The Planning Inspectorate

Appeal Decision

Site visit made on 14 April 2014

By David Leeming

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

Decision date: 1 May 2014

Appeal Ref: APP/L5810/A/14/2211027
3 Chestnut Mews, London SW14 7DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class J of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).
- The appeal is made by Mr Tim Hales against the decision of the Council of the London Borough of Richmond-upon-Thames.
- The application Ref 13/3137/P3PJA, dated 27 August 2013, was refused by notice dated 18 October 2013.
- The development proposed is change of use from Class B1(a) (office) to C3 (residential).

Decision

1. The appeal is allowed and approval granted under the provisions of Schedule 2, Part 3, Class J of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO) for the change of use of 3 Chestnut Mews, London SW14 7DD from Class B1(a) (office) to C3 (residential) in accordance with the details submitted pursuant to Schedule 2, Part 3, Paragraph N of the GPDO.

Procedural Matters

2. Paragraph J.1 of Class J of the GPDO states, among other things, that development is not permitted where the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order immediately before 30th May 2013 or, if the building was not in use immediately before that date, when it was last in use. The Council initially contended that, on the balance of probability, it was not so used. However, on the basis of additional evidence submitted by the appellant, they now accept that this requirement of Class J.1 is met.

3. The Council have queried the lawfulness of the existing office development because, they state, none of the pre-commencement conditions imposed in relation to the permission have been discharged. For that reason they have contended that the unauthorised use cannot benefit from the permitted changes set out in Class J of the GPDO. They mention that one of the conditions was a Grampian condition requiring the owner to enter into a legal agreement to secure membership to a local car club.

4. The appellant has now demonstrated membership of a car club but not by way of a legal agreement demonstrating a lifetime membership for the Class B1 unit. In any event, the Grampian condition in question does not go to the heart of the permission, which was for the erection of a Class B1 office building. The permission has been implemented and the office building has been erected. Any failure to comply with the condition does not invalidate the permission. If, alternatively, there had been a condition preventing any work from taking place until a scheme had been agreed, that would have been a different matter. At most, there has been a breach of condition through occupation and the planning permission remains lawful.

5. The provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) require the local planning authority to assess the proposed development on the basis of (a) transport and highways impacts of the development; (b) contamination risks on the site; and (c) flooding risks on the site. In this case the sole matter of concern is (a) above, in particular the impact of the development on off-street parking demand, which is considered below.

Reasons

6. The proposed development would provide a one-bedroom unit. Policy DM TP 8 of the Council's Development Management Plan (adopted November 2011) (DMP) states that one off-street parking space should be provided where there are 1-2 bedrooms. This is a maximum provision but the Policy expects this to be met, unless it can be shown that in proposing levels of parking applicants can demonstrate that there would be no adverse impact on the area in terms of street scene or on-street parking. Only the latter is relevant to this appeal. Other that the restrictions that apply to the nearby red route, on-street parking in the area is unrestricted.

7. Planning permission was granted for the current office use in the knowledge that there was no available off-street parking provision, albeit on the basis that the unit would have a lifetime membership of a car club. Like the current office use no off-street parking is proposed, quite simply because this would not be possible. Even so, as the Council acknowledge, there would be no increase in a shortfall of off street parking spaces compared to the office use.

8. The Council refer to information derived from the 2011 census that shows 75% of households in the Borough own cars, with 25% having two or more. However, the proposed development would provide a one-bedroom unit, with the expectation that there would thus be no children in the household. There is statistical evidence that people in households with at least one child are nearly a third more likely to own a car than those without children.[1]

9. Although the 2011 census showed an overall increase in the average number of cars available to households nationally compared to the census of 2001, the position in London was materially different, with a decrease of 0.1 cars or vans available per household. The percentage of households in London with no cars or vans increased from 37% (2001) to 42% (2011).[2] Furthermore, in London, over the period since 2000, there has been an 8.4 percentage point net shift in

[1] Transport for London Roads Task Force – Technical Note 12 (How many cars are there in London and who owns them?)
[2] Office for National Statistics - 2011 Census: Key Statistics for England and Wales, March 2011

mode share to public transport away from private transport at trip level, and a 9.2 percentage point net shift away from private transport.[3]

10. It is noted that the property is within an area where the PTAL rating is level 2 (poor), and thus one where residents might be more likely to own a car. However, the appellant points out that level 3 is just 50 metres away. Furthermore, paragraph 5.4.4 of the DMP points out that whilst higher PTALs are achieved in areas with good rail/tube links (level 6 being the most accessible) it is recognised that bus links are also important in the Borough. The appellant draws attention to frequent bus services nearby, as well as to cycle lane provision. The bus services provide links to other means of public transport, including the tube and rail connections in Richmond. There is also a railway station at Mortlake, about half a mile away.

11. Based on the above considerations, whether or not they were members of a car club, it is a reasonable assumption that the future residential occupants might not own a car. However, in the event that they did wish to park within the area, the implications of this are now considered.

12. There is no evidence that the office use has led to any undue difficulties in parking in the area. The Council point to a key difference whereby parking demand for a residential use would be generated outside working hours (evenings and weekends). However this could be viewed as a positive effect in that there is an ability to cater for peak demands at different times of the day, for example people at work or residents.

13. The saturation (stress) level threshold for on-street parking applied by the Council is 90% of available spaces. They refer to a survey undertaken in the area in 2006 when this level was reached and comment that it is known that parking congestion in local roads has worsened since then. For his part, the appellant has provided a Transport Statement with details of surveys taken on two days in November 2013 at 0500 hours and 0100 hours. Disregarding spaces where only time limited parking is permitted, these showed levels of 89% and just over 90% respectively. However, there is a disagreement between the parties as to how the calculations should be compiled. The appellant's percentages are based on a methodology used in Lambeth where, for the purposes of calculating parking stress, it is assumed that each vehicle measures 5m in length. For highway safety and other reasons, the Lambeth methodology omits from the calculation of parking stress all vehicle accesses and the first 7.5m from a junction. The Council in Richmond, however, do not subscribe to the Lambeth methodology and hence ask applicants to count parked cars rather than measure lengths of kerbside. On their interpretation of the appellant's parking surveys the Council consider these to represent a parking saturation level of 95%.

14. The Council have not provided any documentary evidence of a policy basis for their approach to simply counting cars as the sole means of measuring parking stress. They state that looking at what is happening on the roads in the evening is the best way to assess the effect of a proposal. They consider that it is not appropriate to assume that more cars can be parked in an area if 'parked in a proper manner', as suggested by the appellant, when the on street evidence suggests otherwise. However, the Council have not supplied evidence from any recent surveys of their own to back up this particular

[3] Transport for London – Travel in London Report 6 (2013)

assertion. Nevertheless they state that they adopt a length of 5.5m where there are no parked cars to count. They also refer to *Manual for Streets* (2007) (MfS) where 6 metres is given for suggested parallel parking to the street. They consider that the 5m figure in the Lambeth Methodology (2005) is now out of date. However, there is no statistical evidence that car lengths have increased since then; and it is a well known fact that many car users prefer compact models, for reasons of cost or convenience.

15. There is no fixed local or national standard for judging how many cars can be parked in a road parallel to the kerb. Whilst 5.5 or 6 metres might provide the optimum length in which to easily manoeuvre to and from such spaces, a figure of 5m as in the Lambeth Methodology remains a reasonable one on which to base a calculation of parking stress levels. As an example of this, the appellant points to a reference in one of the previous appeal decisions submitted by the Council in support of their case, in which reference is made to a parking bay reported to be 25.5 metres in length where the Inspector reports that 5 cars were parked correctly in the bay.[4] Whilst it may be that some people park thoughtlessly, taking up more space than is reasonably necessary, there is an expectation that where 'shared' space is at a premium people will park responsibly to make the best use of it. Interestingly, the Lambeth Methodology document notes that it may be found that some locations are over 100% stress level because small cars may need less space than 5 metres to park, meaning additional cars can be accommodated.

16. Whether the parking stress is around about 90%, as calculated by the appellant, or is actually 95% as the Council contend, the additional on-street parking demand arising from the proposed one-bedroom unit, if any, is unlikely to be more than one space. Despite the high level of on-street parking in the area, it should be possible to accommodate an extra vehicle in the vicinity, even at peak times of parking. The result of one additional vehicle in terms of parking stress levels would be minimal. As such, the appeal development would not be detrimental to the free flow of traffic or otherwise unacceptably compromise highway safety in the area.

17. The various previous appeal decisions submitted Council have been taken into account.[5] However, the circumstances in those appeals were materially different from that now proposed. In one case there would have been a loss of on-street parking capacity had the appeal been allowed. In another four new flats were proposed, described by the Inspector as large enough to be popular even with those owing a car. In the other appeal a 2-bedroom flat was proposed, which could have provided a small family unit. In any event, it is an established principle that each case must be considered on its own merits. As such, limited weight is attached to the previous decisions in question. Furthermore, these appeals all relate to decisions made by the Council to refuse planning permission prior to the introduction of the permitted development rights referred to in paragraph 2 above.

18. For the above reasons, it is concluded in this case that the development would not result in an adverse impact on the area in terms of on-street parking. It thus complies with the aims of Policy DM TP 8 of the DMP and is sustainable development as sought by the National Planning Policy Framework.

[4] Appeal decision APP/L5810/D/13/2198057, dated 2 July 2013 (paragraph 5).
[5] References APP/L5810/D/13/2198057; APP/L5810/A/13/2202869; and APP/L5810/A/13/2200974

19. The Government's Planning Practice Guidance (PPG) was published on 6 March 2014. The content of this guidance has been considered but in the light of the facts in this case the PPG does not alter the conclusions reached in this appeal.

Conditions

20. In accordance with the provision in Schedule 2, Part 3, paragraph N (11) of the GPDO the Council have requested a number of conditions in the event that the appeal is allowed.

21. The first of these relates to arrangements for the storage and disposal of refuse/recycling. However, the Council's decision to refuse prior consent was because of concerns about increased demand for additional on-street parking provision. The condition does not reasonably relate to the subject matter of the prior approval and therefore cannot be imposed.

22. The second condition relates to cycle parking facilities. Whilst this may have some relevance to the transport and highways impacts of the development it does not touch upon the principal matter concerning on-street parking stress. In any event, the Design & Access Statement that accompanied the application referred to the provision of an external lockable cycle store. Given that the C3 use would be as a one-bedroom flat, the need for a specific condition requiring cycle parking facilities to be approved is excessive and unnecessary.

23. The final condition requires a scheme to be put in place to ensure that the unit has lifetime membership of a car club. Whilst this might be an incentive to all future occupiers not to own a car, they could not be compelled to use the club nor prevented from owning and using their own vehicle. In any event, for the reasons outlined above, even if they did own one, refusal of the approval granted under the provisions of Schedule 2, Part 3, Class J of the GPDO has been found not to be justified in this case. The suggested condition is not therefore being imposed.

David Leeming

INSPECTOR