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## Appeal Decision

Inquiry held on 5 & 6 February 2013

Site visit made on 7 February 2013

**by Terry G Phillimore MA MCD MRTPI**

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

**Decision date: 26 March 2013**

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**Appeal Ref: APP/L5810/A/12/2180089**

**Charlie Butler Public House, 40 Mortlake High Street, London SW14 8HR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Shaun Moynagh, Languard Homes 2020 LLP against the Council of the London Borough of Richmond upon Thames.
  - The application, Ref 11/3819/FUL, is dated 23 November 2011.
  - The development proposed is demolition of existing building; change of use from public house (drinking establishment - Class A4) to residential (Class C3); construction of residential block consisting of 9 apartments on 4 floors plus basement car parking.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building; change of use from public house (drinking establishment - Class A4) to residential (Class C3); construction of residential block consisting of 9 apartments on 4 floors plus basement car parking at Charlie Butler Public House, 40 Mortlake High Street, London SW14 8HR in accordance with the terms of the application, Ref 11/3819/FUL, dated 23 November 2011, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc).
  - 4) Soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and

- proposed numbers/densities where appropriate; implementation programme.
- 5) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.
  - 6) Prior to any works commencing on site a scheme specific Arboricultural Method Statement shall be submitted to and approved in writing by the local planning authority. The Statement shall be in accordance with the recommendations of section 6.1 of BS 5837:2012. It shall include details of all special engineering within the root protection areas of retained trees and other relevant construction details. It shall also include a tree protection plan in accordance with section 5.5 of BS 5837:2012 and tree protection measures to prevent damage above and below ground to the retained trees in accordance with sections 6.2 and 7 of BS 5837:2012. All works shall be carried out in accordance with the Statement and the tree protection measures shall be put in place before any materials or machinery are brought onto the site and before any demolition, construction or landscaping commences and shall be retained throughout the period of development.
  - 7) Before the first occupation of the building hereby permitted the south and west edges of all external terrace areas above ground floor level shall be screened to a height of 1.75m using non-transparent material, samples of which shall be submitted to and approved in writing by the local planning authority, and thereafter the screens shall be permanently retained as such.
  - 8) Finished floor levels containing habitable accommodation shall be set at a minimum of 5.2m AOD.
  - 9) No dwelling shall be occupied until the parking spaces shown in the approved plans have been provided and thereafter those spaces shall be kept available for the parking of motor vehicles at all times. The spaces shall be used solely for the benefit of the occupants of the building of which they form part and their visitors and for no other purpose and permanently retained as such thereafter.
  - 10) Detailed drawings of the vehicular access shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. These shall include measures to protect pedestrian sightlines (2.4m x 2.1m, with nothing higher than 0.6m within those sightlines including landscaping), kerb alignment, levels and surface materials. The approved measures shall be implemented prior to the occupation of any dwelling.
  - 11) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
  - 12) The development hereby permitted shall be carried out in accordance with the following approved plans: AK(2-) 31.1 TP1, 31.2 TP2, 31.3 TP2, 31.4 TP2, 32.1 TP2, 32.2 TP2, 32.3 TP3, 32.4 TP3, 32.5 TP2, 32.6 TP2.

## **Procedural Matters**

2. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.
3. The application was amended while with the Council and its putative reasons for refusal were based on the revised scheme. At the inquiry further amended east and west elevations were submitted, which resolve inconsistencies between drawings in the earlier versions. The parties agree that no prejudice would arise from determining the appeal on the basis of the amendments and that is the approach adopted.
4. A separate planning application for a further revised scheme which is before the Council does not form part of the current appeal decision.
5. A unilateral undertaking containing planning obligations pursuant to section 106 of the Act has been submitted.

## **Main Issues**

6. The main issues are the effects the proposal would have on:
  - a) the character and appearance of the locality including the settings of the Mortlake Conservation Area and designated Buildings of Townscape Merit;
  - b) the amenity value of an adjacent protected oak tree;
  - c) the living conditions of the occupiers of nearby residential properties.

## **Reasons**

### ***Character and appearance***

7. The existing public house building is vacant and boarded up. Across the road to the west is Vineyard Heights, a modern residential and mixed use complex of 4 and 10 storeys. To the east separated by a car parking area is Rann House, a 4 storey block of flats. All these sites as part of a line of contiguous frontage developments along the south side of Mortlake High Street are excluded from the Mortlake Conservation Area. The Area takes in the opposite north side of the High Street including the River Thames frontage, the south side of the High Street further to the east, and a block of development between the excluded High Street sites and the railway line to the south.
8. The appeal site is divided from the latter part of the Conservation Area by Vineyard Path which runs to the rear of the High Street properties. This part of the Area is mainly characterised by 19<sup>th</sup> century residential properties of relatively intimate scale in a tight layout of north-south roads and historic lanes. Many of the houses are locally designated Buildings of Townscape Merit. This includes the pairs of semi-detached cottages along the narrow path of Wrights Walk, the northernmost of which (no. 1) lies to the south west of the appeal site. Victoria Road has terraces of two storey brick cottages closely grouped behind small front gardens within gated boundaries. At the northern end of these is no. 30 Vineyard Path, also of two storeys but which differs by way of its north facing orientation, projecting into the line of Vineyard Path. This property is immediately to the south east of the appeal site.
9. Vineyard Path thus marks a transition between larger scale development on the High Street and the domestic scale of the Conservation Area. The existing

public house occupies an island site, with the building set back from the High Street frontage and behind the line of the adjoining developments. It is of single storey form with upper floor accommodation set in a pitched roof with dormer projections. At the rear it has a full width flat roofed element which abuts the edge of the footway onto Vineyard Path. In its brickwork and scale, reducing in height to the rear, the building has some aspects in keeping with the Conservation Area, but it is of little architectural distinction and unattractive in its existing condition. While some reference has been made to the history of its development, there is no suggestion by the Council that it should be regarded as a heritage asset.

10. The proposed building is in a contemporary style, with brick and render elevations and large window units with horizontal metal panelling. The front section of four storeys would align in footprint with the frontage buildings to the east and west. The statement of common ground records that the Council has no objection to the scale, mass, height and disposition of the development along the Mortlake High Street frontage. This would fit appropriately between the contrasting styles and forms of the neighbouring buildings.
11. At the rear the building would have a mixture of 3, 2 and single storey elements, with the ground floor level raised to take account of flooding considerations. The stepping down in height is agreed to be an appropriate response to the adjacent heritage assets, but whether this pays sufficient regard to these is in dispute. The two storey section would rise above eaves level of no. 30 Vineyard Path, but this element would be only across part of the width at the rear and set to the west of that property. It would also rise behind a landscaped edge to the development rather than at the edge of the footway. From the east and west viewpoints when seen in conjunction with no. 30 the proposal would involve a significantly increased scale of development by comparison with the existing public house building. However, the above factors would on balance prevent the development appearing overbearing in relation to no. 30. No. 1 Wrights Walk is set further to the south separated by a boundary wall to the road, and with the width of Vineyard Path at this point the impact of the development would be less apparent in views taking in the proposal with this building.
12. The Council's Conservation Area Study 1998 identifies that many of the large scale developments along Mortlake High Street have a negative impact on the Conservation Area. Notwithstanding the earlier history of the Vineyard Heights development, the proposal is set within the context of those buildings with a frontage to the High Street, and its site contrasts with the generally tight grain of development within the Conservation Area. At the same time the proposal acknowledges the change in scale to the buildings of the Area, and would not be over dominant in relation to them. Overall the proposal would preserve the settings of the Buildings of Townscape Merit and the Conservation Area, and would not materially harm the significance of these heritage assets as derived from their settings, including with respect to landscaping.
13. The development achieves an appropriate design quality while having regard to the particular context as sought by policies DM DC 1, DM HD 1 and DM HD 3 of the Richmond upon Thames Development Management Plan 2011, policy CP7 of the Core Strategy 2009 and relevant supplementary planning documents.

### ***Protected tree***

14. An oak tree on the footway of Mortlake High Street to the north of the site is the subject of a tree preservation order. There is no dispute that the tree could be adequately safeguarded during the course of the works such that the proposal would not result in its loss. Some pruning would be needed for the construction to be carried out. In addition, the siting of the building in relation to the tree would lead to a need for future periodic pruning works in order to ensure a reasonable degree of separation between the building and the tree. Such pruning would contain its further growth.
15. Unrestricted the tree has potential for a substantial increase in size. This would add to its amenity value, but this is already significant. The existing value would not be materially diminished by the proposal, including with respect to the changed townscape context of the tree. The Council accepted at the inquiry that a need for some pruning of the tree already arises due to overhanging of the road carriageway, and therefore even without the development some containment of its future growth could be expected. In addition, the siting of the proposed building responds to that of the neighbouring developments and is an important factor both in achieving a satisfactory townscape and optimising the use of the site. This approach is consistent with site proposal S5 in the Unitary Development Plan 2005 which covers this site.
16. While policy DM DC 4 of the Development Management Plan does not refer explicitly to allowing for future growth of trees, it seeks to protect and enhance trees and landscape including by the use of tree preservation orders. To the extent that there is conflict with this policy from the pruning works that would arise from the proposal, and with the advice of BS 5837, this is outweighed by the wider urban design and planning benefits of the scheme, which pays sufficient regard to the tree as part of the context of the development.

### ***Living conditions***

17. Policy DM DC 5 of the Development Management Plan seeks to protect adjoining properties from unreasonable loss of privacy and visual intrusion, among other things. The appellant asserts that since the affected properties identified by the Council as of concern in this case are divided from the appeal site by public highway, they are not 'adjoining' and therefore any impact on these cannot be in breach of this policy. This interpretation of the policy was agreed by the Council's planning witness. However, its advocate submitted that a fair and objective reading of the policy should include the identified properties as being ones which neighbour the site albeit not connected to it. Notwithstanding this debate, the appellant's planning witness accepted that the amenity impact on these properties is a material consideration even if the policy is not taken to apply. In assessing this impact, factors such as existing overlooking, relationships to public views, and what can be regarded as reasonable expectations within the particular context are to be taken into account. It is also notable that the policy refers to a minimum distance of 20m between main facing windows of habitable rooms to protect privacy as a 'normal' requirement, implying some flexibility, which is also contained in supplementary documents.
18. In this case there would be a number of relationships that would be at a distance of less than 20m, and these are considered in turn.

19. The west elevation of the proposed building would face towards the flank of Vineyard Heights which has windows at multiple levels. These are in a part of Vineyard Heights which is directly on the edge of the footway and across a road from the site. Parts of the roof terraces proposed on this side of the new building are shown in the plans to be edged by 1.75m high privacy screens, and some of the windows would be to bathrooms and therefore could be expected to be obscured. With such screening to the west edges of the terraces above ground floor level, and having regard to the positioning of the further windows in this elevation, the impact would not amount to an unreasonable intrusion on the privacy of the occupiers of Vineyard Heights.
20. No. 1 Wrights Walk has been extended northwards and has first floor bedroom windows facing the site. There is a first floor roof terrace on the closest part of the existing building, such that there is already potential for some intervisibility. There would be views possible towards no. 1 from proposed first floor windows, but these would be across a road and at an angle rather than directly facing. New terraces at first, second and third floor levels could be adequately screened to limit outward views. The degree of overlooking to windows and garden areas of this property would not amount to an unreasonable loss of privacy.
21. The rear garden of no. 61 Victoria Road would potentially be affected by similar views. However, in the context of existing views over gardens and having regard to areas likely to be well used, the degree of overlooking would not be out of the ordinary in this built up area.
22. No. 30 Vineyard Path has main windows on both floors facing northwards. A south facing window to a second floor bedroom of the new building and the third floor terrace have been identified as of concern in relation to no. 30. The siting of no. 30 on the edge of the footway with existing public views of its frontage, and the location across a road from the site, are again factors to be taken into account in assessing the relationship. Although overlooking from private viewpoints differs from that of a more transient nature from the public domain, the view from the bedroom window (and a first floor bathroom window below) would also not be directly facing no. 30. Overlooking from the terrace area could be prevented by appropriate screening. The relationship would again be acceptable.
23. The siting and height of the new building would be such that adequate daylight and sunlight to the nearby buildings would be safeguarded, and no objection is raised by the Council in this respect. The development would clearly be larger than the existing building and this change would be apparent in the outlook from the surrounding buildings. However, taking into account distances, angles of vision, separation by roads, and the disposition of the bulk of the new building (including with terrace screening), this would not amount to an undue visual intrusion as perceived from the existing buildings.
24. The impact of the proposal on the living conditions of existing occupiers of the above and other nearby properties would therefore be acceptable, with no breach of policy DM DC 5 or supplementary documents.

### **Other Matters**

25. Representations have been made on grounds of the loss of the public house. The Council has considered this matter against policy DM TC 4 of the

Development Management Plan and found the proposal to be acceptable in this respect. The policy deals with local shops, services and public houses. It is broadly consistent with the National Planning Policy Framework guidance to guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. The policy requires that changes of use from public houses will not be permitted unless (i) there is another public house within convenient walking distance or (ii) the public house is inappropriate in terms of access or neighbourliness or (iii) the proposed new use would provide a community service or function. In this case there would remain other public houses within walking distance even with the recent closure of the nearby Railway Tavern. The Council advises on the availability of nearby social infrastructure sites and the restrictions of this site for alternative community uses as a result of its size, location and potential parking impact. The Council has also applied the additional requirement contained in paragraph 4.2.35 that before accepting the loss of such a use evidence will be required on marketing for at least 2 years and reasonable endeavour made to find new occupants. Based on the appellant's submitted information, the Council is satisfied that the pub business has been loss making and its continued use as a public house would be unviable. The views expressed on the community value of the public house in this case are understood, but there is no evidence to undermine the assessment undertaken by the Council and its conclusion reached in terms of the relevant policy.

26. The submitted planning obligations overcome the Council's earlier objections to the development based on an absence of these. They provide for financial contributions towards affordable housing, education, public realm and transport facilities and costs. There is substantial information relating to the local policy basis for these obligations including the development plan, the additional needs that would arise from occupiers of the development and how these would be addressed through the contributions. I am satisfied that the obligations are necessary and reasonable and meet the other tests of Regulation 122 of the Community Infrastructure Levy Regulations 2010, taking into account viability considerations. They can be given weight in support of the proposal.
27. There are some local concerns regarding impact on traffic and highway safety. There is no technical evidence to suggest that the Council's acceptance of the scheme in this respect is not well founded, including with respect to the proposed basement parking access and the degree of use of the surrounding highway by vehicles and pedestrians.

### **Conditions**

28. Conditions are needed on materials and landscaping to ensure that the appearance of the development is satisfactory. There is agreement that the Council's previous concern about the design of the pedestrian ramp could be dealt with under the landscaping condition. Tree requirements are needed to ensure tree protection during the development.
29. There is agreement on the principle of a condition on screening of the external terraces shown in the plans, with the parties inviting an assessment of what is necessary based on the evidence. I have found the proposal to be acceptable in relation to privacy on the basis of 1.75m high screening to the west and south edges of the terraces. Such screening would not unduly add to the bulk of the building or harm its appearance, or detract from the living conditions of

future occupiers of the development. Significant overlooking would not arise from the north and east facing sides or from ground floor terraces, and these are therefore excluded from the condition, which is needed to secure the screening.

30. Floor levels should be above a specified minimum to ensure flood protection. Requirements on parking and access details are needed to safeguard highways conditions. A specified Code for Sustainable Homes level should be achieved in the interests of sustainable development. The Council's earlier concern about energy conservation has already been overcome by clarification of information.
31. A condition specifying the approved plans is needed for the avoidance of doubt and in the interests of proper planning.
32. The Council indicated that the local preferred approach to dealing with construction impact is to make use of other than planning powers.

### **Conclusion**

33. The Council regards the proposal as an overdevelopment of the site, but given my findings on the main issues this has not been established, notwithstanding alternative options that might exist for its development.
34. For the reasons given above I conclude that the appeal should be allowed.

*T G Phillimore*

INSPECTOR



## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mark Westmoreland Smith of Counsel                      Instructed by Head of Legal Services, London Borough of Richmond upon Thames

He called:

Craig Ruddick                      Arboricultural Planning and Policy Officer, London Borough of Richmond upon Thames  
TechCertArbor  
TechArborA

Andrew Jolly BSc(Hons) MA                      Senior Town Planner, London Borough of Richmond upon Thames

### FOR THE APPELLANT:

Charles Banner of Counsel                      Instructed by KR Planning

He called:

Ian Keen MICFor                      Arboricultural Consultant  
FArborA

Kieran Rafferty BA(URP)                      Director, KR Planning  
CUKPL MPIA MRTPI

### INTERESTED PERSONS:

Richard Martin                      Ward Councillor  
Tracy London                      Local resident  
Mike Patterson                      Local resident  
Dale Ingram                      Managing Director, ConservationWorks for Campaign for Real Ale

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

- 1      Unilateral undertaking dated 30 January 2013
- 2      Scheme visualisations
- 3      Foreword to BS 5837:2012
- 4      Statement of Common Ground
- 5      Mr Rafferty's Rebuttal Proof
- 6      Annotated version of Mr Jolly's Appendix K
- 7      Mr Jolly's substitute floor area Table
- 8      Drawing no. AK (2-)32.3 rev TP3
- 9      Drawing no. AK (2-)32.4 rev TP3
- 10     Appellant's opening submissions
- 11     Statement by Ms London
- 12     Statement by Mr Patterson
- 13     Statement by Ms Ingram
- 14     Application representation by ConservationWorks dated 23 January 2012

- 15 Suggested tree conditions
- 16 Suggested access condition
- 17 Council's closing submissions
- 18 Appellant's closing submissions
- 19 Appellant's costs application
- 20 Council's response to costs application