



Appeal Decision

Site visit made on 25 August 2009

by **B D Bagot** BA(Arch) MCP MRTPI

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

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Decision date:
7 September 2009

Appeal Ref: **APP/L5810/A/09/2103349**

9-23 Third Cross Road, Twickenham. London TW2 5DY

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Wynnstay Properties Plc against the decision of the Council of the London Borough of Richmond upon Thames.
- The application, Ref: DC/CTA/08/2651/FUL/FUL dated 29 July 2008, was allowed on 31 October 2008 subject to conditions.
- The development permitted is demolition of existing warehouse and change of use to mixed use, construction of 8 no. dwellings at the front of the site and 2 storey commercial offices to the rear, with new access and landscaping and parking.
- The condition in dispute is No U22987 which states that:
No work or associated activities including deliveries/loading/unloading/servicing/or parking or manoeuvring of vehicles or staff and/or visitors shall be carried out at the B1 units hereby approved between the hours of 18:30 and 08:00.
- The reason given for the condition is:
To protect the amenities of nearby occupiers and the area generally.

Decision

1. The appeal is allowed and the planning permission No DC/CTA/08/2651/FUL/FUL for demolition of existing warehouse and change of use to mixed use, construction of 8 no. dwellings at the front of the site and 2 storey commercial offices to the rear, with new access and landscaping and parking, granted on 31 October 2008 by the Council of the London Borough of Richmond upon Thames, is varied by the deletion of condition No U22987.

Main Issue

2. The main issue is whether the condition in dispute is reasonably necessary in the interests of protecting the amenities of nearby residents and the area generally, or to meet the car parking needs of the proposals.

Reasons

3. The appeal site is on the north-east side of Third Cross Road, in a predominantly residential area. The existing warehouse on the site is set back from the road by a car parking and manoeuvring area, with some 18 marked out car parking spaces. The permitted redevelopment of the site would provide 10 car parking spaces and a loading bay. During the day, 6 of the car parking spaces would be available to the occupiers of the dwellings, and the remaining 4 spaces to the users of the commercial offices. A separate condition requires all 10 car parking spaces to be reserved for the use of occupiers or visitors to the dwellings between 1830 and 0800 hours.

4. It is implicit in the appeal application that the proposed commercial offices would be within Class B1 of the Town and Country Planning (Use Classes) Order 1987 as amended. Such a use must be one that can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. Any nuisance of that kind for nearby residents that might be generated by the development would be contrary to that limitation. It follows that the disputed condition is not reasonably necessary for the purpose of preventing nuisance for nearby residents from activities likely to be generated by the use.
5. It has been suggested that some 6 car parking spaces on the site are used by local residents for overnight car parking, but there is no formal agreement concerning that use, if it takes place. The 4 spaces that would be provided for the commercial offices meets the Council's maximum standards, and the overall number of 10 spaces to be available for residential use after 1830 hours would also be to an adequate standard.
6. The principal purpose of the disputed condition seems to be to ensure that the 4 spaces for daytime commercial use are made available for residents, so that residents' vehicles do not add to parking stress on nearby residential streets. However that matter is already covered by the separate condition to which I have referred. In addition, the appellants have carried out early evening and overnight parking surveys, which indicate that there is adequate capacity on Third Cross Road and Hampton Road to accommodate any limited overspill that might occur from the site, if the offices were to be in use after 1830 hours.
7. On the other hand the retention of the condition would impose a restriction on the use of the office space that could have an adverse effect on the marketing of the proposals, and make it difficult for the occupiers of the office space to run their businesses properly. That would be contrary to policies of the unitary development plan and government advice, which seek to support and encourage employment and economic activity.
8. I conclude that the condition in dispute is not reasonably necessary in the interests of protecting the amenities of nearby residents and the area generally, or to meet the car parking needs of the proposals.

Brian Bagot

INSPECTOR