not been able to advance these matters before or during the appeal process for whatever reason, though I note it ought to have been resolved 'early in the planning process' as the LP otherwise advocates.³ I also recognise that it may in due course be established that neither of these two mechanisms (Council grant and RHP offer) are in fact able to render the appeal proposal commercially viable.
12. Nonetheless, there is no evidence before me in this appeal to substantiate or justify that these matters are not reasonably capable of resolution or that 100% AH cannot be delivered on-site. I accept that providing 15 private market flats would be aligned with the Government's objective to significantly boost the supply of homes,⁴ but in these circumstances I am concerned that were I otherwise minded to grant planning permission an important opportunity to secure AH, in circumstances of an undisputed substantial need for AH, would be lost.
13. Notwithstanding the above, the appellant suggests that the LP does not 'require' disposal of any part of the appeal site to a Registered Provider or 100% provision of AH. I appreciate that AH units may be delivered by a body other than a Registered Provider, but the appellant does not promote any other body. Therefore, were it possible to make AH provision on site, and in the absence of any other body, this Policy would require the appellant to dispose of part of the appeal site to a Registered Provider.
14. I note that LP Policy LP36A(a) 'expects 50%' of all housing units will be affordable housing which the appellant contends is an upper limit. However, LP Policy LP36C states that 'In accordance with A and B, the Council will seek [*ie ordinarily require*] the maximum reasonable amount of affordable housing' including, in part (c), having regard to 'the availability of public subsidy'. I have explained above why there is a realistic prospect that both of these components of LP Policy LP36 (maximum and public subsidy) could deliver 100% AH on-site. This would exceed 50% but, on the evidence before me, it would be the only way that AH could be delivered at all and would not therefore be inconsistent with LP Policy LP36 taken as a whole.
15. I do not have full details of the appeal decision referred to by the appellant.⁵ However, in the current appeal there is interest from a Registered Provider, it has not been established that a Council grant would not restore commercial viability and there is no evidence of any substance before me that agreement

² Page 18.

³ Paragraph 9.3.4.

⁴ Framework paragraph 59.

⁵ APP/L5810/A/11/2162364.

on such matters is not reasonably attainable. I also note that the decision is quite dated and consequently was made under a different development plan and national policy regime. It can therefore be distinguished from the current appeal and I have, in any event, determined the appeal on its individual planning merits.

16. Considering the above, the appeal proposal would not make adequate provision for AH. It would therefore cause significant harm to the provision of AH and would be at odds with the Council's adopted housing and planning strategy in circumstances of a substantial existing and future unmet AH need. It would not accord with LP Policy LP36. It would also conflict with Framework paragraphs 59, 61 and 62 which include that development should address the needs of groups with specific housing requirements, including those who require AH, and expect this to be met on-site.

Character and Appearance

17. In Building A, the ridge line of the roof would exceed the height, scale and massing of nearby buildings and a third storey of useable floorspace would be an exception in the local area. However, the difference would be relatively modest and therefore not manifestly out of keeping with these buildings. Furthermore, the elevations of this 3rd storey part of Building A would be set back from the outside edge of the floors below by about 2 metres and in one corner by a much greater distance. Accordingly, whilst it would still be possible to glimpse the roof in steep, short distance upward views, the degree of set back and the effect of perspective would mean that most of the vertical sides would not therefore be noticeable.
18. Longer distance views would be shallower in angle and therefore more of the 3rd storey would be revealed. However, this part of the building (and the building as a whole) would be seen in, and be assimilated into, its immediate built context. As a result, there would not be any unduly abrupt or jarring effect in the streetscene having regard to height, scale and massing. Furthermore, the external elevation materials in the 3rd storey would be a relatively light colour. To the extent that any of this part of the building would be visible in any of these views, it would as a result generally not stand out or be unduly conspicuous against the sky. This would therefore have a significant curtailing effect on the apparent height, scale and massing this part of the building and the building as a whole.
19. Consequently, Building A would terminate the rows of buildings in Hanworth Road and Powder Mill Lane, and these respective vistas, in a more purposeful and meaningful way than the somewhat underwhelming one and half storey form of the public house. It would also be sufficiently well set back from these roads that it would not unduly compromise the openness of this corner and junction. Overall, it would therefore make a positive contribution to local character, townscape and the skyline.
20. No 670 Hanworth Road, and the adjoining row of buildings, are reasonably compact in footprint and are sited closer to the road than the public house. The public house is relatively large in footprint by comparison and as it is on the corner it extends further in depth (including its outbuildings) along the Powder Mill Lane frontage, beyond the rear elevation of these buildings in Hanworth Road. As a result, while the front elevation of Building A would be sited closer to Hanworth Road it would nonetheless be consistent with the established

building line and although its footprint would extend behind No 670, it would be to a similar point as existing built form on the appeal site.

21. Consequently, the proposed footprint and layout of Building A would not be incompatible with the dual facing aspect of the appeal site and would make a more effective and efficient use of these developed and undeveloped parts of the appeal site. Furthermore, the majority of the increase in building footprint would be behind the façades of these two elevations of this building and as a result would not be apparent in public views.
22. Building B would be similar in scale and height to Building A. However, its narrower footprint and pitched roof would result in appreciably less massing, especially at roof level. Consequently, while it would contain three floors of accommodation the 3rd storey would be in the roof and it would therefore be broadly in keeping with the appearance of nearby buildings in Powder Mill Lane, including the terraced form and arrangement of some of these. Furthermore, its siting, layout and footprint would respect the general building line and arrangement of other buildings along both sides of Powder Mill Lane, including that it would be set back behind an open front apron area.
23. Both buildings would be separated by a reasonably wide parking area and overall Building B is appreciably smaller than Building A. Consequently, while each would be viewed in the context of the other, there would be sufficient openness to avoid an overly intense cumulative arrangement of development. Furthermore, the hard surfacing around and between the two buildings would be commensurate in area with its functional purpose and include a landscaping scheme to soften its appearance and the setting of both buildings, as would the existing trees in this part of Powder Mill Lane. While the overall quantum of development in the appeal proposal would be materially different to that which exists on the appeal site, including a significant uplift in the footprint, height, scale and bulk of built form, for the reasons explained above (and in the main issues below) it would not amount to an 'overdevelopment' of the appeal site.
24. Considering the above, the proposed development would be acceptable having regard to its ridge line, bulk, footprint, siting, scale, height and layout, including hard surfaces. It would not therefore have an adverse effect on the character and appearance of the area and would deliver tangible benefits in these regards. It would accord with Policies LP1 and LP39 of the London Borough of Richmond-upon-Thames Local Plan, July 2018 (the LP). These policies include that development should be compatible with local character and respect local context including with regard to existing townscape, development patterns, views, local grain, scale, height, massing, density, proportions and form, and should enhance street frontages and make best use of land.
25. It would also reflect the National Planning Policy Framework (the Framework) paragraphs 124 and 127. These include that development should create high quality buildings and places, add to the overall quality of the area, be visually attractive as a result of good architecture and layout, sympathetic to local character, create attractive places to live, work and visit, and accommodate an appropriate amount and mix of development.

Living Conditions of the Existing Occupiers of 670 Hanworth Road

26. While the front half of Building A would be sited reasonably close to the facing two-storey side elevation of No 670, on the evidence before me, this part of No 670 contains no habitable room windows and as a result there would be no unacceptable effect on outlook. Furthermore, the side elevation of this closest part of Building A would not project by any significant distance to the rear of No 670. In views from ground level this part of Building A would therefore be seen only to a limited extent and in very oblique views from windows in the rear elevation of No 670. As a result, the scale and massing of this part of Building A would not have an unacceptable effect on outlook.
27. The rear half of Building A would extend in depth behind No 670 and so be more visible to the occupiers of No 670. However, it would be sited to one side and as a result would not interfere with perpendicular views directly to the rear or angled views away from the appeal site. Furthermore, at 1st and 2nd floor level the facing side elevation would be inset by about 2 metres and the top (roof) storey would have a light coloured external elevation material. As I have found in the second main issue above, this design would have a significant moderating effect on apparent scale and massing and consequently for the same reasons would not have an unacceptable effect on outlook from No 670.
28. The rear half of Building A has no windows at ground level facing No 670. There is one window at 1st floor level and three windows in the 2nd floor. However, the set back of this elevation, behind a flat roofed part of the building below, would prevent downward views towards the ground level of No 670. In the 1st floor the stepped out wider front part of the building would prevent views towards windows in the rear elevation of No 670 and in the 2nd floor views would be reasonably distant and at an oblique angle. In addition, there would be no balconies in this part of the building facing towards No 670. Consequently, there would be no unacceptable effect on privacy.
29. Considering the above, the appeal proposal would not result in an unduly overbearing or unneighbourly form of development, nor would it result in undue overlooking. It would not therefore have an unacceptable effect on the living conditions of the existing occupiers of 670 Hanworth Road, having regard to outlook and privacy. It would accord with LP Policies LP1 and LP8. These include that development should respect the local environment and be suitable and compatible in use, layout and design with respect to overbearing impact and overlooking, including from balconies. It would also reflect Framework paragraph 127 which includes that development should have a high standard of amenity for existing users.

Living Conditions of Future Occupiers

30. All of the flats in Building A would include habitable room windows facing towards existing or proposed buildings. However, with the exception of No 670, even at the closest approach the separation distances would be reasonably spacious and all but one flat would have a dual aspect living room/kitchen. With regard to No 670 there would be no outlook from 1st floor windows towards its side elevation and outlook from 2nd floor windows would be set back from the edge of the building, so would be further away and also towards the receding roof slope of No 670. Accordingly, outlook would not be unduly restricted.

31. All but one flat would have a balcony and while these would vary in size and outlook, all would provide a satisfactory private external space. One 1st floor flat would have a Juliette balcony but when open, the large double doors would provide a sense of spaciousness within the living room/kitchen area and occupiers would be able to sit close to this opening or lean out. Furthermore, there would be a reasonably large communal sedum roof space on the 2nd floor. I also note that the Council agrees that the development would be within walking distance of the Heathfield Recreation Ground and this would therefore provide convenient access to public open space for all residents.
32. In Building B, the 1st floor flats would include habitable room windows facing towards existing or proposed built form with dual aspect living room/kitchens. However, even at the closest approach the separation distance would be reasonably spacious and as a result outlook from these windows would not be unduly restricted. One bedroom would have a single window facing towards the more immediate side elevation of the adjacent Church building. However, the gap would be over 4 metres, which would also allow upward views towards the sky, and the Church would be partly screened by the row of trees along this boundary. As a result, outlook would not be unduly restricted or oppressive. Half of the 1st floor flats would have a balcony of uniform size and outlook but would provide a satisfactory private external space. The other flats would have Juliette balconies and provide the same acceptable living conditions for occupiers as already explained above.
33. The living room/kitchens of the 2nd floor flats would be dual aspect including large dormer windows and rooflights (with low cills) facing towards existing or proposed built form (or upwards to the sky). Some bedrooms would have dormer windows and some would have rooflights. However, even at the closest approach to the dormer windows the separation distances would be reasonably spacious and one rooflight would face towards the Church roof and trees. As a result, outlook would not be unduly restricted or oppressive.
34. The Council is concerned that possible redevelopment of the land behind No 670 may cause harm to occupiers of the appeal proposal having regard to outlook and light. However, I note that previous schemes for this land have been refused by the Council and dismissed at appeal. On the evidence before me there is no scheme for this land currently under consideration but even if a proposal did come forward it would need to have regard to the circumstances of the appeal site at that time.
35. Considering the above, the appeal proposal would not result in a cramped overdevelopment of the site for future occupiers and would not therefore have an unacceptable effect on the living conditions of future occupiers, having regard to private external space and outlook. It would accord with LP Policies LP1 and LP39. These include that development should respect the local environment and be suitable and compatible in use, layout and design with respect to protecting amenity and living conditions and (by cross reference to LP Policy LP8) ensure no harm to the reasonable enjoyment of the use of buildings and 'gardens'. It would also reflect Framework paragraph 127 which includes that development should have a high standard of amenity for future users.

Other Matters

36. The appeal proposal would enhance local shopping opportunities, provide a community centre to meet an identified local need and deliver new homes. It would redevelop underused previously developed 'brownfield' land and a rundown vacant building to make a positive contribution to the character and appearance of the area and would provide employment opportunities during the construction and operational phases (of greater resonance, albeit perhaps temporarily, due to the effects of the Covid-19 pandemic). These would be significant benefits of the proposed development.
37. There would be no harm to the living conditions of the occupiers of any other nearby properties, or to highway safety or transportation, biodiversity, sustainable water drainage, contamination, health and well-being or in respect of servicing and recycling and refuse storage. However, the absence of harm in these regards is a neutral factor in my decision.
38. The appellant's unilateral undertaking contains obligations to make air quality and carbon offset financial contributions, and to submit a post construction carbon reduction appraisal report. I have been provided evidence of ownership and title of the appeal site and also the Council's detailed calculation methodology and written justification for its requirements.⁶ I am therefore satisfied that these obligations are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and the tests for planning obligations set out in Framework paragraph 56. Accordingly, having regard to LP Policies LP10 and LP22 and to Policies 5.2 and 7.14 of the London Plan, July 2011, I find that the unilateral undertaking overcomes the Council's objections to the proposed development with respect to carbon off-set and air quality. The absence of harm in these matters is also a neutral factor in my decision.
39. Interested parties made representations with regard to potential loss of light to some windows in the Church building, effect on trees and local parking and the removal of a fence owned by the Church. However, on the evidence before me in this appeal, including the appellant's relevant technical reports, I am satisfied that the loss of light would be limited and therefore would not be unduly harmful, that trees would be adequately protected and that adequate parking would be provided in the appeal proposal. I also note that the Council did not object to the development for these reasons. With respect to alleged illegal parking this is an enforcement matter for the Council or the Police and a boundary fence is a private matter between the respective parties.
40. I am satisfied that the appellant's marketing report was prepared by a suitably qualified professional and is therefore a robust assessment. I note that the public house has been closed for about 3 years and that the Council has not objected to its loss, nor required its retention or replacement as part of the redevelopment of the appeal site. There is no evidence of any substance before me to suggest that I should reach a different view in this regard.

⁶ Air Quality supplementary planning document (SPD), June 2020; Sustainable Construction Checklist, June 2020; and Planning Obligations SPD, June 2020.

Planning Balance and Conclusion

41. As explained in the main issues above, the appeal proposal would cause significant harm to the provision of affordable housing. I give substantial weight to this harm. There would be no harm to the character and appearance of the area or to the living conditions of existing and future occupiers. The absence of harm in these regards is a neutral factor in my decision. The appeal proposal would provide significant benefits, including housing delivery and to the character and appearance of the area. I give these moderate weight.
42. Accordingly, these benefits do not outweigh or overcome the harm that I have identified and the appeal proposal would not accord with the development plan overall. There are no material considerations that indicate that my decision should be taken otherwise in accordance with the development plan. For the reasons given, the appeal does not succeed.

Robin Buchanan

INSPECTOR