



Appeal Decision

Site visit made on 13 December 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2024

Appeal Ref: APP/E5330/W/24/3346835

25-27 Blanmerle Road, Eltham, London SE9 2DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Lawrence Boyce against the decision of the Council of the Royal Borough of Greenwich.
 - The application Ref 23/3113/F was approved on 22 December 2023 and planning permission was granted subject to conditions.
 - The development permitted is demolition of existing maisonettes and linked double garage and replacement with 3 terraced dwellings with accommodation in roofspace to be served by front rooflights and rear dormers, and all associated works (revision to application 23/1753/F).
 - The condition in dispute is No 10 which states that: *"No occupation of the development shall commence until arrangements have been made to secure the entire development as 'car free' in accordance with a detailed scheme or agreement (at the developers [sic] expense) which has been submitted to and approved in writing by the Local Planning Authority. The approved scheme/agreement should ensure that all future residential occupiers of the approved development cannot apply for, or obtain an on-street parking permit to parking [sic] a vehicle on the surrounding public highway and shall be implemented prior to the occupation of the development hereby permitted and shall be so maintained unless otherwise agreed in writing by the Local Planning Authority."*
 - The reason given for the condition is: *"To promote sustainable transport by reducing the need for car travel in accordance with Policy T6 of the London Plan (2021) and Policies IM(b) and IM(c) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (July 2014)."*
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Decision

1. The appeal is allowed and the planning permission Ref 23/3113/F for demolition of existing maisonettes and linked double garage and replacement with 3 terraced dwellings with accommodation in roofspace to be served by front rooflights and rear dormers, and all associated works (revision to application 23/1753/F) at 25-27 Blanmerle Road, Eltham, London SE9 2DU, granted on 22 December 2023 by the Council of the Royal Borough of Greenwich, is varied by deleting condition 10 and substituting for it the following condition:
 - 1) The dwellings hereby permitted shall not be occupied until arrangements have been made to secure the development as a car-free development in accordance with a detailed scheme or agreement which shall have first been submitted to and approved in writing by the local planning authority. The approved scheme or agreement shall ensure that:
 - i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning

authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and

- ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.

Such scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for so long as the use hereby permitted continues.

Application for costs

- 2. An application for costs was made by Mr Lawrence Boyce against the Council of the Royal Borough of Greenwich. This application is the subject of a separate decision.

Preliminary Matters

- 3. Section 79(1) of the Act allows me, in determining this appeal, to vary any part of the decision of the local planning authority (LPA). In so doing, I have allowed the appeal, although the outcome is not that sought by the appellant.
- 4. Notwithstanding the site address provided on the appeal form, for clarity and consistency I have used the address given on the decision notice for planning application Ref 23/3113/F in my decision and the banner heading above.
- 5. The National Planning Policy Framework (the Framework) was updated in December 2024. However, insofar as the contents are relevant to this appeal, the Framework has not changed. Therefore, I am satisfied no party would be disadvantaged by not having the opportunity to comment on the revised Framework.
- 6. Paragraph 57 of the Framework states planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. Planning Practice Guidance¹ refers to this as the 'six tests' and makes clear that each of them needs to be satisfied for a condition that an authority intends to apply. The tests previously included in Circular 11/95 have been superseded by the six tests in the Framework.

Background and Main Issue

- 7. The appeal site comprises two dwellings with forecourt parking and a double garage. Permission has been granted for three terraced dwellings with no off-street parking. There have been two previous unsuccessful applications for a similar form of development on the site², refused for reasons unrelated to parking.
- 8. The site is in a Controlled Parking Zone (CPZ). The disputed condition prevents future occupants of the new houses from obtaining parking permits to park on-street within the CPZ. The appellant would like future occupants of the development to be eligible for parking permits, and contends preventing this via condition is not necessary, relevant to planning or the development permitted, enforceable, precise, or reasonable.

¹ Paragraph: 003 Reference ID: 21a-003-20190723

² Refs 22/4237/F refused 05/05/23 and 23/1753/F refused 08/08/23

9. The main issue is therefore whether condition 10 satisfies the six tests for use of planning conditions.

Reasons

10. The appeal site is within short walking distance of New Eltham Station and several bus-routes on Footscray Road, so is well-connected by public transport. Footscray Road is also the location of a local commercial centre with a range of services and facilities, including a small supermarket.
11. The CPZ that affects the appeal site operates between 9.30 and 11.30 Monday to Friday for parking bays on street and between 8.00 and 18.30 Monday to Saturday where there is a yellow line. The Council has explained the objective of the CPZ is to manage the high level of on-street parking demand in the area, for the benefit of existing residents and businesses. Given the proximity of the station and commercial centre, I observed additional on-street parking demand is likely to come during the daytime from commuters and shoppers.
12. London Plan (LP) Policy T6 states car-free development should be the starting point for all proposals in places that are well-connected by public transport, with no general parking but provision for disabled persons who are Blue Badge holders. CS³ Policy IM(c) seeks car free development where public transport accessibility is high and there is a CPZ. This Policy adds that, in areas of on-street parking stress, the Council will not issue on-street parking permits and will use a condition/legal agreement to ensure future occupants are aware of this. Supporting paragraph 4.8.46 defines areas of on-street parking stress as those within a CPZ where there is known to be limited further parking capacity and additional on-street parking would be harmful to parking conditions.
13. The appellant has provided on-street parking data for roads within 200 metres of the appeal site, from overnight surveys undertaken at 03.00 on a Tuesday and 05.15 on a Thursday, in November 2022. Taking account of both marked bays and single yellow line parking, the surveys found existing overnight parking occupancy in the range of 69-71 per cent. The report states two additional cars would increase the busiest overnight period to 73 per cent, which would be below the 85 per cent threshold at which networks are considered stressed.
14. Notwithstanding the recognised methodology used, these data do not assess levels of on-street parking availability during daytime shopping hours and peak commuter travel times, when demand for spaces in the vicinity of the appeal site would be expected to be particularly high. They also do not factor in the restricted availability of on-street spaces during the operating hours of the CPZ. Most of the marked bays in the vicinity of the appeal site were occupied when I visited, which was during the CPZ's operating hours. Local residents have expressed concerns about difficulty parking within the CPZ, including for those with permits. Even overnight, when the restrictions do not apply, the survey data show little parking availability in the marked bays, suggesting heavy demand. Taking all this together, I find the contention that there is sufficient on-street parking capacity for two additional cars near the appeal site unconvincing.

³ Royal Greenwich Local Plan Core Strategy with Detailed Policies 2014

15. The Council's Highways Officer (HO) reviewed the parking survey data when it was originally submitted in support of application Ref 22/4237/F and concluded any additional demand would create parking problems for existing residents and businesses. There is no pertinent evidence that levels of parking stress in the area have materially changed since the surveys were undertaken in 2022. For the reasons I have outlined, I agree with the HO that additional on-street parking would be harmful to parking conditions near the appeal site.
16. There is no compelling evidence the existing dwellings on the appeal site benefit from residents' parking permits. Even if they do, this would not in itself justify removal of the disputed condition bearing in mind the development plan requirement for car-free development in CPZ locations that are well-connected to public transport. There is no inconsistency between this requirement and the relevant maximum parking standard in LP Policy T6.1, given Greenwich is classified by the LP as an Inner London borough. The suggestion that saleability of the new houses and/or access to mortgage finance would be limited by removing parking permit eligibility is not substantiated by evidence.
17. I therefore find the restriction on additional parking permits secured via condition 10 is necessary to manage parking demand in the vicinity of the development. Further, given the proximity of public transport to the site, the condition is necessary to achieve a car-free development in accordance with LP Policy T6 and CS Policy IM(c). For the same reasons, I find condition 10 is relevant to the development permitted. Given the condition would help achieve the objective in CS Policy IM(b) and the Framework to promote walking, cycling and public transport use, I also find it is relevant to planning. Imposition of the condition enables the development to proceed where it would otherwise have been necessary to refuse permission, which in turn furthers the Framework's objective to boost the supply of homes.
18. For the restriction to be implemented effectively, an amendment to the existing Traffic Regulation Order (TRO) controlling the CPZ is required. This will remove the new houses from the list of dwellings for which residents' parking permits can be issued, which will provide a mechanism by which the restriction can be enforced.
19. The Council has said it expects the TRO amendment to be made at the appellant's expense. Such a payment would have to be secured through a legal agreement, which is as envisaged by condition 10. In these circumstances, it is reasonable to impose a negatively worded condition to prohibit occupation of the development until the TRO has been amended. However, it would be unreasonable for this agreement to prevent work on site starting, so a pre-commencement condition would not be warranted.
20. Section 70(1)(a) of the Act enables the LPA in granting planning permission to impose "such conditions as they think fit". Pre-commencement conditions do require the written agreement of the applicant. However, the disputed condition is not a pre-commencement condition, stating instead that no occupation of the development shall commence until arrangements to secure the development as car-free have been submitted and approved. Consequently, the Council was under no obligation to secure the prior agreement of the appellant before applying condition 10 to the permission.
21. The Council's intention to use such a mechanism is clearly signalled in CS Policy IM(c) as noted above. This approach was also sought in comments

from Transport for London on the planning application. Further, the Council's intention to impose a condition to secure an amendment to the TRO, had permission been granted, was stated in the Transport and Highways section of the Council's decision report on previous refused application Ref 22/4237/F. Consequently, the imposition of condition 10 on permission Ref 23/3113/F should not have come as a complete surprise to the appellant.

22. For these reasons, I find condition 10 is both enforceable and reasonable in all other respects. However, I have some concerns about the precision of the disputed condition as currently worded. These concerns are three-fold.
23. Firstly, the condition does not make provision for disabled persons' parking, as required by LP Policies T6 and T6.1 and CS Policy IM(c). This can be remedied by adding a carve-out from the parking permit restriction for a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation.
24. Secondly, the condition does not make provision for wrongly issued permits to be surrendered. This can be remedied by adding a clause to require this.
25. Thirdly, the final sentence of the condition states the parking permit restriction shall be maintained unless otherwise agreed in writing by the LPA. This wording creates a risk that changes to the development could be made by circumventing the statutory process for variation of conditions, thereby depriving third parties of the opportunity to comment. The remedy in this instance is not to include this tailpiece clause and instead make clear the restriction shall be retained and operated for as long as the use continues. A future application to carry out the development without complying with the condition could be made under section 73 of the Act.
26. For the above reasons, I conclude condition 10 satisfies five of the six tests for use of planning conditions but does not fully satisfy the test of precision. However, I can remedy this by varying the permission in such a way that I delete condition 10 and replace it with a modified version incorporating the changes outlined above. I am thus content the replacement condition that I have attached to this decision satisfies the six tests for use of conditions.

Other Matters

27. The permission requires agreement of a Construction Method Statement, which would help ensure any adverse effects of construction on neighbouring occupiers could be adequately mitigated.

Conclusion

28. For the reasons given above I conclude the planning permission should be varied as set out in the formal decision.

C Carpenter

INSPECTOR