



Appeal Decision

Site visit made on 9 November 2021

by CL Humphrey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2021

Appeal Ref: APP/X5990/W/21/3277361

The Colonnades, 26 Porchester Road, London, W2 6ES

- 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 George Gay (TR Property Investment Trust plc) against the decision of City of Westminster Council.
 - The application Ref 20/05767/FULL, dated 9 September 2020, was refused by notice dated 10 February 2021.
 - The application sought planning permission for the reconfiguration of the ground floor and first floors to provide a supermarket (Class A1) at part ground floor and first floor levels with three retail shop units (Class A1) and two restaurant/ café units (Class A3) at ground floor level, extension to Porchester Road and Bishop's Bridge Road elevations to infill existing colonnade and create entrance lobby to supermarket, infilling of basement vents to Bishop's Bridge Road, alterations to street facades, amendments to rear service yard, installation of mechanical plant and associated public realm works without complying with a condition attached to planning permission Ref 16/09313/FULL and appeal reference APP/X5990/W/17/3168220, dated 23 June 2017.
 - The condition in dispute is No 25 which states that: Prior to occupation of the retail units you must provide the storage area within the service yard for residential waste and materials for recycling shown on drawing number 17 Rev.13. You must clearly mark this area and make it available at all times to everyone living in the residential part of the Colonnades.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Westminster's City Plan 2019 – 2040 (the City Plan) was adopted in April 2021, following the determination of the application. This replaces all policies in Westminster's City Plan dated November 2016 and saved policies in the 2007 Unitary Development Plan. Both the Council and the appellant have referred to the new City Plan and I have had regard to the relevant policy therein rather than the now superseded policies set out on the Council's Decision Notice.
3. There was no reason given for the imposition of condition 25 of permission Ref 16/09313/FULL and appeal reference APP/X5990/W/17/3168220, dated 23 June 2017, to which this appeal relates. It appears from the submitted evidence that the disputed condition of the 2017 permission repeated that imposed on the previous 2014 planning permission.

4. Appendix 1 of the Council's letter dated 20 October 2021 refers to the 2014 permission and sets out the conditions imposed on the 2017 permission, and reasons for their imposition, adapted with reference to the City Plan. The reason given for Condition 25 is "to protect the environment and provide suitable waste and recycling facilities in this part of the City in accordance with Policy 37 of the City Plan 2019 - 2040 (April 2021)". I have considered the appeal on that basis.
5. A Unilateral Undertaking (UU) pursuant to s106 of the Town and Country Planning Act 1990 (as amended) has been submitted during the course of the appeal. This would ensure that the dwellings at the Colonnades were managed at all times in accordance with the Residential Refuse Management Plan. I have had regard to the obligations in the UU in my consideration of this appeal.

Main Issue

6. The main issue is whether the condition is necessary and reasonable in order to protect the environment and provide suitable waste and recycling facilities for residents of the Colonnades.

Reasons

7. The Colonnades is a substantial residential development above commercial units. It has a shared service yard with vehicular access from Porchester Road. The refuse and recycling bins serving the residential properties are contained in part of the service yard.
8. The disputed Condition 25 requires the "storage area within the service yard for residential waste and materials for recycling" to be made "available at all times to everyone living in the residential part of the Colonnades."
9. City Plan Policy 37.B. states that developments "must provide appropriate facilities for the storage of separate waste streams which are safe and convenient to access for deposit and collection, with sufficient capacity for current and projected future use."
10. The appellant explains that each residential property has a refuse store outside the flat. During my site visit I saw a number of these stores, which take the form of a small cupboard. The appellant states that residents place bagged refuse and recycling in the stores between 21:00 and 07:00. This is collected by porters between 07:00 and 09:00 every morning except Christmas Day and New Year's Day.
11. Based on my observations on site, given it is collected frequently, these cupboards are of an adequate size for the storage of general household refuse. The 10 hour window for putting waste into the cupboards for collection is likely to provide enough flexibility for most residents, and the appellant indicates that, if necessary, alternative collection time arrangements outside the set hours may be requested.
12. However, in the absence of a collection on both Christmas and New Year's Day, and without access to the refuse and recycling bins in the service yard, residents would have to take their waste off site. Indeed, the submitted rubbish collection service rules state that, on these days, residents "will need to take it to the nearest communal bins as shown below." The accompanying map shows public bins on nearby streets. As residents are likely to generate more rubbish

- than usual on Christmas and New Year's Day, such an arrangement would be unsatisfactory both in terms of their amenity and that of the surrounding area.
13. Moreover, whilst small items of household recycling such as newspapers, cans and bottles could readily be bagged and stored in the cupboards for the porters to take away, the submitted details of the rubbish collection service, which I saw posted on the doors of the cupboards outside the flats, make it clear that staff will not collect "boxes, packaging etc". Residents will almost certainly need to dispose of boxes and other packaging materials as a matter of course. Indeed, the advent of online shopping in recent years means it is highly likely there will be a frequent need to do so. Although such items can usually be recycled, they are often bulky and so could not readily be contained in a bag within the small refuse store cupboards.
 14. Whilst I note the appellant's declaration that residents do not have a right of access to the service yard within their lease, it is evident from residents' representations that they do make use of the waste and recycling facilities in the service yard and appear to regard them as a valuable amenity.
 15. The submitted Service Yard Risk Assessment dated 6 January 2021 undertook a review "to determine whether it is viable for residential occupants to access the waste refuse area via the service yard." It concludes pedestrians were "at high risk of vehicle-pedestrian collisions", although there is no indication that there have been any reported incidents. The assessment goes on to state "there is no reasonably practicable solution that would allow residents to pass through the service yard safely."
 16. However, I note that the Risk Assessment did not look at access to the refuse area via the building. Nor does it appear that possible alternative facilities have been explored. During my site visit, I was able to walk from the service yard bins directly into the building and, from there, to the flats above. I have no evidence to show that it would not be feasible to provide residents with safe access to the refuse and recycling bins from the building or to provide alternative provision in a safe location to meet residents' needs.
 17. The UU would ensure adherence to the Residential Refuse Management Plan. However, that would simply enshrine the existing collection service which, as set out above, has considerable shortcomings in terms of both capacity and collection.
 18. For the foregoing reasons I conclude that, in the absence of any appropriate alternative, the disputed condition is necessary and reasonable in order to protect the environment and provide suitable waste and recycling facilities for residents of the Colonnades in accordance with Policy 37 of the City Plan.

Conclusion

19. For the reasons set out above, the appeal is dismissed.

CL Humphrey

INSPECTOR