



Appeal Decision

Site Visit made on 8 September 2021

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2021

Appeal Ref: APP/A5270/W/21/3271366

Land Rear Of Park Parade, Acton W3 9BD

- 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 Mrs J Schwarzmans against London Borough of Ealing.
 - The application Ref 205161FUL, is dated 14 December 2020.
 - The development proposed is redevelopment of backland site behind 1-14 Park Parade and 1-11 Lillian Avenue to provide five, two storey dwelling houses with pedestrian access point from Park Parade including associated landscaping, amenity space, refuse and cycle storage.
-

Decision

1. The appeal is allowed and planning permission is granted for redevelopment of backland site behind 1-14 Park Parade and 1-11 Lillian Avenue to provide five, two storey dwelling houses with pedestrian access point from Park Parade including associated landscaping, amenity space, refuse and cycle storage at Land Rear Of Park Parade, Acton W3 9BD in accordance with the terms of the application, Ref 205161FUL, dated 14 December 2020, subject to the attached Schedule of Conditions.

Main Issue

2. The Council did not make a decision on the planning application within the statutory period and this has taken the jurisdiction to determine the application away from the Council. The Council has provided an appeal statement which indicates that it would have granted planning permission.
3. This scheme follows an appeal dismissed in 2020 for a proposed development of six dwellings. Having regard to the comments of the previous Inspector and the evidence before me, I consider the main issue to be the effect of the proposed development on highway and pedestrian safety.

Reasons

4. The primary difference between the scheme subject of the previous appeal and this proposal is the reduction of the number of dwellings from six to five. The sole pedestrian access to the site would be via a pedestrian link from Park Parade that would lead to a communal space at the north of the site. As such, while the footpath from Park Parade is narrow, it widens towards the approach to the site and the entrance to the site would have a considerable width to the building of Plot 1. In addition, a suitably worded condition could be attached to require improvements to the footpath and a resident controlled gate such that the route from the street to the proposed dwellings as a whole would not feel oppressive or unsafe.

5. I acknowledge local concerns including those regarding highway safety in particular that the scheme would remove the turning space for vehicles accessing the commercial units and the conflict between pedestrians and vehicles using the access. However, from the evidence, the existing turning area is not formal and its use as such could cease at any time. Furthermore, the proposal would result in a dedicated pedestrian access from Park Parade for the use of future occupiers of the development as well as for existing residents of the dwellings of Park Parade which would reduce the use of the access road by existing residents.
6. While the commercial units appear to be primarily serviced from the front of Park Parade, it is possible that some units could be serviced via the access road at the rear. While vehicles using the access road would be required to reverse onto Gunnersbury Lane, the pavement in this area significantly widens at the entry to the access allowing pedestrians space to avoid vehicles exiting the access. Furthermore, there is adequate visibility in both directions to allow pedestrians and motorists to see vehicles using the access and react accordingly. As such, while I accept that the vehicular access arrangement for the commercial units would be less than ideal, given that the existing arrangement could cease at any time, the scheme would not result in an unacceptable impact on highway safety.
7. A signed and dated Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 has been submitted as part of the appeal which prevents the development being occupied until the Council and future occupiers have been notified that future occupiers would not be permitted to obtain parking permits in the Controlled Parking Zone. As such I am persuaded that the development would not result in on-street parking in the vicinity of the site.
8. The UU would also require an access management plan to be submitted to the Council and ensure that the residents of the dwellings of Nos 1 – 14 Park Parade would have use of the footpath. In addition, the UU requires a Service Waste Management Plan to be submitted to the Council and to maintain the landscaping area.
9. I have considered the UU in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and I consider it is fairly and reasonably related to the development proposed and as such passes the statutory tests.
10. I note the comments of the previous Inspectors for scheme on the site. However, from the evidence those schemes have a greater number of dwellings than this scheme and further evidence regarding the circumstances of those cases are not before me to enable a direct comparison to be made with this appeal. In any event each case must be determined on its individual merits.
11. Consequently, the proposed development would not conflict with Policy D8 of The London Plan The Spatial Development Strategy For Greater London March 2021 which seeks a safe public realm among other things, the Development Management Development Plan Document Adopted December 2013, or the National Planning Policy Framework in this respect.

Other Matters

12. I acknowledge the evidence regarding restrictive covenants and legal issues relating to the site. However, these are not planning matters and have not altered my overall decision.

13. I note an alternative proposal suggested by The Park Parade Action group. However, I have necessarily determined the proposal before me.
14. In addition, I acknowledge other local concerns including those relating to flooding. However, I see no reason why a condition relating to surface drainage would not adequately mitigate any harm in this respect.

Conditions

15. I have considered the Council's suggested conditions and made minor changes having regard to paragraph 56 of the Framework and the Planning Practice Guidance.
16. The conditions relating to time limits and specifying plans are necessary in the interests of certainty.
17. The condition relating to a construction and logistics management plan is necessary in the interests of highway safety and needs to be pre-commencement as it would affect the early stages of construction. The condition relating to surface drainage is also necessary in the interests of highway safety.
18. The condition relating to external materials is necessary to safeguard the character and appearance of the area but does not need to be pre-commencement as it would be unlikely to affect the early stages of construction. The condition relating to landscaping is also necessary to safeguard the character and appearance of the area.
19. Given the proximity to buildings with commercial use, the conditions relating to sound insulation is necessary to safeguard the living environment of future occupiers. These conditions do not need to be pre-commencement as they are unlikely to affect the early stages of construction.
20. The conditions relating to contamination and ventilation systems are necessary given the commercial uses of the adjacent areas. The pre-commencement condition relating to contamination is necessary as it would be likely to affect the early stages of construction. The condition relating to ventilation does not need to be pre-commencement as it would be unlikely to affect the early stages of construction.
21. The conditions relating to refuse and cycle parking are necessary in the interests of highway safety. The condition relating to amenity areas is necessary in the interests of the living environment of future occupiers.
22. The condition relating to the flue system of No 7 Park Parade is necessary in the interests of the living environment of future occupiers.

Conclusion

23. For the reasons given above the appeal should be allowed.

R Sabu

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 0267-01/01 Rev C (site location plan); 0267-01/02 Rev B (proposed floor plan & elevations plots 1& 2); 0267-01/03 Rev B (proposed floor plan & elevations plots 3,4&5; 0267-01/04 Rev K (proposed site layout); 8020-01 (landscape design plan)
- 3) No development shall commence on the site until a construction and logistics management plan has been submitted to and approved in writing by the local planning authority. Details shall include control measures for dust, noise, vibration, lighting, delivery locations, storage of materials on site; restriction of hours of work and all associated activities audible beyond the site boundary to 0800-1800hrs Mondays to Fridays and 0800 -1300 hrs on Saturdays, advance notification to immediate neighbours of proposed works and public display of contact details including accessible phone contact to persons responsible for the site works for the duration of the works. Approved details shall be implemented throughout the project period.
- 4) No development shall commence on the site until a detailed specification of the proposed improvements to the pedestrian path and the access lane that will service the site has been submitted to and approved in writing by the local planning authority. The development shall be implemented only in accordance with these approved details before first occupation of the dwellings hereby approved.
- 5) No development shall commence on the site until:
 - a) A desktop study has been carried out which shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and other relevant information. Using this information a Conceptual Site Model (CSM) for the site identifying all potential contaminant sources, pathways and receptors shall be produced and assessment of risk to identified receptors undertaken. The desk study will be submitted for approval in writing by the Local Planning Authority prior to any development work (except demolition and site clearance) commencing.
 - b) A site investigation has been designed for the site using the information obtained from the desktop study and any diagrammatical representations (Conceptual Model). This should be submitted to, and approved in writing by the Local Planning Authority prior to that investigation being carried out on the site. The investigation must be comprehensive enough to enable:
 - a risk assessment to be undertaken relating to future occupants of the site and to groundwater
 - and surface waters associated on and off the site that may be affected, and
 - refinement of the Conceptual Model, and
 - the development of a Method Statement detailing the remediation requirements.
- 6) No development shall commence on the site until, a site investigation (undertaken in accordance with BS1075:2011+A1:2013 and LCRM and based

on an approved conceptual site model contained within an approved desk study phase 1 report) has investigated the site and any previously inaccessible ground. The site conceptual model shall be amended based on the findings of the intrusive site investigation and the risks to identified receptors updated. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. The findings of the site investigation and proposed remedial options shall be submitted to the Local planning authority for approval in writing prior to any remedial works commencing and any development works commencing.

- 7) A detailed remediation scheme to bring the site to a condition suitable for the intended use shall be submitted to and subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development, other than that required to carry out remediation works.
- 8) Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced; and is subject to the approval in writing of the Local Planning Authority. The verification report submitted shall be in accordance with the latest Environment Agency guidance and industry best practice.
- 9) No development above ground shall commence until all external surfaces (including hardstanding and boundary treatments) of the development hereby approved have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) No development above ground shall commence until details of an enhanced sound insulation value $D_{nT,w}$ [and $L'_{nT,w}$] of at least 5dB above the Building Regulations value, for the floor/ceiling/wall structures separating different types of rooms/ uses in adjoining dwellings, namely, staircase adjacent to bedroom of separate dwellings of the development hereby approved have been submitted to and approved in writing by the local planning authority. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 11) No development above ground shall commence until details of the sound insulation of the building envelope of the development hereby approved including glazing specifications (laboratory sound insulation including frames, seals and ventilators tested and approved in accordance with BS EN ISO 140-3: 1995 & BS EN ISO 10140-2:2010) and of acoustically attenuated ventilation and cooling as necessary (with air intake from the cleanest aspect of the building) to achieve internal room- and (if provided) external amenity noise standards in accordance with the criteria of BS8233:2014 have been submitted to and approved in writing by the local planning authority. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained.

- 12) Details of hard/soft landscape works and boundary treatments for the development shall be submitted to and approved in writing by the local planning authority before any part of the super structure is commenced. The development shall be implemented only in accordance with these approved details. Any trees or other plants which die or are removed within the first five years following the implementation of the landscaping scheme shall be replaced during the next planting season.
- 13) No development above ground shall commence until details have been submitted to and approved in writing by the Local Planning Authority, for the installation in the dwellings of a filtered fresh air ventilation system capable of mitigating elevated concentrations of nitrogen oxides and particulate matter in the external air. The details to be submitted shall include the arrangements for continuously maintaining the operational efficiency of the system. The ventilation system as approved shall be completed prior to occupation and shall be retained permanently thereafter.
- 14) No dwelling shall be occupied until noise reduction improvements to the restaurant kitchen extraction flue system to the rear of No 7 Park Parade have been implemented to achieve the following criteria:
 - a) the external sound level emitted from the extract system shall be lower than the lowest existing background sound level by at least 5dBA as measured at/calculated to the nearest and/or most affected noise sensitive premises in order to prevent any adverse impact. The assessment shall be made in accordance with BS4142:2014, with all machinery operating together at maximum capacity.
 - b) the externally located extraction/ ventilation system and ducting shall be mounted with proprietary anti-vibration isolators and fan motors shall be vibration isolated from the casing and adequately silenced and maintained as such;
 - c) reductions in odour levels to meet Local Authority standards.
- 15) No dwelling shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority.
- 16) No dwelling shall be occupied until all amenity areas shown on the approved plans have been laid out. The amenity areas shall be retained in perpetuity thereafter.
- 17) Refuse and recycling storage shall be provided in accordance with Council standards and shall be brought into use prior to the first occupation of the development permitted and retained permanently thereafter.
- 18) The cycle storage shown on the approved plans shall provide a minimum of 5 cycle parking spaces in accordance with policy and be brought into use prior to the first occupation of the development permitted and retained permanently thereafter.