
Appeal Decision

Site Visit made on 10 August 2021 by Emma Grierson BSc (Hons) MSc MRPTI

Decision by Martin Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2021

Appeal Ref: APP/L5810/W/21/3269164

2-6 Silver Birches, Marchmont Road, Richmond TW10 6HH

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Sheen Lane Developments Limited against the decision of the London Borough of Richmond Upon Thames.
 - The application Ref 20/2483/VRC, dated 22 July 2020, was refused by notice dated 21 January 2021.
 - The application sought planning permission for the demolition of care home, and the construction of nine residential units and associated works without complying with a condition attached to planning permission Ref 15/5217/FUL, dated 21 October 2016.
 - The condition in dispute is U10915 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans and documents, where applicable.
 - The reason given for the condition is: To accord with the terms of the application, for the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of care home, and the construction of nine residential units and associated works at 2-6 Silver Birches, Marchmont Road, Richmond TW10 6HH in accordance with the application, Ref 20/2483/VRC, dated 22 July 2020, without complying with condition No. U10915 set out in planning permission Ref 15/5217/FUL granted on 21 October 2016 by the London Borough of Richmond upon Thames, but otherwise subject to the conditions contained in the schedule to this decision.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. Approval was previously granted¹ on 25 November 2020 for the variation of condition U10915 of planning permission² to allow for the realignment of footpaths, the addition of pedestrian gates and railings on top of the boundary wall to the frontage of the property. In the decision notice and representations the appellant and Council therefore make reference to the variation of this

¹ 20/2484/VRC (the consented scheme)

² 15/5217/FUL (the original planning permission)

consented scheme, as opposed to the original planning permission. However, details of the original planning permission were provided on the application form relating to this appeal and therefore have been included in the banner above.

4. The Government published on 20 July 2021 a revised version of the National Planning Policy Framework. Accordingly, and in light of the reference made to the previous iteration of the Framework within the submitted evidence, the parties have been provided with a further opportunity to make submissions in respect of the publication. Any comments which have been received have been addressed within the appeal decision.
5. Since the appeal was submitted a new London Plan was published on 2 March 2021 and so policy 3.5 in The London Plan (2016) referred to in the decision letter is now superseded by policies D5 and D6 of The London Plan (2021) as referenced in the Council's statement of case. Therefore the appeal will be considered against these policies from the newly published London plan.

Main Issue

6. The main issue in the appeal is the effect that amended condition U10915 would have on the character and appearance of the surrounding area in relation to the access and permeability of the site.

Reasons for the Recommendation

7. The appeal site is occupied by two residential blocks which are currently under construction. These will comprise nine units and are located on Marchmont Road, adjacent to a public footpath, Albany Passage. It is also located within the St Matthias Conservation Area which is a designated heritage asset. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
8. The surrounding area is a built-up residential area with a high-quality townscape and a cohesive form of varied architectural styles. This is representative of the Conservation Area as a whole and is the basis for its significance. Although a large site, the new buildings currently under construction on the appeal site make a neutral contribution to the significance of the Conservation Area.
9. The variation of the condition relating to plans would allow design changes to the consented scheme including the installation of a vehicular gate and the realignment of the footpaths at the front of the property.
10. Policy LP1 of the London Borough of Richmond Upon Thames Local Plan (2018), the Small and Medium Housing Sites Supplementary Planning Document (2006) and the Mayor of London Housing Supplementary Planning Guidance (2016) advise against 'gated developments' being granted planning permission, where permeability through sites is prevented. However, the proposed gate would be significantly set back from the road and would not be viewed as a traditional gated development within the streetscene, with the open space and perceived access along the front boundary remaining.
11. The consented scheme allows for a brick wall, railings and pedestrian gates which cover a large proportion of the front boundary. The proposed vehicular

gate would be at the same height as this approved front boundary. Although the proposed gate would fill the only remaining open space on the front boundary of the site, this would not appear substantially more imposing within the streetscene than the consented scheme. Furthermore, the design of the proposed gate would not restrict visual permeability into the site.

12. I accept that the proposed vehicular gate would prevent physical permeability into the appeal site. However, the evidence clearly demonstrates that a vehicular gate had previously existed to the site, as demonstrated by the appellant within their statement of case. I find this to be a material consideration to which I must give substantial weight with the principle of a gate to access the site having been previously established. I also find that from a way-finding perspective, the presence of the gates would also assist people seeking to access Albany Passage, and would prevent them from erroneously entering the appeal site, from where there is no direct access to the public footpath.
13. I find that despite there being some conflict with policies which do not permit gated developments, the harm to the character and appearance of the surrounding area would be limited. I find that overall it would have a neutral impact, thereby preserving the character and appearance of the Conservation Area.
14. No objections have been raised with regard to the realignment of footpaths and I find no reason to disagree with this minor amendment which would not significantly impact the streetscene.
15. I therefore conclude that the variation of condition U10915 to change the approved plans would not result in harm to the character and appearance of the surrounding area or the St Matthias Conservation Area. It would therefore not conflict with Policy LP1 of the London Borough of Richmond Upon Thames Local Plan (2018) and Policies D5 and D6 of The London Plan (2021) which requires development to be compatible with local character with high standards of accessible design. It would also comply with the design objectives of the National Planning Policy Framework.

Other Matters

16. It is noted that third party representations have raised concerns regarding highway safety as a result of the proposal. As the proposed gates would be set back from Marchmont Road, this would allow vehicles to enter and exit the site freely without obstructing the highway. Therefore, the proposal would not exacerbate any existing highway safety issues in the area.

Conditions

17. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The Council have sent an updated list of conditions, indicating where conditions have been discharged and I shall impose all those that I consider remain relevant. In the event that some others have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion and Recommendation

18. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed.

Emma Grierson

APPEAL PLANNING OFFICER

Inspector's Decision

19. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed.

Martin Seaton

INSPECTOR

Schedule of Conditions

- 1) The development hereby approved shall be formed of the external surfaces, fenestration, and hard surfacing areas as submitted and approved under 15/5217/DD02, unless otherwise agreed in writing with the Local Planning Authority.
- 2) The development hereby approved shall be carried out in accordance with the detailed drawings of windows, doors, external walls, porches, eaves, hip and ridge lines as submitted and approved under 15/5217/DD02.
- 3) None of the buildings here approved shall be occupied until a suitable means of enclosure has been erected:
 - a) along the northern, eastern and southern boundaries of the site to the satisfaction of the Local Planning Authority and in accordance with details to be approved in writing by the Local Planning Authority.
 - b) Along the southern boundary of the site in accordance with drawing P28 showing Proposed Elevation AA dated July 2020 received 07.09.2020 and the materials and finishes set out in the email dated 24.11.2020.
- 4) The proposed window(s) in the elevation(s) of the building(s) hereby approved shall at no time be openable or glazed, otherwise than in obscured glass, below a minimum height of 1.75 metres (5'7") above the relevant floor level.
 - Rear lower pane of 1st floor windows in rear terrace
 - House 2 and 3 - Bathrooms and ensuites
 - House 4 - Flank dining and bedroom window
 - House 7 - Ensuite window
 - House 9 - Side stair window
- 5) The development hereby approved shall be formed in accordance with the foundation details submitted and approved under 15/5217/DD01.
- 6) The development hereby permitted shall be carried out in accordance with the following plans and document, where applicable:

Site location plan (1443/SB/01)

Proposed elevations CC & DD (1443/P5 B)

Existing site block section and existing elevation photos (1443/SB02)

Proposed site plan (190106 P25 Rev C)

Floor plans: semi-detached houses fronting Marchmont Road (1443/SB/15G)

Proposed plans of Mews Houses (1443/SB/17 E)

Communal bin store (1443/SB18 A)

Proposed elevation GG & Section HH (1443/P7 B)

Proposed elevation EE & Section FF (1443/P6 A)

Proposed elevation AA (190106 P26 Rev B)

Topographical survey (T12/0086/P/0001)

Proposed elevations AA & BB (1443/P3 A)

Tree Plan (12186BT1)

Email from Lee Orchard dated 31 August 2016

Emails from Dido Milne dated 17 August 2016 and 31 August 2016

- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no external alterations or extensions shall be carried out to the building(s) hereby approved.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no building, enclosure or swimming pool falling within Part 1, Class E, shall be erected on any part of the land.
- 9) The development hereby approved shall not be occupied until the approved cycle and car parking provision and its associated demarcation has been provided on site, and is thereafter retained. The car parking spaces shall not be used other than by the residents of the development and their visitors.
- 10) A) Prior to the occupation of any units hereby approved, a soft and hard landscaping and tree planting scheme shall be submitted to and approved in writing by the local planning authority.
 - i. The hard landscaping scheme shall include proposed finished levels or contours; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.); proposed and existing utility services above and below ground (e.g. drainage, power, communications cables, pipelines etc, indicating lines, manholes, supports etc); retained historic landscape features and proposals for restoration, where relevant; a program or timetable of the proposed works. Where within the Root Protection Area of retained trees hard landscape design, small structure installation and service installation should be formulated in accordance with section 7.4, 7.5 and 7.7 of British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations.
 - ii. The soft landscaping works, which shall include:
 - 1) Planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment); the specification is to include details of the quantity, size, species, location, planting methodology, proposed time of planting and anticipated routine maintenance of all planting. Any proposed planting should be undertaken in accordance with appropriate British Standards.
 - 2) Tree planting scheme, which is in accordance with the British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations (sections 5.6) and BS 8545:2014 Trees: from nursery to independence in the landscape. Recommendations, and include:
 - a. Details of the quantity, size, species, and position,
 - b. Planting methodology
 - c. Proposed time of planting (season)
 - d. 5-year maintenance and management programme
- B) All tree planting included within the approved specification shall be carried out in accordance with that specification and in accordance with

British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations (sections 5.6) and BS 8545:2014 Trees: from nursery to independence in the landscape - Recommendations.

C) All hard and soft landscape works shall be carried out in accordance with the approved details and in any event prior to the occupation of any part of the development, unless otherwise agreed in writing by the Local Planning Authority.

D) If within a period of 5 years from the date of planting that soft landscaping, tree or any tree planted in replacement for it, is removed, uprooted, destroyed or dies (or becomes in the opinion of the local planning authority seriously damaged) then the tree shall be replaced to reflect the specification of the approved planting scheme in the next available planting season or in accordance with a timetable agreed in writing with the local planning authority.

- 11) The development hereby approved shall not be implemented other than in accordance with the principles and methodology as described within the approved Arboricultural details - Arboricultural Impact Appraisal and Method Statement - Silber Birches, Marchmont Road, Richmond, prepared by Barrell Tree Consultancy, dated July 2014 submitted and approved under 15/5217/FUL unless otherwise previously agreed in writing with the local planning authority.
- 12) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas over a minimum period of 10 years from the date of completion of the landscaping scheme other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be implemented as approved from the date of completion of the landscaping scheme.
- 13) The tree protection details approved under 15/5217/DD05 and 15/5217/DD08 shall remain in their agreed placement and form on site until the completion of the development unless otherwise agreed in writing with the Local Planning Authority.
- 14) (a) The site inspections must be undertaken by the retained Arboriculturist to reflect the supervision and site monitoring programme as detailed in section 2.1 of approved Arboricultural detail.
(b) Within 48 hours of any onsite inspection, an inspection report shall be submitted to the Local Planning Authority.
(c) Any breaches in Tree Protection must be are recorded, along with a report outlining mitigation to address the breach.
- 15) The development shall not be implemented other than in accordance with the Preliminary Ecological Appraisal (dated 8 June 2016), and the following, unless previously agreed in writing by the Local Planning Authority.

1. If 18 months from the date of survey elapse before commencement of development, a further protected species surveys will be undertaken, and submitted to and approved in writing by the Local Planning Authority.
 2. No trees or vegetation shall be removed other than outside of the bird nesting season (mid-February-August inclusive), unless previously approved in writing with the local planning authority and an inspection by an experienced ecologist must be undertaken up to five days before the work being completed. A 5m exclusion zone shall be set and adhered to if any nest is found.
 3. All retained trees to be protected in accordance with the Arboricultural Impact Appraisal and Method Statement (25.07.2014).
- 16) Prior to the occupation of the development hereby approved the following ecological improvements (in line with the recommendations outlined in the Preliminary Ecological Appraisal) shall be submitted to and approved in writing by the Local Planning Authority:
1. Provision of green walls (provide specification, species and maintenance plans).
 2. Provision of 3 Schwegler bat root boxes affixed to mature trees, models such as Improved Roost/Maternity Bat Box, Double Chamber box or 1FFH box.
 3. Provision of 6 bird boxes in gardens of recommended types: 1SP, 1B hole-fronted, 26 mm entrance hole and 32 mm entrance hole, and 2H open-fronted 120 mm opening; maintain as directed.
 4. Provision of 10 swift boxes or bricks, preferably integrated into the brick or blockwork in a group on one of the blocks of houses (recommended suppliers are Ibstock and Schwegler); locate out of direct sunlight, ideally on north-east or north-west elevations, more than 5m off the ground (ideally near top of walls under eaves or roof edge), and with clear airspace on the approach (free of trees and utilities).
 5. Provision of 2 insect hotel boxes and 1 log pile; the latter should be logs positioned upright in a shallow hole approximately 50cm deep by 1 to 2m square. This hole should be lined with tree bark mulch so as to create a damp microclimate at the base of the logs. The logs should be 10cm or more in diameter and up to 1.5m in length - slightly different lengths make the pile more aesthetically pleasing, so that logs protrude up to 1m above ground. The location should be damp and shady but not constantly wet and could, if wished, be planted up with a few native ferns to add interest.
- 17) The development hereby approved shall be implemented in accordance with the details of Japanese Knotweed removal approved under 15/5217/DD01.
- 18) The development hereby approved shall be formed in accordance with the approved details within the Construction Method Statement approved under 15/5217/DD01.

- 19) Prior to the occupation of the units hereby approved, a scheme for the storage of refuse and recycling, and a Refuse Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the approved storage facilities are in situ, and the site not used other than in accordance with the approved Plan.
- 20) The development hereby approved shall:
 1. Not be occupied until a scheme for the PV panels have been submitted to and approved in writing by the Local Planning Authority and implemented in accordance with the approved scheme, and thereafter maintained.
 2. Meet 35% reduction in CO2 emissions below 2013 Building Regulations.
 3. Not exceed the 105lt of water per person per day.
- 21) The development hereby permitted shall be formed in accordance with the below details approved under 15/5217/DD07.
 1. Details of phasing of the development, as linked to the redevelopment of The Avenue Centre - 15/5216/FUL. (The development hereby approved shall not commence (including demolition) until the care home and the affordable housing at The Avenue Centre Site (15/5216/FUL) is ready for occupation.)