
Appeal Decision

Site visit made on 9 July 2021

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 03 November 2021

Appeal Ref: APP/L5810/W/20/3253201

1A St Leonards Road, East Sheen, London SW14 7LY

- 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 Tim Simmons against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 19/2200/FUL dated 4 July 2019, was refused by notice dated 10 January 2020.
 - The development proposed is the demolition of existing warehouse and redevelopment of the site to provide 9 residential flats with associated landscaping and refuse storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In an attempt to overcome some of the Council's objections, the appellant has provided a planning obligation which would secure a contribution towards affordable housing, amongst other provisions. The appellant has also provided an Arboricultural Report and Impact Assessment, an Updated Energy and Sustainability Assessment and a Daylight, Sunlight and Overshadowing Analysis. Having reviewed these the Council consider that the planning obligation would address their objection in respect of affordable housing, that internal levels of light would be acceptable and that conditions could secure appropriate tree protection measures and energy performance.
3. Consequently, they are not defending the third, fourth and fifth refusal reasons, nor that part of the second reason relating to natural light. Based on the information before me, I have no reason to take a contrary view and I have therefore not considered these aspects any further in my reasoning.
4. Since the application was made and the Council took its decision the National Planning Policy Framework (the Framework) has been revised. I have considered the proposal in light of this revised document, having first given the parties an opportunity to comment on its content, and taken any views received into account in reaching my decision.
5. Within the context of this appeal under section 78 of the Town and Country Planning Act 1990 (the Act) it is not within my remit to formally determine whether the permitted development scheme for which prior approval was granted is still extant and can be lawfully implemented. However, I consider below the implications of the appellant's contention in this regard in light of the evidence before me in so far as it is material to this appeal. It remains open to

the appellant to make an application under section 191 or 192 of the Act for a certificate of lawful use or development and my findings below are given without prejudice to any such application and its determination.

Main Issues

6. The main issues raised by this appeal are the effect the proposed development would have on the supply of industrial land and whether or not the proposal would provide acceptable living conditions for future occupiers of the development, with particular regard to outlook from ground floor flats.

Reasons

Industrial land

7. The development would result in the loss of the existing warehouse. The Local Plan¹ identifies a lack of sufficient employment floorspace, including storage, as being a constraint on employment and business growth in the Borough, finding it imperative that sufficient well-located employment land is retained. I have not been presented with any evidence that this situation has changed since the Local Plan's adoption in 2018.
8. The building is in a mixed area in close proximity to public transport and with apparently adequate servicing access. It would appear to be conveniently situated for its present use and not inconsistent with surrounding uses. Its portal frame type construction and spacious interior would make it flexible and suitable for a variety of storage, industrial and similar employment uses.
9. There is no evidence of the building or site having been marketed to establish whether or not there is demand for the space for employment use and whether or not there is likely to be in the foreseeable future. In the absence of any evidence demonstrating a lack of demand for the building or site for employment uses, the development would be contrary to Local Plan Policies LP 40 and LP 42. Together these seek to retain land in employment use for business, industrial or storage purposes, presuming against loss of industrial land in all parts of the Borough, and only permitting loss of industrial space where robust and compelling evidence clearly demonstrates that there is no longer demand for an industrial based use in the location. The provision of small and affordable units, which the appeal site may well be able to provide, is also encouraged.
10. These Policies only consider residential uses appropriate in specific circumstances and then only as part of mixed-use schemes where a sequential approach following a marketing exercise has ruled out other employment purposes beforehand. As the proposal would not help create the conditions in which businesses can invest, expand and adapt the development would similarly not accord with the Framework's policies to build a strong, competitive economy which require significant weight to be placed on the need to support economic growth and productivity.
11. The Framework also seeks to make effective use of land including to help deliver housing, but also recognises meeting the needs of other uses, and caveats the use of employment land for homes with a need to avoid undermining key economic sectors or sites. Although the proposal would be

¹ London Borough of Richmond upon Thames Local Plan, 2018.

three storey and relatively dense, this does not necessarily mean that the proposal would be a more efficient use of the site.

12. The appellant points out that the business currently occupying the building has only two employees, both of whom have both been able to successfully work remotely during the pandemic. However, whilst the loss of the building may not necessarily directly result in a loss of employment for those staff, it would result in the loss of employment land. The building would be available to support additional jobs to those no longer requiring the space. Those particular circumstances do not demonstrate that the space is no longer needed for employment uses more generally.
13. The number of employees at this or any other site will be dictated by a range of factors including the premises size and the needs of particular businesses. It is reasonable to expect that a storage or warehouse type use may have a different ratio of employees to floorspace than other employment uses.
14. The appeal decision² that the appellant has directed me to in support of their point was an appeal against an enforcement notice in a different London Borough. That decision was clearly taken on the merits and circumstances of that particular case in light of that Borough's development plan policies and it is of note that a marketing exercise was carried out. Notwithstanding the material differences between that case and the appeal before me, it is evident from that Inspector's reasoning that the low level of employment generated by that property was only one consideration. That decision does not, therefore, lead me to consider that the limited number of employees currently or last working at the appeal site would warrant taking an approach contrary to the development plan. In any event I have determined the appeal on its own merits.
15. The appellant points to permitted development rights to change the use of the existing building to residential use for which the Council granted prior approval in 2017. I can appreciate that the appellant's intent at the time was to implement the permitted development. This is demonstrated by the submission and approval of matters to discharge conditions, planning permission for external alterations, and the appointment of approved inspectors and project managers. I can therefore understand why they may not have marketed the building for any other use in those circumstances. However, critically the Council point out that the three year period within which the development needed to be completed expired at the end of last year.
16. On the evidence before me, the advanced stage of preparation for, and clear intent to implement the prior approval scheme cannot mean that the change of use could be carried out if the timescale for completion has elapsed. Although the appellant advises that work has commenced it is not certain that this meant physical work on site as they also advise that it does not benefit from a building regulations approval. In any event, as the requirement is for completion rather than commencement within three years of prior approval being granted, this does not alter the situation.
17. At the time of making the appeal the appellant noted that they had a number of months in which to complete the scheme but there is no evidence before me that such a period can be extended in light of the current pandemic. It is

² APP/U5360/C/18/3208237.

understandable that the appellant would not have wanted to expend resources on implementing and completing that scheme when they hoped to gain planning permission for the appeal proposal; they would have been faced with the prospect of demolishing six flats to implement the appeal scheme. However, the situation remains that the prior approval scheme cannot now be implemented.

18. The permitted development right still exists for the change of use of storage and distribution uses to housing³. However, this requires an application to the Council as to whether prior approval is required for a number of matters. These include whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of storage, distribution or industrial uses.⁴
19. The appellant is of course entitled to make such an application but based on the Council's position in respect of the appeal proposal it is far from certain that prior approval would necessarily be forthcoming, particularly with regard to the Council's current position in respect of the impact on the sustainability of storage and distribution uses. Although the Council did not appear to consider such effects unacceptable when it granted prior approval before, and it is not for me to speculate on why positions may have changed, I note that that previous prior approval was granted before the adoption of the Local Plan and its clear position on employment and industrial land availability.
20. These circumstances mean that I do not consider that either the formerly granted prior approval, or a notional change of use under permitted development rights, can be a realistic and genuine fallback position should the appeal fail. It would not be reasonable to consider that the status of the land has effectively changed given that in all probability there is not currently an implementable residential permission on the site and therefore not a real choice between two alternative uses. Consequently, this cannot carry any weight in support of the appeal.

Future occupiers' living conditions

21. The rear elevations of the three proposed ground floor flats would contain much of their fenestration and would be situated very close to a tall wall. This separates the site from the markedly lower car park and servicing area of an adjacent commercial building. The scheme would face the servicing and parking area which lies between the existing building and the rear of a block of commercial properties with flats above. One flank of the proposed building would immediately adjoin the public car park surrounding medical and community services buildings to the south. The other side of the site partly abuts the back garden of a house on St Leonards Road and partly the service and parking area as it returns around the existing building.
22. All three flats would only have very modest outdoor space and the tall rear wall would be in very close proximity to the rear windows and patio doors opening onto it. The balconies that would serve flats above would extend over the majority of that area with only a modest gap above the wall and below the overhanging balconies. This would result in the outdoor spaces effectively

³ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as Amended), Schedule 2, Part 3, Class P.

⁴ *Ibid.*, Paragraph P.2.(b)(vi).

feeling enclosed to all sides and above, and the outlook from the rooms served by those rear windows would be significantly compromised. As a result, users of those rooms would feel hemmed in with no other windows serving the living areas, dining areas, kitchens, and in the case of one flat a bedroom, providing any relief.

23. The only other glazing serving the central flat would be the front door but that would open into an enclosed circulation space, albeit that would be largely glazed. The bedrooms of the other two flats would be served by glazed doors, but they would open into the parking and servicing area shared with commercial properties and they would be immediately adjacent to the proposed bin store in one case and cycle store in the other. This outlook from those doors would not be a pleasing one and occupiers of the rooms would experience a feeling of being located within a servicing and parking area which would impinge on their experience within the flats.
24. Furthermore, an additional bedroom window in one flat would look directly into the public car park where vehicles park up against the site boundary and are immediately adjacent to a large public recycling area. The equivalent window in the flat at the other end of the building would have a view along the accessway. However, the proposed walkway would pass directly outside and the area immediately beyond is currently used for car parking with no indication that this would be likely to change.
25. Together, these factors would mean that occupiers of each of the proposed ground floor flats would have a significantly compromised, oppressive and disagreeable outlook from their main living spaces with no relief in the form of alternative windows not so affected. This would not provide acceptable living conditions for future occupiers.
26. Curtains or blinds would be expected to be closed in the bedrooms at times of the day and night for privacy. However, it is unreasonable to expect that they would have to remain closed throughout the day to avoid the unacceptable outlook, particularly given the modest size of the flats where it would be likely that occupiers may use bedrooms for a variety of uses during daylight hours.
27. The flats opposite are on the first and second floor so do not have an outlook at ground floor directly onto parking, servicing, or recycling areas. The houses along St Leonards Road have fairly generous rear gardens. Therefore, whilst the immediate locale is built up in a relatively dense fashion, existing conditions in the area do not create an environment where compromised outlook from residential properties is the norm, nor even if it were, would it make the appeal proposal any less harmful.
28. The appellant advises that the rear boundary wall is in their control and could be reduced in height. There is no indication of exactly how much it could be reduced by and given the change in levels between the site and the adjoining car park some form of barrier would presumably need to be retained for safety purposes. Attempting to deal with such an improvement to outlook by way of a condition would leave too much uncertainty as to whether sufficient positive change could be achieved and consequently whether such a condition would be reasonable.
29. The development would not protect the living conditions for occupants of new properties and would be contrary to Local Plan Policy LP 8. It would also be

contrary to the Framework's policy to create places with a high standard of amenity for future users.

30. In an attempt to address the Council's concerns the appellant has illustrated a revised scheme showing reduced size balconies for upper floors and some enlargement of windows. Although these changes might allow an acceptable minimum level of natural light to reach rooms within the flats, light levels through, and the outlook and prospect from, windows are two different factors.
31. The revised approach would leave around half the rear aspect of ground floor flats with an airier prospect than the submitted scheme, but the sense of enclosure would remain with the tall boundary wall in close proximity. Other rear windows would still be faced with a considerably more enclosed outlook where balconies remained projecting above them and extending very close to the tall boundary wall. Windows elsewhere would be unaffected and such an approach would not reduce the level of harm that would occur to an extent that would provide acceptable living conditions for future ground floor flat occupants.
32. I am conscious that the prior approval scheme would have little or no outdoor private space and occupiers at ground floor may well experience an even more constrained or disagreeable outlook. However, for the reasons set out above, this would not be a realistic fallback scheme and does not carry any weight.

Balance and Conclusion

33. The development would have the benefit of providing nine new homes. By way of the planning obligation, which based on the information before me would meet the CIL Regulations⁵ and Framework tests, funding would be provided to contribute towards affordable housing provision in the Borough. In principle this is supported by the Local Plan and the Framework, and this carries moderate weight in support of the appeal. Other provisions of the planning obligation in respect of a car club and car free housing would mitigate the effects of the development rather than being benefits. Avoidance of harm in terms of trees, sustainable construction, highway conditions, character and appearance, neighbours' living conditions and natural light all weigh neutrally.
34. However, the unjustified loss of employment land and unsuitable living conditions for future occupiers, and the consequent conflict with the development plan and the Framework overall in those respects, carries considerable weight that would outweigh the benefits of the scheme.
35. The development would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal is dismissed.

Geoff Underwood

INSPECTOR

⁵ Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework.