
Appeal Decision

Site Visit made on 12 July 2021

by Martin Chandler BSc, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2021

Appeal Ref: APP/L5810/W/20/3264188

San Remo, 195 Castelnau, LONDON, SW13 9ER

- 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 BPML against Richmond Upon Thames London Borough Council.
 - The application Ref 20/0448/FUL, is dated 17 September 2020.
 - The development proposed is Change of use of ground floor from A3 (Restaurant) to a coffee bar at front and C3 (Residential) use to rear to create 1 x 2 bed flat.
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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 Richmond Upon Thames London Borough Council against BPML. This application is the subject of a separate decision.

Procedural Matters and Main Issues

3. Following the submission of the appeal, a revised National Planning Policy Framework (the Framework) was published. The main parties have been consulted regarding this matter, and any comments received have been taken into account in my assessment of the appeal.
4. The appeal is a result of the Council failing to determine the application within the prescribed time period. This was due to the original application not being validated due to the absence of a Sustainability Construction Checklist and BREEAM Domestic Refurbishment Pre-assessment, as required by the Council's adopted validation checklist.
5. Based on the evidence before me, the Council advised the appellant of the necessary information upon receipt of the original application. However, the appellant was not advised that under Article 12 of the Town and Country Planning (Development Management Procedure) Order 2015 (the DMPO), they were required to send a notice to the authority confirming that the required information was not going to be provided.
6. The evidence is clear that the appellant was not going to provide the information requested, however, the legal requirements of the DMPO are quite specific. On this basis, in failing to advise the appellant on the necessary steps, and in the absence of a specific Article 12 notice, in my judgement, the Council have not issued a true 'non-validation' notice. Consequently, I am satisfied that an appeal against non-determination is procedurally correct, and I will

therefore assess the proposal on this basis. Accordingly, having regard to the evidence before me, I consider the main issues to be:

- i) whether the proposal would provide suitable living conditions for future occupants;
- ii) whether the proposal would make appropriate provision for cycle parking, and if not, the effect that this would have on sustainable transport opportunities;
- iii) whether the proposal would make appropriate provision for a reduction in carbon dioxide emissions, having regard to the requirement of local policy;
- iv) whether the proposal makes appropriate provision for affordable housing;
- v) the effect of the proposal on highway safety, having regard to car parking provision; and
- vi) the effect of the proposal on the key shopping frontage.

Reasons

Living Conditions

7. The proposal would seek to provide an apartment with two bedrooms. However, on this basis, it would fail to meet the minimum floorspace provision as required by the Nationally Described Space Standards (NDSS). In addition, the proposal would not provide any external amenity space, and although roof lights and high-level windows are in situ, these would not provide a meaningful outlook. Accordingly, in my judgement, the proposal would create a cramped and unpleasant living environment, that would fail to give future occupants access to external space which would help to compensate for the lack of outlook and limited space.
8. I therefore conclude that the proposal would fail to comply with Policy LP35 of the London Borough of Richmond Upon Thames Local Plan (2018) (LP), as well as advice contained within the 'Residential Development Standards (2010)' and 'Design Quality (2006)' Supplementary Planning Documents. Taken together, these seek amongst other things, development which complies with the NDSS and which provides private, usable, functional and safe amenity space.

Cycle Parking

9. In accordance with Appendix 3 of the LP, the proposal should provide 2 cycle parking spaces. The evidence implies that cycle storage would be provided within the apartment, however, due to my findings set out above in relation to space standards, in my judgement, this represents an unrealistic manner through which to provide such storage.
10. The proposal does not make provision for car parking, and due to the Controlled Parking Zone (CPZ), on-street parking may prove difficult. As a consequence, the provision of cycle parking takes on a heightened importance. Failing to provide appropriate bicycle storage would fail to promote opportunities for sustainable transport and consequently, given the lack of car parking, this represents a substantial shortcoming of the proposal.

11. Accordingly, I conclude that the proposal fails to provide appropriate cycle parking which would be to the detriment of sustainable transport opportunities. As a consequence, the proposal would fail to accord with Policies LP44 and 45 of the LP which establish parking standards and seek to promote sustainable travel choices.

Carbon Dioxide Emissions

12. Policy LP22 of the LP requires developments of one dwelling unit or more to complete the Sustainable Construction Checklist as part of the planning application. The checklist seeks to inform developers on sustainability issues relevant to their development, thereby helping to mitigate against the effects of climate change. However, as identified above, this was not provided and was a key reason why the application was never validated.
13. The proposal is small in scale, and I note that changes allowed through permitted development do not place such requirements on similar developments. In addition, the appellant suggests that the checklist would not affect the principle of the development proposed and that the information would have to be provided by specialist consultants. Consequently, it is suggested that the information is disproportionate to the scale of the development or the impact of change. However, the proposal seeks planning permission and not prior approval. On this basis, and in accordance with the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004, proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. Based on the very limited evidence before me, I have no reason to consider that the requirements of Policy LP22 of the LP are not applicable to proposal. Accordingly, in accordance with Section 38(6), the material considerations in relation to this matter do not indicate a decision contrary to the development plan.
14. Consequently, in the absence of the necessary checklist and having regard to the requirements of local policy, I conclude that the proposal would fail to make provision for a reduction in carbon dioxide emissions. Accordingly, it would fail to comply with Policy LP22 of the LP which requires development to achieve the highest standards of sustainable design and construction.

Affordable Housing

15. Policy LP36 of the LP seeks a contribution towards affordable housing on all housing sites. This is due to exceptional local need and the relatively high land value within the Borough. The evidence before me presents a persuasive case that the requirements of the policy remain relevant despite the requirements of the Framework in relation to small sites. Accordingly, I am satisfied that the Policy is relevant to the determination of the proposal.
16. The specific financial contribution has not been identified by the Council but regardless of this, no mechanism is before me to secure the requirements of the policy. Moreover, no evidence has been presented by the appellant that the policy requirements are not relevant. Accordingly, I conclude that the proposal fails to make appropriate provision for affordable housing. It therefore fails to comply with Policy LP36 of the LP which establishes the local affordable housing requirements.

Highway Safety

17. The surrounding area is located within an area with a PTAL rating of 4. Accordingly, it is expected that 1 car parking space would be required. Despite this, the proposal would not provide any car parking spaces and it has also not been supplemented with a parking survey to demonstrate that the surrounding area could absorb the likely parking demand generated by the proposal.
18. The site is also located within a CPZ and as a consequence, the Council confirm that a legal agreement to preclude future residents from applying for parking permits would have overcome the Council's Transport concerns. However, despite the concerns identified, no substantive evidence has been provided regarding highway safety. For example, in light of the CPZ, it has not been demonstrated where cars may park that would be to the detriment of the free flow of traffic in the locality. Therefore, in my judgement, I find that the Council has failed to fully articulate the harm that would be caused by the proposal.
19. Accordingly, based on the evidence before me, I have no basis on which to agree that the proposal would be harmful to highway safety. I therefore conclude that it would not harm highway safety and that consequently, it would comply with Policy LP45 of the LP which establishes parking standards for the borough.

Key Shopping Frontage

20. The appeal site is located within a Key Shopping Frontage. Accordingly, Policy LP26 of the LP seeks to resist a loss of floorspace in what was Use Class A1 (retail). The appeal site is currently in use as a restaurant however, both uses are now contained within Class E of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020. Accordingly, it is the Council's view that Policy LP26 remains applicable to the proposal.
21. Due to the recent change in the use classes order, I find that Policy LP26 is not entirely consistent with the national picture. However, based on the evidence before me, the Council's concerns primarily manifest themselves in the size of the remaining commercial unit, suggesting that at 17sqm, it would be very small, and that no evidence has been provided in relation to a likely end-user.
22. There can be no doubt that the retained commercial unit would be small. However, in my judgement, the key driver behind the policy relates to the overall viability and vitality of the shopping frontage. On this basis, based on the evidence before me as well as my observations on site, the shopping frontage appears to be viable and vibrant with many units in active use. When assessed against this context, the evidence before me does not present a compelling case that the viability and vitality of the frontage would be compromised as a result of the proposed change of use. Moreover, although similar proposals for conversion have retained larger elements of commercial floorspace, the Council has failed to present compelling evidence to suggest that no demand would exist for the smaller unit.
23. As a consequence, in the absence of evidence to substantiate the Council's concerns, and due to the apparent health of the existing shopping area, I conclude that the proposal would not harm the key shopping frontage. It would therefore comply with Policy LP26 of the LP, the requirements of which are set out above.

Conclusion

24. I have found that the proposal would not harm highway safety or the vitality of the Key Shopping Frontage. However, these findings do not alter or outweigh my conclusions regarding the living conditions for future occupants, the effect on sustainable transport, carbon dioxide emissions, and affordable housing provision. These matters are of fundamental concern and weigh heavily against the proposal. Accordingly, the appeal should be dismissed, and planning permission refused.

Martin Chandler

INSPECTOR