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## Appeal Decisions

Site visit made on 16 November 2020

**by Alexander Walker MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 January 2021**

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### **Appeal A Ref: APP/F5540/C/20/3251164**

#### **Land to the rear of 14-24 High Street, Cranford, TW5 9AY (also known as 6-11 Kavsan Place)**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Kavanjit Hayre on behalf of DKH Investments (Cranford) Ltd against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The enforcement notice, numbered BWR/2017/00604, was issued on 16 March 2020.
- The breach of planning control as alleged in the notice is the erection of six two-storey dwellings.
- The requirements of the notice are:
  1. Demolish the six two-storey dwellings (units 6-11 Kavsan Place).
  2. Remove all resultant debris associated with the above works from the Land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.**

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### **Appeal B Ref: APP/F5540/C/20/3251161**

#### **20 High Street, Cranford, TW5 9RG**

- 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 Mr Kavanjit Hayre on behalf of DKH Investments (Cranford) Ltd against the decision of the Council of the London Borough of Hounslow.
- The application Ref 00608/20/P8, dated 1 July 2019, was refused by notice dated 20 February 2020.
- The development proposed is the demolition of existing house and erection of 6 houses; formation of access road and associated parking and landscaping.

**Summary of Decision: The appeal is allowed and planning permission is granted subject to the conditions contained in the attached Schedule.**

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### **Preliminary Matters**

1. The addresses for each appeal as set out in my banner headings above are taken from the respective appeal form (s174 appeal) and application form (s78 appeal). However, the two appeals relate to the same site.

## Background

2. Planning permission was granted in 2014 for the demolition of existing house and erection of 6 houses; formation of access road and associated parking and landscape<sup>1</sup>.
3. The development was not built in accordance with the approved details. The deviations from the planning permission included the repositioning of the dwellings, most notably unit 9 (also referred to as unit 4); the increase in the size of some of the dwellings; and, the lack of the installation of a footway. A subsequent planning application<sup>2</sup> was submitted seeking to address the Council's concerns, including altering the design of unit 9 and the installation of a footway. This application was refused by the Council and on 16 March 2020 the Notice was issued.

## Appeal A

### *The ground (e) appeal*

4. The ground (e) appeal is made on the basis that copies of the enforcement notice (the Notice) were not served as required by section 172 of the Town and Country Planning Act 1990 (the Act) as amended.
5. The appellant argues that they have a mortgage on the land with Union Bank of India UK Ltd, who should have been issued with a copy of the Notice. The Council confirm that a copy was indeed issue to The Company Secretary, Union Bank of India UK Limited, Senator House, 85 Queen Victoria Street, London, EC4V 4AB as indicated on the copy of the Certificate of Service dated 16 March 2020.
6. Given the above, I am satisfied that copies of the Notice were served as required by section 172 of the Act. The ground (e) appeal therefore fails.

### *The ground (a) appeal and the deemed planning application*

### *Main Issues*

7. The main issues are the effect of the development on highway safety.

### *Reasons*

8. In their case for Appeal A, the appellant raises the planning application 00608/20/P8, which is the application that is the subject of Appeal B. Section 177(1)(a) of the Town and Country Planning Act 1990 (the Act) only allows the grant of planning permission in respect of matters stated in the Notice as constituting a breach of planning control "whether in relation to the whole or any part of those matters". The development that forms the subject of planning application 00608/20/P8 under Appeal B is materially different to the matters alleged in the Notice. Accordingly, I cannot consider this development as part of the deemed planning application as to do so would go beyond the provisions of s177(1)(a).
9. Unit 4 has been built close to the back of the kerb of the access road serving the development. Due to the location of unit 9 on the corner of the road, this

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<sup>1</sup> LPA ref: 00608/20/P4

<sup>2</sup> LPA ref: 00608/20/P8

has resulted in a lack of visibility when travelling along the road. As a consequence, this has a significantly detrimental effect on the safety of road users as they would not be able to see oncoming vehicles or pedestrians until the very last moment when turning the corner.

10. This harm is exacerbated by the lack of a footway throughout the site, resulting in pedestrians having to share the road with vehicles. Given the relatively narrow width of the road this gives rise to an unacceptable risk of conflict between vehicles and pedestrians. The significant lack of pedestrian safety would discourage residents of the development from walking as a sustainable alternative to using a car. This is further compounded by the extensive formal and informal car parking provision throughout the site, which clearly reads as a heavily car orientated development that not only fails to encourage sustainable forms of transport, such as walking and cycling, but actively discourages it. Some of the parking spaces do not comply with the Council's Residential Crossovers and Off-Street Parking Policy (RCOPP) and therefore could lead to additional highway issues.
11. Moreover, the Council raise concern that the current site layout does not provide adequate space for a refuse vehicle to manoeuvre within the site without compromising highway safety. Due to the lack of visibility on the corner of the road adjacent to unit 9 and the significant amount of hardstanding available for informal parking I concur with the Council's view that a refuse vehicle would not be able to safely manoeuvre within the site.
12. I find therefore that the development significantly harms highway safety, contrary to Policies CC1, CC2 and EC2 of the London Borough of Hounslow Local Plan (LP) 2015, which amongst other things, seek to ensure that development is of a good design, provides a safe environment and maximises opportunities for walking and cycling. It also fails to comply with the guidance set out in the RCOPP.

*Conclusion on the ground (a) appeal and the deemed planning application*

13. For the reasons given above, I conclude that the ground (a) appeal should fail and the deemed planning application should be refused.

*The ground (f) appeal*

14. For the appeal to succeed on this ground, I need to be satisfied that that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
15. The appellant argues that the road could be resurfaced and reconfigured to provide safe access and that alterations could be made to unit 9. However, such works would result in a development that goes beyond the matters alleged in the Notice. Accordingly, I cannot consider the proposed alterations to the road as part of the deemed planning application as to do so would go beyond the provisions of s177(1)(a).
16. It is also argued that as the Council raise no objection to plots 1, 2, 3, 5 and 6 they should not be required to be demolished. I acknowledge the environmental effects that the demolition of these dwellings would cause and that the development plan seeks to maximise the supply of housing in the Borough. However, it is these dwellings, in addition to unit 9, that facilitate the

harmful effect the overall development has on highway safety. Were these dwellings to remain, for the reasons I have outlined above, the significant harm to highway safety would remain as there would still not be a footway; there would be insufficient turning space for a refuse vehicle to safely manoeuvre; and, there would be an unacceptable amount of formal and informal parking provision. Therefore, the retention of the dwellings, with the exception of unit 9, would not overcome the breach of planning control or address the reasons why the Notice was issued. Consequently, the steps required to comply with the requirements of the notice are not excessive.

17. The ground (f) appeal fails.

#### *Conclusion on Appeal A*

18. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

### **Appeal B**

#### *Procedural Matters*

19. A **draft** Unilateral Undertaking (UU) has been submitted ensuring that the demolition of parts of the existing unit 9 to bring it in line with the proposed details; the replacement of the existing access road; and, the construction of the new accessway are carried out within specified timescales. The Council has chosen not to comment on this Unilateral Undertaking. I shall return to this matter below.

#### *Main Issues*

20. The main issues are the effect of the development on highway safety.

#### *Reasons*

21. The proposed development seeks to address the Council's concerns through the installation of a footway through the site that would link Park Lane with High Street; reduce the number of parking spaces; and, alterations to unit 9 to provide suitable visibility.

22. The proposed footway would be level with the access road and provide a shared surface, enabling a pedestrian route through the site. The footway would be constructed of paviours that would visually demarcate it from the asphalt road. In addition, the northern corner of unit 9 would be altered so that it is stepped back, allowing greater visibility around the corner, thus reducing the risk of conflict between road users. Furthermore, the reduction in the number of parking spaces would alleviate the concern that the current development actively encourages car use.

23. The refuse vehicle swept-path analysis as depicted on Drawing 00-01 P0 indicates that a refuse vehicle could turn around within the site. Whilst it may cross the footway in places when doing so, such infringements would be only minor. Given the relatively small size of the development, the foot traffic along the footway would be very limited and therefore the potential for refuse vehicles to come into conflict with pedestrians would be negligible, particular as these infringements would be when the vehicle is travelling in a forward gear.

24. I note the Council's comments titled 'Refuse and Recycling', which states that the alley is too narrow for any [refuse] lorries to access. The author goes on to state that they should not have approved the above planning application. It therefore seems to me that despite a refuse vehicle being able to safely manoeuvre within the site, as I have found above, the Council seems to imply that such a vehicle could not access the site anyway, which would invalidate their concerns regarding the swept-path analysis. As planning permission has already been granted for six dwellings on the same site with the same access, it would be wholly unreasonable to now raise concerns regarding this matter with no material change in circumstances in this regard. In any event, based on the evidence before me, I am satisfied that a refuse vehicle could satisfactorily manoeuvre around the site.
25. In their Officer's Report, the Council only refer to unit 9's current position and its resultant obstruction of visibility around the corner. There seems to be no assessment of the proposed removal of its northern corner. Based on the evidence before me and the observations I made on site, I consider that, subject to the proposed alterations, there would be adequate visibility around the corner to ensure that there would not be any unacceptable risk of conflict between road users. This would be further enhanced by the installation of the proposed footway.
26. I find therefore that the proposed development would not significantly harm highway safety and as such would comply with Policy EC2 of the LP, which seeks to promote highway safety. It also complies with the guidance set out in the RCOPP.

#### *Other Matters*

27. I have had regard to the concerns raised regarding unauthorised works being carried out on the site, which has led to the submission of the appeals. However, the role of the planning system is not to punish those that carry out unauthorised works. The appellant has sought to remedy the breach of planning control.
28. I note that a first-floor window in the side elevation of unit 9 is within proximity of an existing neighbouring property and would cause unacceptable overlooking and subsequent loss of privacy to the occupants of this property. The proposed plans indicate that this window would be obscure glazed, which would adequately mitigate this harm.
29. I have had regard to the concerns raised regarding flooding and potential defective structural composites. However, there is no substantive evidence before me that the development would cause flooding. Furthermore, the appellant confirms that the development has been built in accordance with building regulations.
30. I have considered the draft UU. However, as the covenants set out within it could be similarly achieved through the imposition of appropriately worded conditions, I do not find that the UU is necessary.

#### *Conditions*

31. The Council have submitted suggested conditions in the event that I allow the appeal. I have considered these conditions accordingly, having regard to the

tests set out in the National Planning Policy Framework. For the sake of clarity and enforceability, I have amended the conditions as necessary.

32. For the avoidance of doubt, it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
33. In the interests of the character and appearance of the area and highway safety, conditions are necessary requiring details of hard surfacing, boundary treatment; access gates and road markings for the turning area to be submitted and approved; and, the management and storage of waste and recyclable materials. Due to the proximity of the development to neighbouring residential properties, I consider that there are exceptional circumstances that justify the removal of permitted development rights pertaining the erection of structures/buildings within the curtilage of the hereby approved dwellings.
34. In the interests of protecting the living conditions of neighbouring residents, a condition is necessary restricting new openings, ensuring windows in side elevations are obscure glazed and restricting hours of demolition and construction.
35. In the interests of the character and appearance of the area, a condition is necessary requiring details of both hard and soft landscaping to be submitted and approved.
36. In the interests of highway safety, conditions are necessary regarding a Construction Logistics Plan; details of visibility splays and a swept path analysis of the proposed vehicular and pedestrian access; a Parking Management Plan; alterations to unit 9; and, the replacement of the existing access road, turning areas, car parking spaces and footpath. The UU suggests a time limit of 18 months for the replacement of the access road, turning areas, car parking spaces and footpath with a new access in accordance with the approved details. However, in the interests of highway safety, this seems an excessively long period. I consider that a more suitable time limit would be 12 months.
37. In the interests of crime prevention and highway safety, a condition is necessary regarding street lighting.
38. I have had regard to the Council's suggested condition regarding archaeological trenching. However, as the development has largely been carried out, I do not consider that such a condition is necessary.
39. Some of the conditions suggested by the Council require the necessary requirements to be completed prior to the occupation of the development. However, as the dwellings are already occupied, I shall impose a time period for the completion of the requirements of the relevant conditions.

#### *Conclusion on Appeal B*

40. For the reasons given above, having considered all matters raised, the appeal is allowed.

#### **Overall conclusion on Appeal A and Appeal B**

41. I have dismissed Appeal A and upheld the Notice. However, the grant of planning permission under Appeal B triggers the provisions set out under section 180 of the Act which would effectively mean that the enforcement

notice would cease to have effect insofar as it would be inconsistent with that grant of planning permission.

## **FORMAL DECISIONS**

### **Appeal A**

42. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

### **Appeal B**

43. The appeal is allowed and planning permission is granted for the demolition of existing house and erection of 6 houses; formation of access road and associated parking and landscaping at 20 High Street, Cranford, TW5 9RG in accordance with the terms of the application, Ref 00608/20/P8, dated 1 July 2019, subject to the conditions contained in the Schedule attached to this decision.

*Alexander Walker*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: CRAN 001, 00-01 P0, 00-01 P0 (including refuse vehicle swept path analysis), 21-04 Rev P02, 21-03 Rev P01, 21-02 Rev P01, 21-06 Rev P01, 21-05 Rev P01, 21-01 Rev P01, 20-01 Rev P01, 20-05 Rev P01, 20-21 Rev P01, 20-04 Rev P02, 20-03 Rev P01, 20-02 Rev P01 and External Material Schedule prepared by GAA Design Rev P01.
- 2) No additional windows or other glazed openings shall be formed in the buildings hereby approved without the prior written consent of the Local Planning Authority.
- 3) Within 3 months of the date of this decision, the windows in the side elevations of the buildings hereby approved shall be constructed from obscure glazing and shall remain obscure glazed for as long as the development remains in existence.
- 4) Within 3 months of the date of this decision, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved within 12 months. These details shall include (proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing material; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (eg drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc); retained historic landscape features and proposals for restoration, where relevant).

Soft landscape works shall include (planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; implementation programme; and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the date of this decision.

(a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard [3998 (Tree Work)] or any other BS replacing.

(b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

- 5) No demolition or construction work shall take place on the site except between the hours of 8:00am to 6:00pm on Mondays to Friday and 9:00am to 1:00pm on Saturdays and none shall take place on Sundays and Public Holidays without the prior agreement of the Local Planning Authority.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) 1995 (or any order revoking or re-enacting that order) no enlargement of the premises or any additional structures/buildings within the curtilage of the site shall be carried out.
- 7) No development shall take place, including any works of demolition, until a Construction Logistics Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall accord with TfL guidance and shall include:
  - i. a site plan (showing the areas set out below)
  - ii. confirmation that a pre-start record of site conditions on the adjoining public highway will be undertaken with Hounslow Highways and a commitment to repair any damage caused
  - iii. provision for the parking of vehicles of site operatives and visitors
  - iv. provisions for loading, unloading and storage of plant and materials within the site
  - v. details of access to the site, including means to control and manage access and egress of vehicles to and from the site for the duration of construction including phasing arrangements
  - vi. details of vehicle routing from the site to the wider strategic road network
  - vii. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - viii. provision of wheel washing facilities at the site exit and a commitment to sweep adjacent roads when required and at the request of the council

- ix. a scheme for recycling/disposing of waste resulting from demolition and construction works
  - x. measures to ensure the safety of all users of the public highway especially cyclists and pedestrians in the vicinity of the site and especially at the access
  - xi. commitment to liaise with other contractors in the vicinity of the site to maximise the potential for consolidation and to minimise traffic impacts.
  - xii. avoidance of peak hours for deliveries and details of a booking system to avoid vehicles waiting on the public highway
  - xiii. all necessary traffic orders and other permissions required to allow safe access to the site to be secured and implemented prior to commencement of construction
  - xiv. details of the construction programme and a schedule of traffic movements
  - xv. the use of operators that are members of TfL's Freight Operator Recognition Scheme.
- 8) Notwithstanding the details shown on the approved drawings full details including visibility splays and swept path analysis of the proposed vehicular and pedestrian access to the site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development above ground level. The approved details shall be completed within 12 months of the date of this decision.
- 9) Within 3 months of the date of this decision, a Parking Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include the following:
- i. details and location of parking spaces for people with disabilities;
  - ii. details and location of 20% electric vehicle charging points and details of a further 20% passive provision;
  - iii. details of parking layout and allocations (including details as to how the occupancy will be maximised through the lease of sales)
  - iv. details of measures proposed to restrict parking to designated bays only and prohibit parking on the access road
- The car parking areas shall thereafter be managed in compliance with the approved Parking Management Plan. The approved details shall be completed within 12 months of the date of this decision.
- 10) Within 3 months of the date of this decision, details of the arrangements for the management and storage of waste and recycled materials, including swept path tracking diagrams for a refuse vehicle entering and exiting the site, shall be submitted to and approved by the Local Planning Authority.
- The arrangements for storing waste and recycled materials shall not be carried out otherwise than in accordance with any approval given and shall be completed within 12 months of the date of this decision.
- 11) The streetlighting shall be completed in accordance with the approved details and shall be maintained in working order in perpetuity.

- 12) The pedestrian footpath linking the development to the high street shall be provided as specified within 12 months and shall be retained and maintained as such in perpetuity.
- 13) Within 6 months of the date of this decision, the hereby approved alterations to the existing building known as Unit 9 shall be completed.
- 14) Within 12 months of the date of this decision, the hereby approved alterations to the access road, turning areas, car parking spaces and footpath shall be completed.