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# Appeal Decision

Site Visit made on 21 November 2011

**by E C Grace DipTP FRTPI FBEng PPIAAS**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 15 December 2011**

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**Appeal Ref: APP/L5810/A/11/2161041**

**Park House, Station Road, Teddington TW11 9AD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by The BA Partnership against the decision of the Council of the London Borough of Richmond-upon-Thames.
  - The application Ref 11/1436/FUL, dated 5/5/11, was refused by notice dated 15/9/11.
  - The development proposed is demolition of existing studio building and replacement with a four storey building (C3 dwelling/ A3 restaurant Uses).
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## Decision

1. The appeal is allowed and planning permission is granted for demolition of existing studio building and replacement with a four storey building (C3 dwelling/ A3 restaurant Uses) at Park House, Station Road, Teddington in accordance with the terms of the application, Ref 11/1436/FUL, dated 5/5/11, subject to the conditions set out in the schedule at the end of this decision.

## Background

2. Park House is a 1960s office block with an adjoining television/film studio (now demolished), positioned at the junction of Station Road with High Street and abutting the designated Teddington High Street Conservation Area. In January 2011 planning permission (Ref: 10/1750/FUL) was granted for change of use of Park House to a hotel and demolition of the studio and its redevelopment with ground floor restaurant and 3 floors of offices above. The hotel conversion is in progress and due for completion in 2012. There is a contract to hand the hotel to Travelodge in April 2012 by which time the development must be completed as the construction access would be lost. Whilst interest in the proposed new build restaurant still exists, there is a lack of demand for the proposed office floorspace. Hence, the current proposal was submitted to alter the permission in respect of the new build element on the site of the former studios from restaurant with offices over to restaurant with 9 flats above.

## Unilateral Undertaking

3. The second refusal reason indicates there was no legal agreement in place to make provision towards requisite infrastructure in line with the Council's Public Obligations Strategy SPD. However, the appellant states that the Council has never sought any Agreement and considers this to be a manufactured refusal reason. Nevertheless, they have submitted a Unilateral Undertaking which commits to making payments totalling in excess of £40,000 towards transport infrastructure, play facilities, health and safety and education provision as mentioned in the Committee report.

4. Although the Council have indicated their general acceptance of its terms, the appellant points out that the various sums do not relate to any specific infrastructure requirements that are directly related to the development and are not claimed by the Council as being necessary to make it acceptable in planning terms. Hence, they do not meet the statutory tests of the Community Infrastructure Levy Regulations. In the absence of such and any statement from the Council as to how they are fairly and reasonably related in scale and kind to the development, I agree and cannot therefore take these elements of the Undertaking into account in arriving at my decision.
5. However, the Agreement also includes clauses prohibiting future occupants of the proposed flats from applying for a parking permit and to ensure provision of a car club for intended residents, which the appellant does accept as being necessary and appropriate. Having regard to the highly sustainable town centre location of the site and the pressure upon the limited available kerbside parking spaces, I concur that these elements of the Agreement are acceptable.

### **Main Issue**

6. Accordingly, the sole issue in this case is whether the proposal would result in the unacceptable loss of employment land contrary to the provisions of the Development Management Plan Policy DM EM2.

### **Reasons**

7. The appellant indicates that the Council granted permissions in 2001 and 2004 for replacement of the studio building with offices, but as these did not attract any commercial interest they were never implemented and have lapsed. The extant permission for the restaurant and office development has not yet been commenced as it would be economically unviable to build the offices and the appellant has submitted marketing evidence to support that. Indeed it would appear the market for commercial office is declining and further surplus office space is becoming available. These factors added to the generally lower office rentals achieved in Teddington, combined with the current economic recession, and the absence of any evidence from the Council to contradict the marketing reports submitted by the appellant, lead me to accept that the office element would not be viable. In fact, the Council appear to have accepted the current lack of demand for B1 Uses when they granted permission to convert offices in Park House to hotel use.
8. The Council's main reason for refusing this current proposal is based on their stance that it would involve the loss of 120sq m of employment use. However, the appellant indicates that the studio use is *sui generis* and not B1 and thus cannot represent a loss of employment land, building or use. Moreover, the Council do not state that they object to the fact that the permitted 799sq m of office space on the site will not be built, and there is no condition or legal obligation requiring the offices to be built as part of the overall development scheme. Therefore, the approved office space cannot reasonably be regarded as having been an essential *quid pro quo* of permitting the loss of 3450sq m of office space at Park House, to hotel use.
9. Policy DM EM2 seeks to retain land, sites and buildings which were last used for employment purposes in employment use. The aforementioned circumstances lead the appellant to consider the policy is not breached. On the face of the evidence before me, I agree.

10. Notwithstanding this conclusion that the site does not comprise existing employment land, it is evident that Policy DM EM2 incorporates a sequential approach to the redevelopment of such sites: requiring that firstly, it be solely employment based development; secondly, mixed use, including maximising the amount of affordable housing provided as part of the mix and thirdly, for affordable housing. Despite the council having already granted permission for a mixed restaurant and office use on this site, the officer's report somewhat inexplicably states: "*it is not considered proven that a wholly employment use of the site is unfeasible*". Nevertheless, the report also indicates that the Council suggested to the appellant that affordable housing might be considered a sufficient reason for accepting the loss of employment use. It continues by reporting that the appellant had contacted housing associations in this regard.
11. I am advised by the appellant that of the 8 Housing Associations contacted some did not deign to respond, while others indicated they were not interested. Only one positive response was made, but as their offer was set at a level that is between 50-70% of the site value and build cost, and also subject to conditions that were wholly unrealistic and commercially impossible to accept, this was not pursued further. They maintain they have therefore followed the sequential approach, despite not accepting it is appropriate to the precise circumstances of this case, and reached a negative conclusion.
12. In light of this and all of the above, the options which the appellant regards as being available for this site and commercially viable are to develop it with a restaurant only, or a restaurant with open market flats above as an alternative to the offices. The rationale being that there is an acknowledged demand for housing whereas there is demonstrably not for offices. I note that the Council's Core Strategy Policy CP15 expects that 50% of all new housing to be provided as affordable dwellings and although the policy continues by indicating that a financial contribution towards the Affordable Housing Fund will be sought from sites below the threshold of 10 dwellings, the Council have surprisingly, in my view, not sought any such payment.
13. The appellant referred to the indications in the draft National Planning Policy Framework that the Government seeks to ensure that economic and business policies should be flexible enough to accommodate requirements not anticipated in the development plan and to allow a rapid response to changes in economic circumstances. They consider this is precisely what they are attempting to do with this site and emphasise the acute building deadlines to which they have to adhere. The appellant considers the proposal also complies with the housing policies in the London Plan and the housing parameters for Teddington set out in Core Strategy Policy CP14. From my reading of these and in the absence of any evidence whatsoever from the Council to contradict this, I concur with the appellant. As the Core Strategy also indicates that nearly all new development in the Borough will be on brownfield sites, I agree with the appellant that given the realistic and financially viable options open to them for this site, it would be a wasted opportunity not to utilise it in part for housing.
14. Occupants of an adjoining office block expressed concerns about residential accommodation being sited close to the windows in their second floor office and restaurant windows facing their first floor office. The Council identified no grounds for refusal on this basis and the appellant considers there would be no material difference between this proposal and the approved scheme.

15. Although the relevant window in the proposed building would serve a bedroom, unlike with the previous permission for offices, the appellant considers the respective accommodation would be mainly occupied at different times eg. 09.00hrs – 17.00hrs for offices, and 17.00hrs – 09.00hrs for the bedroom. Moreover, appropriate privacy could be achieved through the deployment of blinds or curtains. The appellant had anticipated this matter to be addressed by the attachment of a condition requiring the relevant restaurant/ bedroom windows to be fitted with partially or fully obscure glazing. However, they submitted a drawing to illustrate this (7524/200) and although the Council did not raise privacy/overlooking as an issue and has not commented on the drawing, I am content this would suitably address the concern that has been expressed, and I am satisfied I can attach a condition requiring implementation of those glazing details.
16. Being minded therefore to allow the appeal and grant planning permission, I have had regard to the conditions that have been suggested by the Council and the appellant's response thereto. In the case of the standard 3 year time limit, the appellant has suggested this could be reduced to 12 months, in light of the intention to make an urgent completion. A condition requiring submission of details and samples of external materials is appropriate in the interests of visual amenity. I shall also insert a condition requiring windows in the south west elevation to be partially or fully obscure glazed for privacy reasons. I accept the need for waste storage to be agreed and implemented in interests of residential amenity. There is no need for a condition restricting parking as that has been addressed in the Section 106 Undertaking. I accept the need for specifying the dwellings as Code Level 3 to ensure they provide energy efficient housing. The appellant has objected to the condition relating to the suggested BREEAM rating for the restaurant as they intend to build it to a 'very good' standard in accordance with the extant approval. In the absence of any justification from the Council for varying that standard, I shall impose it as 'very good' in the interest of consistency.
17. I agree that details of the PV roof panels should be submitted and approved in the interest of visual amenities. Also that cycle parking should be implemented to discourage car use. An approved construction method statement is necessary because, although one already exists for the on-going development, this is a new permission and conceivably could require works beyond the completion of the hotel. The restaurant opening hours and prohibition of take-aways is identical to the existing approval and acceptable in the interest of residential amenities. Similarly the conditions pertaining to the air conditioning and extractor units are required to safeguard residential and visual amenities and delivery time restrictions are identical to the extant permission, again in the interest of residential amenity. Finally, it is appropriate to specify precisely the plans to which this permission relates, for the avoidance of doubt.
18. For the reasons given above I conclude that the appeal should be allowed and permission granted subject to the conditions set out in the schedule below.

*Edward Grace*

Inspector

### **Schedule of Conditions**

1. The development to which this permission relates must be begun not later than the expiration of 12 months beginning with the date of this permission.
2. The external surfaces of the building and, where applicable, all areas of hard surfacing, shall not be constructed other than in materials, details/samples of which shall be submitted to and approved in writing by the Local Planning Authority.
3. Before the first occupation of the building hereby permitted the windows in the south west elevation shall be fitted with obscured glass in accordance with drawing no 7524/200 and shall be permanently retained in that condition.
4. The building hereby approved shall not be occupied until arrangements for the storage and disposal of refuse/waste have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority and permanently retained thereafter.
5. The dwellings hereby approved shall achieve a Code Level 3; in accordance with the requirements of the Code for Sustainable Homes: Technical Guide (or such national measure of sustainability for house design that replaces that scheme). No dwelling shall be occupied until a Final Code Certificate has been issued for it certifying that the Code Level stated above has been achieved and which has been submitted to the Local Planning Authority for approval.
6. The restaurant hereby approved shall achieve BREEAM Rating 'very good' in accordance with the requirements of the BREEAM Guide (or such national measure of sustainability for design that replaces that scheme). No part of the development shall be occupied until a Post Construction Review Certificate has been issued for it certifying that the Rating Level stated above has been achieved and has been submitted to the Local Planning Authority for approval.
7. Prior to the development commencing, details of the proposed Photovoltaic Panels (including size, positioning and form) shall be submitted to and approved in writing by the Local Planning Authority, and such details approved shall be installed prior to the occupation of any of the units.
8. No part of the development shall be occupied until cycle parking facilities have been provided in accordance with detailed drawings showing the position, design, materials and finishes thereof to be submitted to and approved in writing by the Local Planning Authority, and shall be permanently retained thereafter.
9. No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to through the construction period. The Statement shall provide for:
  - The parking of vehicles of site operatives and visitors;
  - The loading and unloading of plant and materials;
  - The storage of plant and materials used in construction of the development;
  - The erection and maintenance of security hoarding;
  - measures to control the emission of dust and dirt during construction;
  - A scheme for recycling and disposing of waste resulting from demolition and construction work.

- Hours of construction working.
- Details, routes and access of all construction traffic.

10. In relation to the new restaurant, customers shall not be present on the premises, nor shall there be preparation or sale of food during the following times:

- before 8am and after 11pm Mon-Thu inclusive
- before 8am and after 11.30pm Fri - Sat
- before 8am and after 10:30pm Sunday.

A notice to this effect shall be displayed at all times on the premises so as to be visible from outside.

11. The premises shall at no time be used for the sale of hot food for consumption off the premises.

12. No air conditioning apparatus, equipment or ducting shall be erected, placed or fixed to any part of the roof or external faces of the building, otherwise than as agreed in writing by the Local Planning Authority.

13. Before any mechanical plant and kitchen extraction system to which the application refers is used at the premises, a scheme shall be submitted to and approved in writing by the Local Planning Authority which demonstrates that the following noise criteria can be complied with and shall thereafter be retained as approved.

The cumulative measured or calculated rating level of noise emitted from the mechanical plant to which the application refers, shall be equal to the existing background noise level or 5dB(A) below if there is a particular tonal or discrete component to the noise, at all times that the mechanical system etc operates. The measured or calculated noise levels shall be determined at the boundary of the nearest ground floor noise sensitive premises or 1 meter from the facade of the nearest first floor (or higher) noise sensitive premises, and in accordance to the latest British Standard 4142. An alternative position for assessment /measurement may be used to allow ease of access, this must be shown on a map and noise propagation calculations detailed to show how the design criteria is achieved. The plant shall be supported on adequate proprietary anti-vibration mounts as necessary to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.

14. Prior to the first use of the premises details of a scheme for the extraction and treatment of fumes and odours generated from cooking or any other activity undertaken on the premises shall be submitted to and approved in writing by the local planning authority. Any equipment, plant or process approved pursuant to such details shall be installed prior to the first use of the premises and shall be operated and retained in accordance with the approved details and operated in accordance with manufacturer's instructions.

15 Deliveries (including loading and unloading) shall only be made to or from the site between the hours of 07.00 & 21.00 Monday to Saturday and 09.00 to 18.00 on Sundays or Bank or other Public Holidays.

16 The development hereby permitted shall be carried out in accordance with the following approved plans and documents, where applicable: 7524/101 - 112; 7524/200; & DS 01 - 08.