
Appeal Decision

Site visit made on 23 February 2015

by R J Yuille Msc DipTP MRTPI

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

Decision date: 3 March 2015

Appeal Ref: APP/K5600/A/14/2229051

Flats 21 and 22 Gate Hill Court, 166 Notting Hill Gate, London, W11 QT

- 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 Mr Dan Kader against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref: PP/14/00243 dated 16/01/14 was refused by notice dated 04/06/14.
 - The development proposed is the change of use and refurbishment of Flats 21 and 22 from offices (B1) to Class 3 dwellinghouses.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use and refurbishment of Flats 21 and 22 from offices (B1) to Class 3 dwellinghouses at Flats 21 and 22 Gate Hill Court, 166 Notting Hill Gate, London, W11 QT in accordance with the terms of the application, Ref: PP/14/00243, dated 16/01/14 subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development shall be carried out in accordance with the details shown on the submitted plans: 297.P.00.01; 297.P.00.02; 297.P.00.03; 297.P.00.04; 297.P.00.05; 297.P.00.06; 297.P.00.07; 297.P.00.08; 297.P.00.09; 297.P.00.10.
 - 3) The development hereby permitted shall not commence until details of secure cycle parking have been submitted to and approved in writing by the local planning authority and this development shall not be occupied until the cycle parking has been provided in accordance with the approved details and the cycle parking shall be maintained for the lifetime of the development.

Background

2. When it determined the application the subject of this appeal the Council did not consider that it had a legal agreement which adequately ensured that the proposed flats would be permit free¹ and would make provision for cycle parking. Since that time a revised legal agreement has been signed by the Council and the owners of the proposed flats. This provides, amongst other

¹ A permit free development is one in which future occupants would not be eligible for parking permits

things, that the owners of the proposed flats would not knowingly permit any owners or occupiers of these flats to apply for a parking permit and if one is issued to surrender it within 7 days of written demand. It also provides that any advertising or marketing material would make clear that any owners or occupiers of these flats would not be eligible for parking permits and that a covenant to that effect would be included in any lease.

Main Issues

3. The Council accepts that the appeal scheme, which would involve returning two units to their original residential use, is an appropriate change of land use which would constitute sustainable development in a sustainable location and be of an appropriate design that would not harm the setting of the Ladbroke Conservation Area. I have no reason to dispute this.
4. The Council's sole reason for refusal relates to the absence of an adequate legal agreement to ensure a permit free development and to make provision for cycle parking. The main issues in this appeal are, therefore, firstly, whether such a legal agreement is necessary to make the development acceptable in planning terms, whether it is directly related to the proposed development and whether it is reasonably related to it in scale and kind and, secondly, whether these matters could be dealt with by planning condition.

Reasons

Legal Agreement

5. No off street parking would be provided for the occupants of the proposed flats. The entire borough is the subject of a single Controlled Parking Zone and the demand for on street resident's parking spaces is high with the occupancy of such spaces being at saturation levels at most times of the day and night. If the occupants of the proposed flats were to obtain residents' parking permits this would lead to additional drivers circulating on already congested roads to find available spaces. This would conflict with the aims of ensuring highway safety and convenience and reducing air pollution. Consequently Policy CT1 of the Core Strategy of the Local Development Framework for the Royal Borough of Kensington and Chelsea (the Core Strategy) includes the requirement that all new additional residential development be permit free. A legal agreement ensuring that the development would be permit free would, therefore, be necessary to make the development acceptable in planning terms.
6. Many streets in the Borough, including those around the appeal site, are dominated by parking and traffic. Consequently the Council aims to encourage cycling as an alternative to using the car and points out that cycling can often be one of the quickest and easiest ways of getting to places as well as providing health benefits. In order to achieve this Core Strategy Policy CTC1 requires that provision be made for cycle parking in new developments. A legal agreement requiring such provision would, therefore, be necessary to make the development acceptable in planning terms.
7. As the requirement for a permit free development and for cycle parking provision would only apply to the occupants of the proposed flats and to their cycle parking spaces they would be directly related to the proposed development and reasonably related to it in scale and kind. A legal agreement

of the type sought by the Council would therefore accord with policy² and the law³.

Conditions

8. Legal agreements of the type discussed above should only be used where it is not possible to address any unacceptable impacts of the proposed development through planning conditions⁴. I saw on my site inspection that there is space within the basement of the existing building where secure cycle parking could be provided. As both the Council and the appellant agree, therefore, this is a matter that should be dealt with by condition.
9. The appellant also suggests that a planning condition could be used to ensure that the development proposed would not take place until a scheme which would guarantee that it was permit free had been agreed with the Council. I do not agree. In the absence of any explanation of the mechanism by which future owners or occupiers of the proposed flats would be notified that they were not eligible to apply for a parking permit it is not clear to me that such a condition would be enforceable. This is therefore a matter that should be dealt with by way of the submitted legal agreement.
10. Two further conditions would need to be attached to any planning permission. The first of these would be the standard condition covering the commencement of development while the second would specify the plans to which any permission would relate. This latter condition would be needed to define the permission.

Conclusions

11. For the reasons given above I conclude that the appeal should be allowed.

RJ Yuille

Inspector

² The Framework. Paragraph 204.

³ Community Infrastructure Levy regulations 2010. Regulation 122.

⁴ The Framework. Paragraph 203.