



Appeal Decision

Site visit made on 30 August 2024

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2024

Appeal Ref: APP/K5600/W/24/3344795

Royal Borough of Kensington & Chelsea Town Hall, Hornton Street, London W8 7NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Kensington Property Partnership against the Royal Borough of Kensington and Chelsea.
 - The application Ref is PP/23/04148.
 - The development proposed is the part change of use of basement car park to provide 985sqm of flexible work-space and ancillary welfare provision (Use Class E), 130sqm training facility (Use Class E) and 2,635sqm self-storage facility (Use Class B8); and ancillary uses including cycle parking with changing facilities and electrical car charging points.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. This is an appeal against the failure of the Council to determine the application within the prescribed period. The Council has explained that had it determined the application it would have been refused for two reasons; fire safety and the loss of car parking spaces with the consequent harm from the displacement of vehicles to adjoining areas. These form the main issues in this appeal.
3. Since the original committee report which considered this proposal, the Council has adopted the New Local Plan Review (Local Plan 2024) on 24 July 2024 and this replaces the Local Plan 2019. The Local Plan 2024 now forms part of the development plan for the considerations in this appeal.

Main Issues

4. The main issues are:
 - whether or not the scheme would demonstrate the highest standards of fire safety in accordance with the requirements of the development plan, and
 - whether or not the loss of the existing car parking spaces, and the related management of the car park, would result in unacceptable displacement of vehicles thereby leading to undue disturbance to nearby residential properties and unacceptably increase parking pressure in the area.

Reasons

Fire safety

5. Policy CD16 of the Local Plan 2024 addresses issues of fire safety and criterion A requires that all development proposals must demonstrate that they achieve the highest standards of fire safety. This policy complements Policy D12 of the London Plan 2021 which also covers fire safety. Policy D12 requires that in the interests of fire safety and to ensure the safety of all building users, all development proposals must achieve the highest standards of fire safety, including to ensure that they are designed to incorporate appropriate features which reduce the risk to life and the risk of serious injury in the event of a fire, and are constructed in an appropriate way to minimise the risk of fire spread.
6. This proposal concerns the fairly extensive underground car park beneath the Kensington and Chelsea Town Hall. The car park is used mainly as a public car park but there is also a sizeable area used for the parking of Council vehicles. The car parking areas cover two interconnected basement floors (Basement Level 2 and the lower level Basement Level 3). There is a single point of vehicular access and a single point of vehicular egress to and from Phillimore Walk which connects with Basement Level 2. The parking areas presently have about 325 public car parking spaces over the two basement levels.
7. In terms of the proposal, within the furthest, end section of Basement Level 3 the car parking spaces would be replaced by a self-storage area of about 2,635sqm. The range of self-storage units would all be quite modest in size and the information shows that there would be about 237 units accessed via fairly narrow access ways. The remainder of Basement Level 3 would be retained as a public car park.
8. On Basement Level 2, the scheme shows about 985sqm of flexible work space areas with ancillary welfare space, and a 130sqm training facility. Elsewhere the basement space would be retained as car parking.
9. In addition, other facilities would include cycle parking and changing facilities, and the provision of 15 Electric Vehicle Charging Points (EVCPs).
10. The application was accompanied by a Fire Safety Note (email dated 7 October 2022). This Note set out a series of items, comments and recommendations on fire safety. In respect of Firefighting Access, the Note includes the comments that "electric car charging points are a potential project risk item. We recommended exploring at an early stage if these can be removed from basement levels entirely".
11. The application was reported to the Committee (7 November 2023) with a recommendation for approval. The report did not highlight, at that point, fire safety as an issue. The Committee resolved to defer the application and listed a series of issues which it required further information and reassurances on. This included "details of fire safety set out in a fire safety strategy and means of escape".
12. The subsequent addendum Committee Report (23 July 2024) explains that planning officers had requested updates from the appellant as to when the additional information required by the Committee would be received. However, by that time a non-determination appeal had been submitted and the proposal was reported to the July Committee Meeting for advice on the approach to

dealing with the appeal. At that point, the Council's Building Control Team had been consulted and had objected on grounds of fire safety. This led to the resolution that, had the application been before the Council, it would have been refused on fire safety grounds. The Committee also resolved that a separate reason for refusal was justified in terms of the impacts leading from the loss of car parking.

13. As part of the appeal and at the final comments stage, the appellant submitted a Fire Statement Form (19/07/23) and a Fire Strategy Report (RIBA Stage 03) (23/8/24). I have had regard to both these documents. In particular, the Fire Strategy Report is a generally detailed document that seeks to understand and address the fire safety risks. For instance, it identifies the means of escape in the event of a fire, evacuation strategies, refuges and fire safety systems. In section A.7, the Fire Safety Strategy identifies Specific Fire Hazards and Risk Factors which are considered to be non-standard for a building of this type, or present hazards which bear special consideration and/or risk mitigation measures. The specific fire hazard in the case of this underground area is listed as Li battery fires from cycle stores and car parks.
14. The Fire Strategy Report lists measures that seek to address this risk and later in the Report there is section A.8.4.1 concerning the issue of batteries in the car park and the proposed design approach including the installation of sprinklers, smoke detection and alarm systems, and shut-offs for EVCPs. The Report confirms intended compliance with details in BS EN 61851 and that the installation would be in line with the guidance of T0194 - Covered Car Parks - Fire Safety Guidance for Electric Vehicles (T0194), although it argues that thermal imaging techniques are ineffective, and there is no intention to increase spaces between EVCP parking spaces. The Fire Strategy Report links the recommendations to the relevant parts of the Building Regulations, which would be required to be met.
15. The Council has responded to the Fire Strategy Report and commented that the information provided has been reviewed by the Council's Building Control Officer. It is explained that given the development proposes to install EVCPs to an existing covered car park, in a building that contains both office and residential units, it is expected a risk assessment as per Appendix A of the T0194 to have been completed and submitted to demonstrate the highest standards of fire safety under policy D12 of the London Plan 2021.¹ This is a response to which I attach substantial weight.
16. The appellant has again responded to make the case including that the Fire Strategy Report provides appropriate detail at this planning stage to demonstrate fire safety of the proposed EVCPs, that any further fire safety details can be secured by condition and that the statutory objectives relate to the Building Regulations. The appellant also explains that EVCPs were incorporated into the proposed development following a pre-application request from the Council to meet sustainability objectives and adopted policy requirements, and that there are already 4No existing EVCPs, which would have been accepted by the Council in their car park.
17. Firstly, when examining all the information, the Council has not raised concerns with the majority of the details in the Fire Safety Report, only in respect of the

¹ The advice from the Building Control Team also comments that it should be noted that a fire risk assessment is not specified in Policy D12, so this is qualitative assessment based on current best practice in the industry.

EVCPs and the related charging of vehicles. In terms of the other elements of fire safety I consider that the issues are reasonably standard and the detail provided in the various reports and comments are sufficient at this planning stage.

18. However, EVCPs and the related charging of electric vehicles have been identified as a specific issue that needs to be addressed for these basement areas. As noted above, the original Fire Safety Note (email dated 7 October 2022) states, in summary, that they are a potential project risk item and as a starting point seeks their removal from the proposal from the basement levels entirely. The Fire Strategy Report identifies LiIo batteries as the only Specific Fire Hazards and Risk Factors in relation to this scheme. Consequently, in these circumstances, it is reasonable and proportionate to focus on this issue, and for the level of detail to be clear that it demonstrates that the highest standards of fire safety would be met.
19. If discussions had continued at the application stage then potentially this may have led to additional details and more precise specifications to be incorporated as part of the application and the completion of a risk assessment as per Appendix A of T0194. However, it is not the role of the appeal process to evolve a scheme and the details in the various reports, such as with the approach set out in the Fire Strategy Report, do not then lead to precise, specified and agreed constructional details that form part of the scheme before me. I am conscious that the development plan policy requirements state that the development proposals *must* (my emphasis added) demonstrate that they achieve the highest standards of fire safety. This is a planning policy requirement and given the fire reports identify this matter as a specific risk I am not satisfied that this can be left to be dealt with as part of any subsequent planning details or under the Building Regulations.
20. Given that the underground areas are fairly extensive and spread over two basement levels, with the proposed additional mix of workshop, training and storage areas all with occupants/customers at times, and with the Town Hall above with its staff and visitors, I consider that there is a need for a high level of confidence that the EVCPs can be accommodated safely underground as envisaged. While there may be four charging points at the moment, the proposal would provide 15 and this is a material increase in number and potentially the related fire safety issues that need to be addressed.
21. I am also conscious that paragraph 6.147 of the Local Plan 2024 highlights that any consideration of fire safety should be undertaken in a sensitive way given the profound impact on the borough's communities of the Grenfell Tower tragedy. At this stage, and based on the information before me, including with the concerns of the Council's Building Control Team, I consider that I need to take a precautionary approach. In terms of the specific safety issue with regard to EVCPs and the related charging of electric vehicles, I am not content that I have sufficient reassurance that the scheme is designed to incorporate appropriate specifications and features to demonstrate that the EVCPs would be acceptably accommodated in this basement area.
22. The provision of the EVCPs is an integral part of the application, detailed in the description of the development, and therefore I am not satisfied that this part of the scheme could be excluded from the proposal by a planning condition.

23. Furthermore, given the importance of this matter and my view that I need to take a precautionary approach, I am not persuaded by the evidence that I have sufficient certainty that future details could address my concerns so as to be able to attach a condition to any approval for the subsequent submission and agreement of future EVCP details.
24. It follows that in the specific circumstances of this site and the information before me, I conclude the scheme does not demonstrate that it would achieve the highest standards of fire safety in accordance with the requirements of the development plan. As a consequence, the scheme would not meet with Policy CD16 of the Local Plan 2024 and Policy D12 of the London Plan 2021 which, in this respect, concern the approach to fire safety in the planning process.

Car parking

25. At the present time, there are about 325 publicly available car parking spaces stationed across the two basement levels. In addition, there are about 40 spaces used by Council vehicles at the northern end of Basement Level 2.
26. The introduction of the self-storage uses in Basement Level 3, and the flexible workspace units and training facility at Basement Level 2, would lead to the loss of about 172 public car parking spaces, retaining about 153 public car parking spaces. Four of the Council spaces would be reallocated for the self-storage use leaving about 36 spaces for Council vehicles.
27. The proposal has been accompanied by various Transport Statements and submissions. The Transport Statement (22 June 2023) (Markides Associates) includes a survey of existing parking demand. This was undertaken during a week in May 2022. This information shows that the highest use of the public car park is during the broadly middle hours of the working day on Monday to Friday when the number of vehicles parked range generally from about 180-200. The number of parked cars are often substantially lower at weekends. Generally, the figures show that the car park is underused with about 120 of the 325 spaces available at all times, with on other occasions a much greater number available.
28. Nevertheless, in purely number terms, based on the information available, if no action was taken in terms of managing demand, then the approximate 153 public car parking spaces proposed to be retained would not meet the present usage for core periods during the 9am to 5pm period Monday to Friday. There would be a shortage of about 40-50 spaces at peak times.
29. However, the scheme sets out proposals to seek to manage the demand for the reduced number of public car parking spaces. This could, as part of any planning condition attached to an approval, include a marketing campaign in advance of the changes to inform regular users of the intention to reduce capacity and alternatives, such as public transport and alternative car park locations. The parking app could also be improved to highlight the number of spaces available, in addition to the existing real time data on available spaces at the entrance to the car park.
30. Importantly, to assist with demand management there are, for many local residents, workers and visitors to the area, good options on many occasions as an alternative to the private vehicle. As evidence of this is that the appeal site and the surroundings streets are located within the Public Transport

Accessibility Level 6a, which indicates good public transport accessibility. The site is near to High Street Kensington Underground Station and the bus stops on Kensington High Street with its regular bus services.

31. In terms of the development plan, there is no policy that protects public car parking. Indeed, criterion A of Policy T8 of the Local Plan 2024 seeks to minimise reliance on private car use arising from new development and promote sustainable travel patterns by managing congestion and the supply of car parking.
32. Drawing these matters together, there is presently an oversupply of public car parking spaces on the site and, I am satisfied that with effective efforts to inform users of available spaces and highlight the alternatives, some users are likely to shift to more sustainable modes of transport. This leads to confidence that the retained spaces would be sufficient on most occasions to meet the general level of need for this location. Importantly, even with the proposed loss of car spaces there would still remain a substantial number of convenient spaces available to serve the needs of businesses and residential properties in this locality.
33. In terms of parking and vehicle needs for the various uses proposed, the evidence persuades me that the self-storage units, would in all probability be used by private individuals and the traffic generated would be as modest as predicted. The proposed storage units would not be attractive to commercial operators because of the moderate size of the units, the location at the northern end of Basement Level 3, the low ceiling heights and circuitous access to this part of the basement limiting the size of vehicles, and the fairly narrow passageways between the units necessitating trolleys or similar arrangements to get to the individual units. The limited number of parking spaces to serve the self-storage units would be adequate.
34. In these circumstances, the self-storage units, which would be accessed via the established vehicular accesses to and from the basement areas from Phillimore Walk, would not generate a level or type of traffic movement that would materially detract from the living conditions of residents in the surrounding area.
35. The training space and the workshops would provide fairly limited sized accommodation and while those attending these facilities would have the option to drive and park in the public spaces, given the good accessibility of the site to public transport, these uses are unlikely to affect the demand for public car parking spaces to a material extent.
36. The surrounding streets to the north of Kensington High Street, other than the appeal site and the Kensington Library building, are predominantly residential. The streets, with very few and limited exceptions, are subject to Controlled Parking Zones which are restricted to resident permit holders only. Most of the immediately adjoining roads have restrictions that allow only those who are a resident permit holder to park between 8.30am to 10pm Monday to Friday, 8.30am to 6.30pm on Saturdays, and 1pm to 5pm on Sundays². Therefore, there is no realistic option for other drivers at peak times, if they could not park within the basement parking areas, to relocate to the adjoining streets.

² Other streets have different time restrictions, some with no restriction on Sundays, although the restricted hours are similar during Monday to Friday.

Consequently, there would be no displacement or undue parking pressure in the area because adjoining streets are not available as an alternative to the public car park.

37. With appropriate management and information regarding the use and availability of the car park, and the retention of the approximate 153 spaces, the scheme would provide a reasonable balance between meeting the need for spaces and the development plan policy approach to seek to minimise the reliance on the private car and promote sustainable travel patterns by managing the supply of car parking. This balance is such that the remaining spaces and the proposed uses would be compatible with the general amenities of the area and the living conditions of local residents.
38. In conclusion, I am satisfied that the loss of the proposed car parking spaces, with appropriate management of the car park that could be achieved by suitably worded planning conditions, would not result in the unacceptable displacement of vehicles and, therefore, would not lead to undue disturbance to nearby residential properties nor unacceptably increase parking pressure in the area. Accordingly, the scheme would meet with the requirements of Policies CD9, T1 and T8 of the Local Plan 2024 which, amongst other things, set out the policy approach to car parking and that development is required to ensure good living conditions for occupants of new, existing and neighbouring buildings.

Other Matters

39. I have had regard to all the letters of representation that have been submitted at the application and appeal stages. The vast majority raise objection to the scheme. I have considered the impacts from the reduction in the car parking spaces in the section above, and concluded that the scheme would be satisfactory in this respect and not cause an unacceptable impact on the area and its residents. In particular, I am content that the self-storage units would be a reasonable and acceptable use in this basement area and provide a service to the locality.
40. The site lies within the Kensington Conservation Area. However, given that the proposal is located wholly within the basement areas, and there would not be any unacceptable impacts from traffic and parking, I consider that the scheme would preserve the character and appearance of the area and would not detract from its significance as a designated heritage asset. I also find that there would be no harm to the setting or significance of any listed building in the vicinity of the site.

Conclusion

41. The application, in part, follows the Council's Property Team's assessment that the Council car park is underutilised following independent review and the strategy to explore alternative uses for the space. After various considerations and a tendering exercise, this led to the appellants to be chosen as the preferred choice and to take a lease on part of the basement for use as a workspace, training facility and self-storage, subject to securing the necessary planning permission.
42. I am conscious, therefore, of the dialogue that has taken place which has led to the proposal and the detail that has been submitted with it. Nevertheless, the

Planning Committee was not satisfied and this led to the deferment, the requests for further information on a number of issues, and ultimately the appeal against non-determination.

43. There is much in favour of the proposal and the scheme would deliver a wide range of worthwhile benefits. The workspace units would help meet a need for small and flexible business space in a populated urban location. This would support the economic prosperity of the area. The training facility, with catering training in mind, would be a valuable addition to learning and would provide economic and social benefits. It would be purpose designed for this function and, therefore, able to provide a high standard of training facility. The self-storage units would deliver a different type of economic use and the evidence indicates it would meet a need that is not well catered for in this general area. The provision of EVCPs, as a matter of principle, would support sustainable transport options.
44. This mix of uses would make efficient and effective use of an underutilised car park in a location with high sustainability credentials. The loss of the car parking spaces would be acceptable, as there would remain a good number of spaces, and with appropriate management would not lead to a general undersupply. Indeed, this would comply with the general development plan approach for car parking in the Borough. Furthermore, there would not be displacement of cars or inconvenience to local residents for the reasons I have explained above.
45. These aspects of the scheme would provide worthwhile benefits which, collectively, I attribute substantial weight in favour of approval.
46. However, on the other hand, I am not satisfied that the scheme has demonstrated it would achieve the highest standards of fire safety. This is a development plan requirement. Based on all the information, I consider that I need to take a precautionary approach and for the reasons I have explained, in relation to the identified risk from EVCPs and the related charging of vehicles, I do not consider that the scheme incorporates such a level of detail, in the specific circumstances of this case, which is sufficient to meet the stringent planning policy tests. This is a matter of great significance, and particularly so given the confined nature of this sizeable, underground space, split over two basement levels. This harm, and related policy conflict, is of such weight that it clearly outweighs the benefits of the scheme that I have summarised above, and which are detailed in the submissions.
47. As a consequence, the level of harm from this fire safety issue, and the related conflict with the planning policies, is such that the scheme would not accord with the development plan when considered as a whole. There are no planning considerations of such weight to justify a decision other than in accordance with the development plan. Accordingly, I conclude that the appeal should be dismissed and planning permission refused.

David Wyborn

INSPECTOR