



Appeal Decision

Site visit made on 18 March 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 30th March 2022

Appeal Ref: APP/G3110/W/21/3282989

Land adjacent to no. 1 Minster Road, Oxford, Oxon OX4 1LX

- 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 Edward Bell against the decision of Oxford City Council.
- The application Ref 21/01892/VAR, dated 29 June 2021, was refused by notice dated 3 September 2021.
- The application sought planning permission for "Demolition of existing garage. Erection of 1 x 2-bed dwellinghouse (Use Class C3) and installation of new boundary treatments. Provision of private amenity space and bin and cycle stores" without complying with conditions attached to planning permission Ref 20/01460/FUL, dated 6 October 2020.
- The conditions in dispute are Nos 10 and 11 which state that:
(10) Prior to the commencement of the approved development, a plan illustrating a boundary treatment surrounding the application site and adjacent area of land edged in blue on the location plan shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be specified to preclude the use of any part of the application site for the parking of motor vehicles. The approved boundary treatment shall be installed prior to the first occupation of the approved development and shall be retained and maintained thereafter.
(11) Prior to the first occupation of the approved dwellinghouse, the existing dropped kerbs fronting the application site and land adjacent to the application site, edged in blue on the location plan, shall be reinstated to a full height kerb in consultation with and constructed to the standards required by the Local Highway Authority.
- The reasons given for the conditions are:
(10) To preclude the parking of motor vehicles on the application site as the development is required to be car free in accordance with Policy M3 of the Oxford Local Plan 2036.
(11) To ensure that parts of the application site and land that falls within the control of the applicant is not used for car parking as the development is required to be car free by Policy M3 of the Oxford Local Plan (2036).

Decision

1. The appeal is dismissed.

Background and Main Issue

2. The location plan approved as part of the original planning permission¹ (Original Permission) included a small plot of land adjacent to the appeal site edged in blue (Adjacent Land), which was owned by the appellant at the time the Original Permission was granted. A number of conditions were imposed on the Original Permission to ensure the entirety of the appeal site, including the Adjacent Land, remained car free in accordance with Policy M3 of the Oxford

¹ 20/01460/FUL dated 6 October 2020

Local Plan 2036 (Local Plan). The appellant has since sold the Adjacent Land to a third party. The appellant now seeks to amend conditions 10 and 11 of the Original Permission, so that the content of these conditions would not bind the Adjacent Land.

3. The Council alleges that the changes sought to conditions 10 and 11 go beyond the scope of section 73 of the Town and Country Planning Act 1990 (s73), as they seek to amend the operative terms of the Original Permission. However, the appellant has not sought to amend the physical description of development under the Original Permission, nor the boundaries of the application site itself. On this basis, I am satisfied that the proposed changes would not amend the operative terms of the permission, and would therefore be within the remit of s73.
4. In this context, the main issue is whether or not the disputed conditions are reasonable and necessary in relation to the Adjacent Land in the interests of procuring car free development.

Reasons

Policy Background

5. Policy M3 of the Local Plan says that any residential development within a Controlled Parking Zone (CPZ), and which is within 400 metres of frequent public transport links and 800 metres of a supermarket, should be car free. The basis for this policy is to limit parking opportunities within the city, thereby reducing reliance on private vehicles. In turn, this should help to reduce air pollution and congestion, as well as help to create a more attractive environment for pedestrians and cyclists. As the appeal site is within the Divinity Road CPZ and meets these parameters for distance to local services, the Original Permission was granted on the basis that the development, including the Adjacent Land, would be car free.

Condition 10 (Boundary Treatments)

6. Both the appeal site and the Adjacent Land are currently used for parking, which was clearly evident on my site visit. This is currently facilitated by two separate access points, one to the appeal site and one to the Adjacent Land, each with a corresponding dropped kerb.
7. Condition 10 requires details of boundary treatments to be submitted to and approved by the Local Planning Authority prior to commencement. This condition includes a requirement that the approved boundary treatments would preclude parking within the appeal site and the Adjacent Land.
8. Irrespective of the ownership position, there is a clear spatial and functional relationship between the appeal site and Adjacent Land. If the Adjacent Land was excluded from the car-free requirements, it would still be conceivable for cars or other vehicles to remain parked on this parcel of land in conjunction with the new dwelling, which risks an artificial subdivision of the appeal site and the Adjacent Land to achieve this purpose. Moreover, without boundary treatments physically preventing vehicle access, parking would remain possible within these areas which would undermine the car-free objectives of Policy M3. On this basis, the condition remains both reasonable and necessary to ensure the development does remain properly car-free.

9. At the time the Original Permission was granted the Adjacent Land was owned by the appellant. The condition requiring boundary treatments to preclude the use of the Adjacent Land for parking was therefore properly imposed and enforceable. As planning permission runs with the land (alongside any conditions attached), the change in ownership has no bearing on the enforceability of the condition, nor its overriding need.

Condition 11 (Dropped Kerbs)

10. Condition 11 requires the existing dropped kerb to the Adjacent Land to be reinstated to a full height kerb, to prevent vehicle access to this land. Much like the boundary treatments required pursuant to condition 11, the reinstatement of the kerbs is necessary to ensure parking is physically prevented to the appeal site and to the Adjacent Land. It therefore remains reasonable and necessary to ensure the development as a whole does remain truly car free in practice, in compliance with Policy M3. Once again, as planning permission runs with the land, the condition remains enforceable irrespective of the current ownership position.

Overall Findings

11. Conditions 10 and 11 of the Original Permission remain necessary and reasonable in connection with both the appeal site and the Adjacent Land, to ensure the development remains car free as required by Policy M3 of the Local Plan. Moreover, I am satisfied that both conditions remain enforceable against the new owner of the Adjacent Land, and meet the other statutory tests of relevance and precision.

Other Matters

12. I acknowledge the appellant's contention that even if conditions 10 and 11 were varied to exclude the Adjacent Land, the appeal site itself would technically be car free and therefore policy compliant. Nonetheless, because the appeal site and the Adjacent Land are linked so closely in both a spatial and functional sense, it is essential that the conditions bind both parcels of land to ensure the development is truly car free.

Conclusion

13. The proposed variations would undermine the objectives of Policy M3 of the Local Plan, and would therefore conflict with the development plan as a whole. There are no other considerations, including the provisions of the Framework, that would outweigh this finding. The appeal is therefore dismissed.

James Blackwell

INSPECTOR