
Appeal Decision

Site Visits made on 24 August 2021 and 29 September 2021

by Scott Britnell MSc FdA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2021

Appeal Ref: APP/Z5630/W/21/3269253

36 Tolworth Rise South, Surbiton, Kingston on Thames, Surrey KT5 9NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 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 Colin Evans against the Council of the Royal Borough of Kingston Upon Thames.
 - The application Ref 20/02638/FUL dated 19 October 2020, was refused by notice dated 17 February 2021.
 - The application sought planning permission for the erection of a two storey rear extension with mansard roof and conversion of existing first and second floor flat to 2 x2 bedroom flats; erection of an external staircase without complying with a condition attached to planning permission Ref 07/16327/FUL, dated 31 August 2007.
 - The condition in dispute is No 3 which states that: *Provision shall be made within the curtilage and off the highway for 2 parking spaces in accordance with the Council's standards and with details which shall be submitted to and approved in writing by the Local Planning Authority. The spaces are to be made available before the dwelling is occupied and thereafter be kept available for parking purposes at all times.*
 - The reason given for the condition is: *To ensure the provision of adequate off-street parking accommodation and to avoid the congestion of surrounding roads by parked vehicles in accordance with Policies T1 (Transport Safety) and T20 (Compliance with Car and Cycle Parking Standards) of the Royal Borough of Kingston upon Thames Unitary Development Plan First Alteration.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was lodged, a new version of the National Planning Policy Framework (the Framework) was published. The views of the main parties were sought and any comments received have been taken into account in my decision.
3. The application was determined by the Council prior to the Mayor of London publishing the London Plan 2021 (the London Plan). This now forms part of the development plan and I have determined the appeal against its provisions. The Council provided an update in their appeal statement regarding this matter and the appellant had the opportunity to consider the Council's update in his final comments.
4. The Council has questioned whether application 07/16327/FUL has been implemented, suggesting that a later permission has in fact been constructed (09/16392/FUL). On this basis, the Council has raised doubts whether the

earlier 2007 permission is still extant and therefore whether its conditions can be varied. This notwithstanding, the Council has nonetheless determined the application to vary a condition on the 2007 permission as if it were validly made. This being the case, I have proceeded on a similar basis.

5. Planning permission was granted under application 07/16327/FUL for the development set out in the banner header above. The permission was subject to four conditions. The application that is the subject of this appeal seeks to remove condition No.3 of that permission. That condition requires the provision of two off-street parking spaces. This appeal does not seek to vary or remove any of the other conditions imposed on the planning permission.

Main Issue

6. The Council are concerned that the removal of the two off-street parking spaces would result in increased competition for on-street spaces on surrounding roads. It is their concern that this would lead to adverse impacts on highway safety. The main issue, therefore, is the effect that removing the condition would have on highway safety.

Reasons

7. No.36 Tolworth Rise South (No.36) is located at the end of a terrace of properties on the east side of the A3 Kingston Bypass. There are a number of commercial premises at ground floor along the terrace that are served by a parking bay to the front that provides temporary parking. The parking area to No.36 is situated to the rear and is accessed from Barnsbury Lane.
8. Policy T6.1 of the London Plan adopts a location based approach to the maximum number of parking spaces to be provided at developments. It also takes account of the Public Transport Access Level (PTAL). The Council's Officers Report indicates that the appeal site is located in an Outer London location and that it has a PTAL of 3. The maximum number of car parking spaces that should be provided for 2no. two bedroom flats, according to the London Plan, is 0.75 spaces per dwelling, equating to 1.5 spaces in total.
9. I carried out site visits on two days. The first visit was undertaken during the early afternoon. The second visit was carried out during the early and late afternoon. While there were no cars parked at the appeal site at the time of my visits, the area to the rear is large enough to accommodate the 2 parking spaces required by the planning condition.
10. The appellant has not provided any substantive evidence in the form of a parking survey to indicate the level of parking availability in the locality. However, from my own observations when visiting the site and surrounding locality on two different days, and at different times of day, on-street parking availability in the area was very limited, with few spaces available. The situation was exacerbated by many vehicle crossover points, as well as various parking restrictions (including waiting and yellow line restrictions). All these features severely restrict the availability of on-street parking and the greatest availability was at some distance from the site. It is evident, therefore, that there is considerable competition for spaces in this area.
11. The competition for on-street parking would, in all likelihood, be exacerbated by the removal of the condition. As a result, the displacement of a further two vehicles would be likely to cause harm to highway safety with vehicles likely to

park inconsiderately and causing obstruction to other road users. In reaching this conclusion, I note that the appeal site is close to bus stops, a railway station and a number of shops and services. However, this does not alter my concerns with regards to the lack of parking availability.

12. The appellant has referred me to the planning permission granted in respect of the Tolworth Towers site¹. I do not have the full details of that development before me, so I am unable to draw any firm conclusions in this matter. In any event, I note that that development appears to be a major form of development and so is not directly comparable to the appeal proposal to vary a condition. The appellant also refers to a new office development on Ewell Road. While no details of that development have been provided, the Council's Officer Report suggests that it, too, is of a different scale and character. Therefore, I afford these matters limited weight in my overall considerations.
13. It is suggested by the appellant that the proposal would deprive and discourage occupants of the flats at No.36 from owning or using vehicles. This, the appellant suggests, would improve traffic flow, highway safety and traffic pollution levels. However, there is no proposed mechanism before me that would prevent current or future occupants of the flats from owning or having access to a private motor vehicle. The absence of such a mechanism diminishes the weight that I can give to the appellant's suggestion. The appellant also suggests that the proposal would reduce visitors to N0.36 arriving in car. However, there is no evidence before me to suggest that visitors would not simply seek to park on nearby roads in the event the appeal were to be allowed.
14. I conclude that the proposal would result in harm to highway safety. As such, there would be conflict with CS Policy DM9, which states that the Council will require new development to comply with car parking standards. There would also be conflict with CS Policy DM10, which states, among other matters, that development proposals should have regard to local traffic conditions and highway safety and ensure they are not adversely affected, and that they should provide car parking in accordance with the standards in the London Plan. There would also be conflict with London Plan Policy T6.1 that I have cited above and London Plan Policy T4, which states that development proposals should not increase road danger. The proposal would also conflict with Paragraph 111 of the Framework, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

Other Matters

15. No objections were received from third parties regarding the proposal. However, the absence of objections is a neutral factor in my overall assessment, as the harm that I have identified would still exist.
16. In support of the proposed removal of the condition, the appellant suggests that the existing parking area could be made into a garden to improve the appearance of the appeal site and the area. There are no such details before me, nor is there any mechanism before me to ensure that these would be done

¹ Planning applications 15/16356 and 18/16764/FUL (taken from the Appellant's Statement).

or the necessary works carried out. Again, this diminishes the weight that I can give to this suggestion.

17. The appellant suggests that the present parking area breaches the limitations set out by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended². He also suggests that the proposal would improve drainage system on site, which he states contributes to local flooding. However, there is no cogent evidence to indicate that the hardstanding is not authorised and no substantive evidence relating to flood risk in the area. As such, the weight that I can give to these matters is limited.
18. The appellant also refers to planning application 16/16149/FUL, which the Council's Officer Report states was for removal of a condition attached to planning permission 09/16392/FUL. The Council indicate that the condition under that application was identical to the condition subject to this appeal, and that an appeal against the Council's decision was dismissed³. The appellant suggests that the reasons for upholding that refusal are no longer valid and have been breached by subsequent planning applications. The appellant has also raised various issues regarding the way that the Council dealt with the original 2007 planning application. However, I have considered this appeal to remove condition 3 on its merits.

Conclusion

19. In considering this appeal, I have had regard to the tests set out at Paragraph 56 of the Framework. I consider that the planning condition that the appellant is seeking to remove is necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
20. For the above reasons, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Scott Britnell

INSPECTOR

² The appellant refers to the 'Town and Country Planning Act (General Permitted Development) amendment 2 England order 2008'.

³ APP/Z5630/W/16/3167586.