



Appeal Decision

Site visit made on 24 May 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2021

Appeal Ref: APP/N5660/W/20/3258370

80 Norwood High Street, London SE27 9NW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Sunny Singh against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 20/01734, dated 27 May 2020, was refused by notice dated 17 July 2020.
 - The application sought planning permission for development described as the "reinstatement of lawful residential use (Use Class C3) at first and second floors, and use of ground floor as ancillary display, sale and storage to builders merchants' (Use Class B8); erection of ground floor rear extension, rear dormer roof extension, installation of 4x front roof lights and replacement windows at first floor level (part retrospective)" without complying with conditions attached to planning permission Ref 19/03484/FUL, dated 17 February 2020.
 - The conditions in dispute are Nos 4 and 9 which state that:
 - (4) Within 1 month of the date of this decision (and notwithstanding any indication on the plans hereby approved) the area for vehicles to turn within shall be laid out in accordance with approved plan '106A' of the planning permission granted under ref. 10/02101/FUL (dated 20.08.2010). That area must not be used for any other purpose and must be retained without obstruction for the duration of the development.
 - (9) No vehicles shall enter or leave the site otherwise than in a forward direction.
 - The reasons given for the conditions are:
 - (4) To enable vehicles to draw off, park and turn clear of the highway, minimising danger, obstruction and inconvenience to users of the adjoining highway and to minimise impact on amenity (policies T1, T6, T7, T8 and Q2 of the London Borough of Lambeth Local Plan (2015)).
 - (9) To avoid hazard and obstruction being created in the adjoining highway (Policy T8 and Q2 of the Local Plan (2015)).
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Decision

1. The appeal is allowed and planning permission is granted for the reinstatement of lawful residential use (Use Class C3) at first and second floors, and use of ground floor as ancillary display, sale and storage to builders merchants' (Use Class B8); erection of ground floor rear extension, rear dormer roof extension, installation of 4x front roof lights and replacement windows at first floor level (part retrospective) at 80 Norwood High Street, London SE27 9NW in accordance with the application Ref 20/01734, dated 27 May 2020, without compliance with condition numbers 1, 2 and 4 previously imposed on planning

permission Ref 19/03484/FUL, dated 17 February 2020, and subject to the following conditions:

- 1) [Deleted – no longer required.]
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, other than where details are altered pursuant to the conditions of this planning permission.: PL101; 101; 102; 103; 111 A (rec'd 24.01.20); 112 A (rec'd 24.01.20); 113 A (rec'd 24.01.20); 114; BP01A (rec'd 24.01.20); M1519A/W/D and A/02/M prep. by Arc3.
- 3) All new external work and finishes and work of making good shall match existing original work adjacent in respect of materials used, detailed execution and finished appearance except where indicated otherwise on the drawings hereby approved, or unless otherwise required by condition.
- 4) Within 1 month of the approval of details pursuant to condition 5(f) below, the area for vehicles to turn within shall be laid out in accordance with approved details. That area must not be used for any other purpose and must be retained without obstruction for the duration of the development.
- 5) Within 3 months of the date of this decision, a Delivery and Servicing Plan shall be submitted for approval in writing by the Local Planning Authority. The submitted details must include but shall not be limited to the following:
 - a) A strategy to manage vehicles servicing and delivering from the site;
 - b) Frequency and timings of deliveries to and from the site;
 - c) The management of loading and unloading of vehicles delivering to and from the site;
 - d) Frequency of other servicing vehicles such as refuse collections;
 - e) Dimensions of delivery and servicing vehicles;
 - f) Proposed loading and delivery locations; and
 - g) Control of noise emissions from vehicles on the site (including forklifts).

The development hereby permitted shall thereafter be operated in accordance with the approved details.

- 6) Within 3 months of the date of this decision, full details of waste and recycling storage for the site shall be submitted to and approved in writing by the local planning authority. The waste and recycling storage areas/facilities should comply with Lambeth's refuse and recycling storage design guide (2013), unless it is demonstrated in the submissions that such provision is inappropriate for this specific development.

The details for waste/recycling storage areas/facilities shall be implemented in full within 28 days of approval, and thereafter retained for the life of the development.

- 7) Within 3 months of the date of this decision, and notwithstanding any indication on the approved plans, details of the provision to be made for cycle parking shall be submitted to and approved in writing by the Local Planning Authority.

The cycle parking shall thereafter be implemented in full and in accordance with the approved details and shall thereafter be retained solely for its designated use.

- 8) No loading or unloading of goods, including fuel, by vehicles arriving at or departing from the premises shall be carried out otherwise than within the curtilage of the site.
- 9) No vehicles shall enter or leave the site otherwise than in a forward direction.
- 10) Notwithstanding any indication on the approved plans and within 1 month of the date this decision, a sign reading "No Reversing Into Street" shall be erected in a prominent position adjoining the exit. The sign shall be retained thereafter for the duration of the use of the builder's merchant.
- 11) The use of the premises hereby permitted shall not operate other than within the following times:
0730 Hours to 1730 Hours – Monday to Friday
0800 Hours to 1630 Hours – Saturdays

Procedural Matter

2. The period for compliance with the disputed Condition 4 on planning permission ref: 19/03484/FUL began with the issue of the decision notice on 17 February 2020 and ended on 17 March 2020. The evidence before me, which includes an enforcement notice served by the Council on 21 August 2020, indicates that a breach of Condition 4 had commenced before the application which is the subject of this appeal was submitted. I have therefore determined the appeal having regard to the provisions of Section 73A of the Town and Country Planning Act 1990 rather than Section 73, although in this instance this has made no practical difference to my consideration of the appeal.

Background and Main Issue

3. The appeal site is on the western side of Norwood High Street, and has a two-storey detached building on the street frontage with a large yard to the rear. The site has been the subject of a number of applications for planning permission in recent years, and it is helpful to summarise the most significant of those here.
4. In 2010, planning permission was granted for the use of the rear yard and part of the Norwood High Street building as a builders' merchant ("the 2010 permission" – LPA ref: 10/02101/FUL). The following year, permission was granted for a single storey storage building at the rear of the site and the widening of the vehicular crossing over the Norwood High Street footway ("the 2011 permission" – LPA ref: 11/02124/FUL).
5. Permission was then sought in 2017 for the part change of use of the ground floor of the Norwood High Street building from a builders' merchant (Use Class B8) and residential (Use Class C3) to a mixed A1, B1 and B8 use allowing the retail sale of goods to the public, as well as the part change of use of the first floor level from residential to an office (Class B1) ("the 2017 scheme" – LPA ref: 17/02336/FUL. This application was refused in 2018, and an appeal dismissed in 2019 (PINS ref: APP/N5660/W/18/3216953).

6. Planning permission was granted in 2020 for residential uses at first and second (attic) floors of the Norwood High Street building, the use of the ground floor in connection with the builders' merchant business, as well as various physical works to facilitate these uses ("the 2020 permission" – LPA ref: 19/03484/FUL). The appellant applied to amend Condition 4 and remove Condition 9, in order to alter the approved arrangements for vehicular access, turning on site, and egress. The Council refused that application on the grounds that, while it considered that amended internal turning arrangements could be acceptable, removing the requirement for vehicles to enter and leave the site in a forward gear would pose an unacceptable risk to highway safety. It is this application which is the subject of this appeal, although the other applications are all relevant.
7. The main issue is therefore whether the requirements imposed by the disputed conditions are necessary, relevant to the development and reasonable in all other respects, with regard to the effect of the development on highway safety.

Reasons

8. The appellant's business "GNK Builders' Merchants" operates from the rear yard and the ground floor of the Norwood High Street building on the appeal site. The rear yard, and therefore most of the area of the site, is within a Key Industrial and Business Area and there are many other employment and industrial uses nearby. The front building is within the West Norwood District Centre, with numerous small shops and similar premises extending along Norwood High Street in both directions from the appeal site. At the time of my site visit, although there were still various lockdown restrictions in place in respect of Covid-19, and roads and public transport in London were considerably quieter than in my usual experience, Norwood High Street was moderately busy with a mix of traffic, pedestrians and cyclists passing the site. The roadway has one lane in each direction, so is not especially broad, and it has a mix of single and double yellow line parking restrictions, although I am not aware of any restrictions on loading or unloading outside the appeal site.
9. The site is in an area with very good public transport accessibility, but it is in the nature of the business that incoming and outgoing deliveries, as well as customer visits, are largely dependent on private road transport. Typically for a builders' merchant, the business receives regular bulk deliveries of materials from suppliers, its own vehicles are sent out to make deliveries to customers, and customers visit the site to make and collect purchases. The appellant's transport statement indicates that there are usually four deliveries to the site per day, two in articulated lorries and two in smaller 7.5 tonne box vans or Transit-type vehicles. Deliveries from the site are despatched using the business's own fleet of three cage-sided Hiab lorries (trucks with mounted cranes, one of 26 tonnes and two of 18 tonnes) and a smaller Transit tipper van, which typically make three or four trips each per day. At the time of my site visit I saw customers collecting purchases using vehicles ranging from cars and small vans to Transit-type vehicles, with company staff positioned at the entrance to direct vehicles into the site and back out onto the street.

Condition 4

10. Disputed Condition 4 requires the provision and retention of turning areas within the site. In so doing, it refers back to drawings approved as part of the 2010 permission. The appellant is of the view that plans approved as part of

the 2010 permission were superseded by those of the 2011 permission which did not refer to the plans of the 2010 permission but which, among other things, amended the appeal site's access arrangements by widening the vehicular pavement crossover. The appellant argues that the 2011 permission "opened a new chapter in the history of the site", that the site is "controlled solely by the conditions attached to the [2011 permission]", and that the 2019 permission should have "brought forward only whichever of those conditions attached to [the 2011 permission] remained necessary".

11. The creation of an additional storage building and modifications to the site access from Norwood High Street were operational development allowed by the 2011 permission. Although the appellant argues otherwise, it is clear from the evidence before me that, notwithstanding the changes introduced by the subsequent permissions, the use of the rear yard and the ground floor of the Norwood High Street Building as a builders' merchant is derived from the 2010 permission. The conditions attached to that permission therefore remain relevant. Nothing in the evidence before me indicates, on any sensible reading, that the 2011 permission and its conditions were either intended to nullify, or should be treated as having superseded, those conditions attached to the 2010 permission relating to the operation of the site. Furthermore, nothing I saw on site suggests that the highway safety considerations for which Condition 4 was attached to the 2010 permission have been rendered obsolete by the relatively limited widening of the vehicular crossing allowed by the 2011 permission.
12. The 2020 permission allowed for a ground floor extension at the rear of the Norwood High Street building. This had been built by the time of my site visit, and projected into the rear yard ending close to the area used for customer parking, leading to some loss of space for vehicle movements and parking. No dedicated turning area had been provided within the site, but having seen the potential for from manoeuvring vehicles outside the site to obstruct the highway, and the attendant possibility that accidents could be caused, I am persuaded that one remains necessary. I note also the lack of detail provided in respect of provision for turning vehicles within the site. In these circumstances it seems to me to be entirely reasonable, and indeed sensible, that a condition should refer back to the requirements of the "master" permission, in other words the 2010 permission. In my view the 2011 permission is of little relevance in this respect.
13. As part of his appeal evidence the appellant submitted a Transport Statement, dated July 2018. This had formed part of the submission for the 2017 scheme as well as the application to which this appeal relates, although it was not included as part of the supporting evidence for the 2020 permission. The Transport Statement indicates that vehicles up to and including 7.5 tonne box vans have space to manoeuvre within the site, so that they can be driven in and out of the site in a forward gear. On this basis, the Council accepts that the disputed Condition 4 could be amended to provide greater clarity that indicative swept paths for such vehicles should be kept free from obstruction, so that they can access and service the site safely, and to tie it in to the submission of the Delivery and Service Plan required by Condition 5 (which is not in dispute). I accept this as a pragmatic point, and agree that Condition 4 should be rewritten, although an alternative form of words suggested by the appellant is not acceptable as it only addresses on-site parking rather than space for turning.

14. I conclude that the provision and safeguarding of on-site turning space is necessary and reasonable to enable vehicles to draw off, park and turn clear of the highway, thereby reducing danger, obstruction and inconvenience to users of the adjoining highway and minimising the impact on amenity of the public and occupiers of other nearby premises. The disputed Condition 4 should be replaced with an amended version, set out as Condition 3 in my decision above. This will ensure compliance with Policies T1, T6, T7, T8 and Q2 of the 2015 Lambeth Local Plan ("the LLP"), which together seek to ensure that development includes measures to reduce the level of danger on nearby roads, that servicing is on-site unless it is demonstrated that it can take place on-street without affecting highway safety or traffic flow, and that neighbouring occupiers are protected from unacceptable disturbance.

Condition 9

15. As I have described in paragraphs 12 and 13 above, the manoeuvring of large vehicles in and out of the appeal site is disruptive to the free flow of traffic on Norwood High Street. Notwithstanding the limited number of recorded accidents described in the appellant's transport statement, it is also likely to increase the risk of accidents on the highway.
16. The disputed Condition 9 which requires vehicles to enter and leave the site in a forward gear uses the same wording as that attached to the 2010 permission, which was addressed by the Inspector in the 2019 appeal. Having observed the site in 2019 the earlier Inspector commented that, although the appellant's staff directing vehicles into the site and supporting them in reversing out onto the highway act with great care and diligence, the process is clearly disruptive to traffic. My predecessor agreed with the Council that it is not an acceptable way for large vehicles to enter the highway, and on the basis of all the evidence before me so do I. There is nothing before me which suggests that the key issues in respect of this matter have changed since the earlier appeal decision.
17. I note that the Inspector in 2019 commented that they had "reservations as to the appropriateness of imposing such a condition, given how challenging it could be to enforce". However, while there may be some difficulties monitoring and enforcing would not, in my view, be impossible. Again I agree with my predecessor that, having been previously imposed and with an eye on consistency in decision making, such a condition would be appropriate in respect of the appeal site. It is also relevant to the development permitted by the 2020 permission, which has reduced and restricted the space available for vehicle manoeuvring in the rear yard.
18. I consider that disputed Condition 9 is necessary to ensure that the appeal site operates without causing unacceptable harm to the movement of traffic or to safety on the highway, and thus to ensure that the development complies with policies T8 and Q2 of the LLP as described above. The condition is also relevant to the development permitted and reasonable in all other regards.

Other Matters

19. The appellant has referred to another builders' merchant on Norwood High Street, operated by Travis Perkins a short distance north of the appeal site, and suggests that the Council has not treated the two sites consistently in respect of deliveries and servicing. I saw, although did not enter, the Travis Perkins

site at the time of my visit. No deliveries were taking place at the time, but that site appears to have a larger yard than the appeal site, and consequently it may be that it is better able to accommodate vehicles' turning movements. Furthermore, I have not been made aware of any comparable conditions in respect of the Travis Perkins site, and the appellant's comments in this respect do not carry weight in favour of his case in this appeal.

20. I also acknowledge the appellant's difficulties in managing an apparently successful and growing business on a somewhat constrained site, especially in the light of the impacts of Covid-19 over the last year and a half. However, while lockdown restrictions have resulted in there being reduced levels of traffic on many roads this is unlikely to be the case permanently. In reaching my decision I have to consider the long-term implications of the development as well as the present circumstances.

Conditions

21. For clarity and to ensure compliance with the tests in the National Planning Policy Framework and Planning Practice Guidance ("the PPG"), I have made minor amendments to the conditions where necessary.
22. I have deleted the disputed Condition 4 of the 2020 permission, and replaced it with a new Condition 4 requiring turning areas to be laid out and retained, but with the timescale for this now linked to the submission and approval of the Delivery and Service Plan required by Condition 5. Disputed Condition 9 is retained as originally imposed.
23. The PPG makes clear that decision notices for the grant of planning permission under section 73A should also restate the conditions imposed on earlier permissions that continue to have effect. Condition 1 of the 2020 permission is deleted, as the standard time limit for the commencement of development is no longer necessary. I have imposed an amended version of Condition 2 which now specifies the approved plans, as these had been listed separately on the original decision notice.
24. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

25. For the reasons given above I conclude that the appeal should succeed. I will therefore grant a new planning permission without the disputed Condition 4 but substituting another, and with other conditions amended, restated or deleted as explained in the preceding section.

M Cryan

Inspector