



Appeal Decision

Site visit made on Monday 9 December 2024

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 29 January 2025

Appeal Ref: APP/Z5630/Q/24/3351903

**Underground Car Park Kingston Riverside Henry Macauley Avenue,
Kingston Upon Thames, KT2 5FE**

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 (as amended) (TCPA) against a refusal to modify a planning obligation.
 - The appeal is made by Premier Ground Rent No. 5 Limited against the decision of Royal Borough of Kingston Upon Thames.
 - The development to which the planning obligation relates is Modification to car park management plan subject of the provisions of paragraph 39 and 40 of S106 relating to planning permission 06/12424/FUL dated 11th July 2008.
 - The planning obligation, in the form of a unilateral undertaking was dated 11th day of July 2008, was made by NHP Leisure Developments Limited, NHP (Kingston) Limited, Merlion Capital Kingston Limited and Irish Nationwide Building Society in favour of the Mayor and Burgesses of the Royal Borough of Kingston Upon Thames Council.
 - The application Ref 22/02347/LEG, dated 13 July 2022, was refused by notice dated 13 March 2024.
 - The application sought to have the planning obligation modified as follows:
'Modification to car park management provisions under paragraph 39 and 40 of the Unilateral Planning Obligation'
-

Decision

1. The appeal is allowed. The planning obligation, dated 11 July 2008, made between NHP Leisure Developments Limited, NHP (Kingston) Limited, Merlion Capital Kingston Limited and Irish Nationwide Building Society (and to whom Premier Ground Rent No. 5 Limited are a party as a successor in title) in favour of the Mayor and Burgesses of the Royal Borough of Kingston Upon Thames Council, shall have effect subject to the modifications as set out below:
2. Paragraphs 27 (a) and (b) [relating to blue badge parking scheme], 39 (a) to (h) inclusive [relating to approval of a car parking management scheme], and 40 [relating to the implementation of the approved car parking management scheme], are modified with their replacement. They are replaced with Paragraphs 27 (a) and (b), 39 (a) to (h) inclusive, and 40 as contained within submitted document *CD03a – 07-01-25 – S.106 – Schedule 1 – Paras 27, 39 and 40 – AS PROPOSED* submitted on 8 January 2025¹.
3. The modification also includes, within CD03a, an Appendix 2 – Car Parking Management Scheme. This is explicitly referred to in the modified paragraphs 27, 39 and 40, and forms a part of the approved modifications. These are the only modifications allowed by this appeal and the rest of the s106 legal agreement dated 11 July 2008 remains extant and unchanged (unless

¹ Being itself a consolidation of CD03 and CD04 submitted at the initial appeal stage.

modified in agreement with the Local Planning Authority or matters have been discharged).

Procedural Matters

4. Originally the Appellant sought to be 'heard'. To that end arrangements were made to hold a Hearing on 14 January 2025. On examination of the written evidence before the decision maker, the Appellant was invited to review whether or not they still wanted to be 'heard'. Following this, the Appellant indicated that they were content to have their appeal considered by means of written representations – as initially sought by the Council. The Appellant was given until 14 January 2025 to provide any final comments.
5. Local residents were notified of the appeal scheme and of the Hearing. Representations were duly made in writing. These representations have been taken into account in determining the modifications sought.

Applications for costs

6. An application for costs was made by the Appellant against the Local Planning Authority. This is subject to a separate costs decision.

Preliminary Matters

7. The legal agreement made under section 106 TCPA was made by NHP Leisure Developments Limited, NHP (Kingston) Limited, Merlion Capital Kingston Limited and Irish Nationwide Building Society in favour of the Mayor and Burgesses of the Royal Borough of Kingston Upon Thames Council, as detailed in the header of this decision.
8. The Appellant's agent has confirmed that Premier Ground Rent No. 5 Limited are successors in title to those originally cited in the unilateral undertaking. I have proceeded on this basis.

Main Issue

9. The main issue is:

Whether the obligation continues to serve a useful purpose, and would serve that purpose equally well if it had effect subject to the modifications specified in the application.

Reasons

The legal parameters

10. Section 106A(6)(c) of the TCPA sets out:

(6)Where an application is made to an authority under subsection (3), the authority may determine—

(a)that the planning obligation shall continue to have effect without modification;

(b)if the obligation no longer serves a useful purpose, that it shall be discharged; or

(c)if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications

specified in the application, that it shall have effect subject to those modifications.

Background

11. The background to the case is set out extensively in the evidence of the main parties (including their respective position statements. Therefore, I have not sought to replicate here in any detail.
12. Put simply, planning permission was granted in October 2008 for a mixture of residential flats and a hotel on the appeal site. Connected to this grant of planning permission was a legal agreement under s106 of the TCPA which, amongst other obligations, secured various provisions for car parking. This included Paragraphs 27, 39 and 40 of the legal agreement² relating to Blue Badge Parking Spaces and a Car Parking Management Scheme.
13. Ostensibly, the Appellant wishes to modify the terms of the s106 agreement so that Paragraphs 27, 39 and 40 only are modified by their replacement with the text set out in document CD03a – 07-01-25 – S.106 – Schedule 1 – Paras 27, 39 and 40 – AS PROPOSED³. The effect of this modification would also result in the approval of the management of the car park in accordance with the Car Parking Management Scheme (which is also contained within the same CD03a document). For clarity, the allowing of the appeal would result in the modification of the legal agreement by the modifying of the three paragraphs cited and the replacement of the parking management scheme by that supplied in the modification application.
14. The appeal proposal seeks modification to the planning obligation in order to allow longer term permits for leaseholders, the allocation of parking spaces and the right of transfer of permits from existing leaseholders to new leaseholders.
15. The effect of the modification would essentially allow longer leases of spaces and allocations on the 119 market spaces; the blue badge holders spaces (18 bays), hotel spaces (12 bays) and affordable housing spaces (38 spaces) provisions remain unaltered. The Appellant's submitted Car Parking Management Plan indicates that the average number of bays occupied over the past five years in 101 spaces; representing a vacancy rate of around 40%. Within little to the contrary, I see no reason to disagree with these figures.
16. The Appellant has made it clear, at Paragraphs 2.1 and 2.3 of their appeal statement, that the issuing of short-term permits to non-residents and increasing the EV charging provision were removed prior to determination following feedback. To avoid any ambiguity, I have proceeded on the basis that Permits to Park at the appeal site **would not** be issued to non-residents⁴. Not only has this been clearly stated by the Appellant in their professional evidence before me, but also there is no provision for this within the submitted Car Park Management Plan dated September 2024, which forms an intrinsic part of the modification.

²² See document: CD02 – 13-09-24 – s.106 Schedule 1 – Paras 27, 39 and 40 – AS COMPLETED

³ This consolidates the version CD03 with a similar title, but removes the track changes and commentary provided in that document.

⁴ Though clearly the small number of 12 spaces for the hotel would continue with no changes for 'resident' guests.

17. I saw during my site inspection that the site is located a short distance from Kingston town centre. Parking in the local area is strictly controlled through measures such as on street permit only parking bays and double yellow lines. There are some paid for car parks such as that found at the Seven Kings car park. However, the relatively high parking rates and time limits for these suggest they are typically aimed at short term use for shoppers or nearby hotel guests rather than residential use. I also saw that rail and bus services are located around a 10 to 15 minutes' walk away.

Considerations

Useful Purpose

18. The aims of the existing obligations are clear; they seek to control parking at the appeal site in order to ensure that it is provided for those occupiers who wish to seek and pay for a Permit to Park. This provides a useful planning purpose because it ensures that within the original planning permission from 2008 there is car parking provided for those residents who seek and require it – including a specific provision for those requiring it for Blue Badge parking and also those residing in private or affordable housing stock on the site.
19. The obligation securing the parking and its management through permits and other such measures ensures that the development continues to comply with locally adopted planning policy. Including the most recent iteration of the statutory development plan which includes the Core Strategy of 2012 (and Policies DM9 and DM10) and the London Plan. Put another way, if the obligation was removed then there would be no obvious control over the parking needs of residents of the development. This is a situation which would not be desirable given that it would potentially shift demand for parking to either on street or elsewhere or cause considerable inconvenience for residents seeking on-site parking.
20. The modifications sought would not alter the underlying principle of the parking on site being managed by means of the obligation and car parking management plan. Accordingly, I find that the obligation continues to serve a useful purpose.

Equally well

21. The modifications would allow residents to obtain an allocated parking space and parking permit for that space for a period in excess of the current annual period. The evidence before me indicates that there is an average vacancy rate of 40%, which means that over the past five years large parts of the car park have been under-utilised. This is not an efficient or effective use of land. The Appellant suggests that this underutilisation of the car park is linked to the fact that spaces are currently not allocated, subject to short permit lengths of no more than 12 months which have to be annually reviewed, and that there is no right of transfer when occupiers move and new leaseholders move in.
22. The Council raises the concern that right of transfer would result in a form of stockpiling of permits. This could be through the allocation and tying of permits and spaces to specific residential units which no longer require them. The effect of this may be that other residents who do want permits are unable to obtain them. However, this appears to be a fairly rigid interpretation of what may happen in the future. Indeed, the modification sought, which

should be read plainly, including the Car Parking Management Plan, provides a degree of flexibility for the management of the car park.

23. It does not necessarily mean that every parking space and permit will be stockpiled by occupiers who have no need for them. Instead it provides some certainty, to those who want it, that for those units where the leaseholder has obtained a permit this can be transferred with the leasehold. Moreover it provides some certainty for the new occupant that, should they want it, the unit comes with an allocated space and permit.
24. Given the annual cost of the permits, as detailed in the Car Parking Management Plan, it would be unusual that an occupier would want to retain a parking space and permit if they had no need for it. In such circumstances, which they would highly be aware of at the purchase of the leasehold, they would most likely seek to revert that space and permit back to the 'pot' for allocation to another occupier. It should also be recalled that the evidence presented in this case is that only 60% of the spaces are occupied on average over the past five years – and this is a situation where there are more residential units than car parking spaces provided. In other words, not every household within the residential complex requires or seeks parking within the car park.
25. I recognise the Council's concerns that a direct association between a leasehold and parking space / permit may restrict the opportunity for permits to be obtained by future occupiers. This is especially so given the disbalance between the number of spaces compared to residential units. However, I am not convinced by the Council's limited evidence presented that the modifications sought would result in parking elsewhere on the local highway network. This is not currently the situation, where there is a noticeable vacancy rate of around 40%. Furthermore, given the site's location near to the services and shops of Kingston town centre and public transport networks into central London it is highly unlikely that there would be a significant change in demand envisaged by the Council.
26. Accordingly, I find that the proposed modifications would serve that purpose equally well.

Other Matters

27. A number of concerns have been raised by interested persons at the application and appeal stages. These includes;
 - Concerns over members of the public accessing the parking area and using the parking spaces.
 - That these were spaces provided for residents use only. As such, the use of spaces by members of the public would compromise security and increase noise and pollution, and adversely affect emergency access and escape routes.
 - The use of the parking spaces by members of the general public would result in an increased risk to highway users such as pedestrians – including children and adults – given that the car parking is accessed via a forecourt.

- There is ample parking elsewhere in Kingston town centre, including at the Seven King's Car Park and the Bentall Centre.

28. In considering these, and all matters raised by interested parties, I note that the originally submitted scheme was expressly revised so that public parking provision was removed from the modifications sought. As such, I must work on the expectation that the spaces will only be used by residents within the terms of modifications sought and those with Permits to Park, as detailed within the application and the Car Parking Management Plan. Given this, I do not find that the other matters raised by interested parties over the proposed modifications provide justification for the dismissal of the appeal.

Conclusion

29. I find that the obligation continues to serve a useful purpose. I have also found that it would serve this purpose equally well if it had effect subject to the modifications specified in the application. Accordingly, for the reasons given above the appeal should be allowed and the legal agreement made under s106 TCPA dated 11 July 2008 should be modified as sought and set out in the Decision section of this letter.

C Parker

INSPECTOR