



# Appeal Decisions

Site visit made on 2 February 2010

by **Alan M Wood MSc FRICS**

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

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**Decision date:  
5 March 2010**

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## **Appeal Ref: APP/L5180/A/09/2110641 [Appeal A] 37 Hamilton Road, Twickenham, TW2 6SN**

- 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 Bill Bailey on behalf of Hamilton Lofts Ltd against the decision of the Council of the London Borough of Richmond upon Thames.
- The application Ref 08/2870/FUL is dated 20 August 2008.
- The development proposed is described as the conversion of existing redundant industrial buildings into 21 flats, demolition of minor buildings and structures and construction of 6 new residential units, with 24 car parking spaces.

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## **Appeal Ref: APP/L5810/E/09/2110657 [Appeal B] 37 Hamilton Road, Twickenham, TW2 6SN**

- The appeal is made under sections 20 and 74 of the Town and Country Planning Act (Listed Buildings and Conservation Areas) 1990 against a failure to give notice within the prescribed period of a decision on an application for conservation area consent.
- The appeal is made by Mr Bill Bailey on behalf of Hamilton Lofts Ltd against the decision of the Council of the London Borough of Richmond upon Thames.
- The application Ref 08/3000/CAC is dated 20 August 2008.
- The works proposed are described as the conversion of existing redundant industrial buildings into 21 flats, demolition of minor buildings and structures and construction of 6 new residential units, with 24 car parking spaces.

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### **Decision**

1. I dismiss both Appeal A and Appeal B.

### **Procedural Matters**

2. Notwithstanding the descriptions of the proposed developments above, Appeal A relates to the conversion of existing redundant industrial buildings into 21 flats and construction of 6 new residential units, with 24 car parking spaces. Appeal B relates to the demolition of minor buildings and structures.
  3. In respect of Appeal A, the Council has indicated that had an appeal against non determination of the application within the statutory period not been lodged, the application would have been recommended for refusal on the grounds that the proposed development would: (a) fail to provide a sufficient level of affordable housing in terms of number and tenure mix to compensate adequately for the substantial loss of employment floor space, (b) fail to provide appropriate contributions in the context of its Supplementary Planning Document: *Planning Obligations Strategy* (2005) [POS] towards education,
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health, public realm and open space, playing pitches and transport facilities within the borough which would place an unreasonable demand on existing local facilities, (c) fail to provide car club membership for all units and exemption from car parking permit eligibility, and (d) fail to meet the Council's target for CO2 emission reductions in new development via the use of renewable technologies.

4. In respect of Appeal B, the Council has indicated that had an appeal against non determination of the application not been lodged, the application would have been recommended for approval subject to conditions.

### **Main issues (Appeal A)**

5. (a) Whether the proposed development would provide a sufficient level of affordable housing in terms of number and tenure mix, (b) the effect of the proposed development on existing facilities in respect of education, health, public realm and open space, playing pitches and transport facilities, (c) the effect of the proposal on sustainable modes of travel, and (d) whether the proposal would achieve the appropriate CO2 emission reductions.

### **Procedural Matter**

6. A unilateral undertaking (UU) has been submitted by the appellant as part of the appeal process. The UU does not state anywhere however that it is a planning obligation as required by section 106 of the Town and Country Planning Act 1990 (TCPA). Section 106(9) requires that a planning obligation should be executed as a deed and should state that the obligation is a planning obligation for the purposes of section 106. By omitting the formalities as required by section 106(9) the Deed may fail. The definitions in the UU would also be improved by the suggested changes put forward by the Council as they would add more certainty.

### **Reasons**

#### **Appeal A**

##### Affordable Housing

7. Policy CP15 of the of the London Borough of Richmond upon Thames Local Development Framework Core Strategy (2009) [CS] expects that 50% of all new residential units will be in the form of affordable housing with a tenure mix of 40% housing for social rent and 10% intermediate housing. The appellant has provided a viability appraisal which adequately demonstrates that the scheme's residual value would be lower than the existing site value. Accordingly the current market conditions would restrain the appellant from providing a level of affordable homes in accordance with the policy.
8. The UU indicates that the appellant would provide eight residential units in the form of affordable housing which approximates to 30% of the proposed development. The affordable housing accommodation would comprise three no 1 bed flats, three no 1 bed houses and two no 2 bed flats although this is not spelt out in the definition of affordable housing units in the UU and would not therefore be enforceable. All of the affordable units would be for housing for social rent. Given the current market conditions as indicated in the viability appraisal and the constraints of the site I consider that the level of affordable

housing proposed by the appellant would be acceptable in this case as would the tenure mix.

9. The Council however has indicated that any planning permission would be extant for a period of three years and market conditions could change during that period. It has therefore proposed that a financial monitoring and review procedure be required to allow the auditing of the development process on an open book basis in relation to build costs and final sales. There is however no provision for this mechanism in the UU. Affordable housing is an important facet in the government's overall housing strategy as is evidenced by national policies in Planning Policy Statement 3: *Housing* and in the London Plan Spatial Strategy for Greater London (2008) [LP] and the Council's Development Plan. I consider therefore that a monitoring review and arrangement would be appropriate in this case in order that an acceptable level of affordable housing would be achieved at the time that the site is developed.
10. The UU restricts the occupation of the market units to no more than ten prior to the affordable housing units being ready for occupation. The Council has indicated that this figure should be nine units. However, I find no compelling reason why the former figure would not be acceptable in this case.
11. I agree with the Council however that clause 1.1 of Schedule 1 of the UU is unclear and unenforceable and I consider the Council's proposed wording of the schedule to be generally more robust. The current drafting of the UU would leave the legal status of the obligation to transfer the land open to challenge as a transfer of property in a positive form is outside the terms of section 106 (1) of the TCPA. I also agree with the Council that there should be more than "reasonable endeavours" made to effect a transfer. The obligations are policy based requirements and therefore need to be more certain and robust.
12. Consequently, I conclude that, because of the shortcomings of the UU, the proposed development would not satisfactorily secure the appropriate provision of affordable housing. It would therefore conflict with Policies 3A.9, 3A.10 and 3A.11 of the LP, and Policy CP15 of the CS, and Policies BLT13 and EMP4 of the London Borough of Richmond-upon-Thames Unitary Development Plan: First Review 2005 (UDP), and the Council's Supplementary Planning Guidance: *Affordable Housing*. These policies promote the provision of affordable housing and specify the nature of its provision.

#### Effect on Existing Facilities

13. Policy CP16 of the CS asserts that new developments will be expected to contribute to any additional infrastructure and community needs generated by the development. The POS indicates that, in this case, financial contributions in respect of transport, public realm, health and education are required.

#### *Transport*

14. The Council has calculated the required transport contribution to be £70,652 in accordance with the POS. The appellant however has committed through the UU to construct a turning head within the site which would also be for public use. I agree with the Council however that the wording in the UU in terms of the rights to public use of the turning head need to be expressed in more unequivocal terms and be available from the date of the practical

completion of the development if the full benefit of the scheme is to be realised.

15. The appellant has indicated that the transport contribution should be offset by the cost of creating the turning head. I observed that the houses in Hamilton Road have no off-street car parking and the level of on-street parking restricts the road to what is effectively a single carriageway. There is no turning head in the road and therefore vehicles reverse significant distances to the junction with Edwin Road. In a previous appeals decision<sup>1</sup> at the site in 2007, the Inspector commented that the availability of a turning head would be a significant benefit to the residents and to highway safety and I concur with that view. He also considered that there are several options other than gates that could control the access.
16. Although a figure of £85,000 was quoted by the appellant at the 2007 Inquiry, no updated figure is before me. Whilst in principle I consider it would be reasonable to reflect the additional cost of the turning head when calculating the level of contribution, no analysis of the cost of constructing the turning head has been provided. The Inspector also referred to the methodology used by the Council to calculate the transport contribution in the context of the POS in respect of the proportionality in the variations between the PTAF factors applied. As in that case, there is no clear explanation for the variations which casts some doubt on the reasonableness of the scale of the financial contribution sought by the Council.
17. Accordingly I do not consider that there is compelling evidence before me that provision of the turning head would meet the requirements for a transport contribution even if the PTAF rationale had been clarified satisfactorily by the Council. I conclude therefore that the proposed development would fail to make an adequate and appropriate level of contribution to the existing transport infrastructure and consequently would conflict with Policy CP16, the POS and Policy TRN2 of the UDP which relates to the impact of new development on the transport infrastructure.

#### *Education, Public Realm and Health*

18. The UU contains a commitment for contributions of £17,800, 21,216 and 5,377 towards education, the public realm and health respectively. These figures differ only marginally from those calculated by the Council using the methodology in the POS. From the evidence before me, I am satisfied that these contributions are necessary in this case and I consider that the sums stated in the UU are acceptable. I agree with the Council however that the trigger point for the payment of the contributions (including any transport contribution) following the occupation of the seventeenth open market unit is unacceptable. The contributions are intended to fund schemes to offset the various impacts of the proposed development and delaying their payment until the majority of the dwellings have been occupied would inevitably delay the provision of those services.
19. I conclude therefore that the proposed development would, because of the timing of the proposed contributions, fail to provide adequate and appropriate

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<sup>1</sup> APP/L5810/A/07/2041553 and APP/L5810/E/07/2041554

contributions to the existing education, public realm and health facilities accordingly would conflict with Policy CP16; and Policy 3A.26 of the LP and Policy HSG19 of the UDP which relate to contributions towards community facilities.

### Sustainable Travel

20. Policy 3C.3 of the LP encourages shifts to more sustainable modes of transport and appropriate demand management. Policy CP5 of the CS requires car share facilities and car clubs to be established in appropriate new developments. The Council has indicated that measures aimed at discouraging car ownership and promoting sustainable travel patterns should be put in place to meet the requirements of the policies. In this case, such measures would include car club membership for all of the accommodation units and designation of a car club parking space on the appeal site.
21. From the evidence before me I am satisfied that these measures would be necessary in this location and the appellant has included clauses in the UU to this effect. However I consider that the clauses in the UU, which include the term "reasonable endeavours", introduce a measure of uncertainty into the obligation. I also note that if the lease referred to in clause 1.7 of Schedule 2 of the UU is not completed until the occupation of the twenty-seventh dwelling then the obligation would lapse. Furthermore, the provision of the car parking space in clause 1.8 of Schedule 2 is subject to the Accredited Car Club Provider complying with its covenants in the lease. The terms of a lease are however a private matter between the owner and the Car Club Provider and should not affect the principle of the obligation.
22. I also consider that the rewording of clauses 1.7 onwards of Schedule 2 of the UU as proposed by the Council would be more robust and would provide greater certainty. As stated above, the obligations are policy based requirements and therefore need to be more certain and robust.
23. Accordingly, I conclude that the proposed development would fail to make an adequate and appropriate level of contribution to sustainable travel and would therefore conflict with Policy 3C.3, Policy CP5, and Policies TRN2 and TRN4 of the UDP which relate to traffic impacts on the road network and parking standards.

### CO2 Emissions

24. Policy CP1 of the CS refers to the requirement for development to meet the Code for Sustainable Homes level 3 standard for new homes and the EcoHomes excellent standard for conversions or the BREEAM excellent standard for other types of development. Policy CP2 seeks to achieve a reduction in CO2 emissions of 20% from on site renewable energy generation. The appellant has submitted a BREEAM Ecological Assessment and a EcoHomes Pre-assessment Estimate as part of the planning application process. Having regard to this information, I am satisfied that this matter could be dealt with by the imposition of a condition.
25. I find no detailed information before me however in respect of any forms of proposed renewable energy sources. In this respect therefore the proposed development would conflict with Policy CP2 and Policies 4A.1, 4A.3, 4A.4 and

4A.7 of the LP which relate to sustainable construction and renewable energy, and Policy BLT11 of the UDP which supports ecological design principles.

### Other Matters

#### *Interested Parties*

26. Interested parties have raised a number of issues principally car parking, loss of light, noise and disturbance, overdevelopment and loss of employment land. I have dealt in some detail above with the impact of the proposal in respect of parking. From my observations I am satisfied that the proposed layout and configuration of the proposed development would not adversely affect the living conditions of the neighbouring occupiers.
27. From the evidence before me I consider that the amount of development proposed would not be disproportionate in terms of density or intensity in this location. The loss of employment land has to be balanced against the benefits of the proposal. Having had regard to the information before me and the comments of the Inspector with regard to the previous appeals, I consider that the loss of employment land would be justified in the context of Policy EMP4 of the UDP in this case.

### **Conclusion**

28. For the reasons given above, the Appeal A does not succeed.

### **Appeal B**

29. The guidance in paragraph 4.27 of Planning Policy Guidance Note 15: *Planning and the Historic Environment* states that consent for demolition should not be given unless there are acceptable and detailed plans for any redevelopment. In this case, whilst detailed plans have been submitted for a redevelopment proposal, I have concluded above that the proposal before me would not be acceptable. Therefore, in the absence of a satisfactory scheme for redevelopment, appeal B must fail.

### **Conclusion**

30. For the reasons given above, Appeal B does not succeed.

*Alan M Wood*

Inspector