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## Appeal Decision

Site visit made on 18 October 2024

**by C Rafferty LLB(Hons), Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 4<sup>th</sup> December 2024**

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**Appeal Ref: APP/K3605/W/23/3336111**

**370b Walton Road, West Molesey, Surrey, KT8 2JE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr John Holland (John Holland and Associates Ltd) against the decision of Elmbridge Borough Council.
  - The application Ref is 2023/1733.
  - The application sought planning permission for retrospective application for use of building for storage (B8 use class) without complying with a condition attached to planning permission Ref 2021/3760, dated 10 June 2022.
  - The condition in dispute is No. 2 which states that: 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 development falling within part 3 classes I, P and PA of schedule 2 to the said order shall be carried out within the curtilage of the application site, unless planning permission is first granted by the borough council.
  - The reason given for the condition is: To safeguard the character and amenities of the premises and adjoining properties and to comply with policy DM2 of the Elmbridge Development Management Plan.
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### Decision

1. The appeal is allowed and planning permission is granted for retrospective application for use of building for storage (B8 use class) at 370b Walton Road, West Molesey, Surrey, KT8 2JE in accordance with application Ref 2023/1733 without compliance with condition number 2 previously imposed on planning permission Ref 2021/3760 dated 10 June 2022 and subject to the conditions in the attached schedule.

### Main Issue

2. The main issue is whether the disputed condition is reasonable and necessary in the interests of the character and appearance of the area.

### Reasons

3. The appeal site comprises a single storey building to the rear of No. 370 Walton Road, which is a property forming part of a terrace with commercial uses at street level and residential uses above. Surrounding streets contain a range of residential premises arranged in a consistent, street-facing manner. The appeal building has limited visual interaction with these streets. The site is accessed from a lane and sits among single storey structures that, although to the rear of residential premises, appear to be primarily used as garages or for storage.

4. Planning permission 2021/3760 was granted at the site subject to a condition restricting permitted development rights, namely through the removal of Classes I, P, and PA of Schedule 2 to Part 3 of the GPDO. This condition was attached to safeguard the character and amenities of the premises and adjoining properties. The National Planning Policy Framework is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Planning Practice Guidance (PPG) states conditions restricting future use of permitted development rights or changes of use may not be reasonable or necessary.
5. Much of the Council's appeal evidence relies on the officer's report and appeal decision for a different application at the site. While this is distinguishable from, and separate to, the current scheme before me, it remains clear that the Council considers the application of such permitted development rights could harm the character of the area through the potential to result in an independent dwelling at the appeal site.
6. The main parties agree that the appeal site is currently in Class B8 use, which aligns with my observations on site. Planning permission 2021/3760 was granted for use of the building for Class B8 use and any new permission that may arise from this appeal would be for this same use. Accordingly, if any condition to these planning permissions restricting permitted development rights was deemed to be justified, this would need to relate to controlling any future change from the permitted B8 use. However, there are currently no permitted development rights to change from Class B8 use to any other use class. By its nature, any change of use from Class B8 would require an application for planning permission.
7. In any event, Classes P and PA require prior approval determination in relation to a range of matters and if the prior approval date falls on or after 10 June 2019 or 1 October 2020, respectively, development will not be permitted. As these dates have now passed, these permitted development rights are not applicable in this instance. Class PA also related to changes of use from Use Class B1(c), rather than from Use Class B8. With regard to Class I, this would permit the change of use of a building falling within Use Class B2 to a use for any purpose falling within Use Class B8. It would not, however, relate to a change of use from Use Class B8. Accordingly, this permitted development right is also not applicable in this instance.
8. I note the comments of the Council regarding the planning history of the site, and the various applications and appeals for a residential use in this location that have been refused. I further note the Council's position that there has been no change in local circumstances since the granting of the original permission. However, given my findings, there is nothing to suggest that the removal of this condition would result in a change of use of the appeal building under permitted development rights, either to a dwelling or other use. As outlined above, any future change of use at the appeal building from Class B8 would require planning permission, at which stage the Council would have the opportunity to evaluate any potential impact on the character and amenities of the premises and adjoining properties.
9. Accordingly, there is no clear justification before me for the restriction of permitted development rights as outlined in condition no. 2 of planning permission 2021/3760, such that this condition is neither reasonable nor

necessary in this instance. The removal of this condition as proposed would also not conflict with Policy DM2 of the Elmbridge Local Plan Development Management Plan 2015 which seeks to preserve the character of the area.

### **Other Matters**

10. The main parties have outlined their positions regarding the potential loss of a B8 use at the site. However, the proposal does not expressly relate to the change, or loss of, a B8 use. I have determined the appeal as it appears before me, being the removal of condition no. 2 of planning permission 2021/3760.
11. Planning Practice Guidance makes it 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. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

### **Conclusion**

12. For the reasons given above, I conclude that the appeal should be allowed.

*C Rafferty*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall be carried out in strict accordance with the following list of approved plans and documents: E-I640-O-03\$, Planning Statement and Application details Supporting Document received on 28th October 2021.
2. No machinery shall be used within the existing building or on the application site unless details of the type of machinery and noise output has been submitted to and approved in writing by the Local Planning Authority.

END OF SCHEDULE