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Ref: 132.1MAR

The Planning Inspectorate
Room 3/12A
Temple Quay House
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Temple Quay
Bristol BS1 6PN

17th December, 2015

Dear Sir or Madam,

Re: APP/X5210/C/15/3133473: Flat 1, April House, NW3 5TE

1. Introduction

This letter and attachments together comprise the appellant's rebuttal comments on the Local Planning Authority's (LPA's) appeal statement.

Detailed responses to objectors' comments are given in section 8 of this letter.

We attach two further documents: a signed unilateral undertaking; and technical transport rebuttal comments.

Transport

The attached a rebuttal statement on transport matters has been prepared by Paul Mew Associates (P1365 45 Marshfield Gardens Rebuttal Note 15.12.15). The note contains no new or revised evidence. However, for ease of reference, the statement includes various tables and diagrams extracted from the original transport statement submitted in October 2015.

Further comment on transport matters is also provided in sections 3, 4 and 8 of this letter.

Legal agreement

We attach a signed unilateral undertaking. The agreement relates to the use of the northern parking space and also the payment of a highway contribution.

The agreement is offered with 'blue pencil' clauses.

Further comment on the scope and effect of the undertakingis provided at section 10 of this letter.

Plans

The proposed plans included on the Planning Register alternate between two different versions: One showing planting/planters surrounding the two parking spaces, and the other not. The as-built scheme corresponds with the version with planters.

2. Planning history and current status

The appellant disputes the LPA's summary of the planning history (LPA 1.4-1.6) and the many and varied claims of objectors.

With the exception of the appeal proposals, there are no outstanding applications or un-regularised developments at the appeal property.

- The basement development is approved and now fully lawful.
- The LPA confirm that the side extension is fully lawful (a slight amendment to detailing of the soffit is still to be agreed).

These matters are not therefore material to this appeal.

The layout was first described on plans submitted prior to construction in September 2014 (App. Ref. 2014/5724/P). Whilst the LPA claims that the applicant/appellant did not initially make these details sufficiently clear in their application, there is no dispute that they were clearly shown on submitted drawings before construction commenced.

The LPA subsequently advised, on a site visit in March 2015, that the front boundary works required permission and also indicated that changes to the crossover could be undertaken post approval. They further advised design changes to the height and details of gates and these alterations were undertaken as the development continued (March 2015).

As the boundary and side extension application progressed (Application reference 2015/3684/P), the LPA's position changed after the case officer belatedly sought advice from his transport colleagues. That advice was that the layout could not be supported. The LPA advised that the application should be split in two in order for the side extension approval to be expedited. This was very much a 'Sword of Damocles' request; the appellant had no choice but to follow the advice in order to avoid enforcement action on the side extension. The applicant/appellant disputed the LPA's views on parking and agreed to submit further supporting evidence. Further discussion on the LPA's transport and access concerns was postponed.

The evidence was submitted, but the LPA then moved pre-emptively in serving the Notice before full and proper consideration of the application and supporting evidence for the boundary treatment (pre-determination).

The application was refused one day before the expiry of deadline for the Notice, leaving insufficient time to properly consider the alternative of an appeal against a refusal of planning permission.

3. Transport – On street parking bay

We refer to the Paul Mew statement on technical parking matters.

The LPA claims that the appellant has submitted no further evidence on a number of points (LPA3.5). It is a peculiarity of the enforcement appeal process that there is an exchange of evidence, rather than a 'front loaded' appellant's statement at the start of a written reps. appeal against a refusal of planning permission. The LPA's haste in issuing the Notice, but belatedly refusing planning consent, effectively removed this option.

The LPA claims the applicant did not engage in discussion on a legal agreement (LPA 3.16); 'this was not discussed, considered or commented upon'.

The simple fact is that this was because the LPA belatedly changed position on the application and the notice was then served first and permission refused afterwards. The LPA did not propose an agreement at the planning application stage. Their pre-determined position is crystal clear in Section 4 of the Notice *'The Council do not consider that planning permission should be given because planning conditions could not overcome these problems'.* Such a condition could and possibly would have included a condition requiring a legal agreement to mitigate potential parking impacts.

4. Visibility/sight-lines

The LPA claim we have not addressed sight lines (LPA3.23). We refer the Inspector to section 5 of technical note of July 2015 (submitted with the application, to the Paul Mew technical Note of October 2015 and the rebuttal note of December 2015.

Further comment on objector's comments on visibility/sight-lines is given in section 8 below.

5. Design

The LPA has not substantiated its case in relation to design and appearance. The Notice specifically refers to policy Core strategy CS14 (Promoting high quality places and conserving our heritage). Section 2.3 of officer's delegated report states:

.The brick piers and gates are not in keeping with the host dwelling in terms of both their design and appearance. The choice of materials does not compliment the host dwelling which is finished in white render. It is not considered that the choice of brick chosen matches the original brick which is a characteristic of the Fitzjohns Netherall Conservation Area.'

Contrary to the LPA's claims, the appellant has clearly set out the reasons why a return to the previous forecourt layout, required by the Notice, represents a diminution in environmental quality. In summary, this will require:

- A return to an open forecourt with insufficient enclosure.
- Loss of boundary treatment, gates or piers.
- An unnecessarily wide crossover.
- Continued unregulated parking on site of up to three cars with pavement over-running.

The appellant has provided details of common materials and boundary details typical of the area (appendix H of the appeal statement). These are reflected in the appeal scheme and also reflect the boundary materials of the host property (with the exception of the unsightly infill stone panels of 'crazy paving' to No.45).

The LPA seem to have changed position on design and appearance. Their statement clearly accepts that the appeal scheme is an improvement and they then rely solely only on parking issues to justify the Notice (LPA 3.31):

'Some sort of boundary treatment in this space may well be acceptable which both enhances the character and appearance of the conservation area in line with CA policy F/N31. However, although what has been built satisfies that policy, it also clearly leads to the creation of a harmful scenario which is contrary to Transportation policies DP19 and DP21 through the loss of one on-street car parking bay and a lack of sightlines from the northern off-street bay. (LPA 3.35).

This clearly concedes the argument on design.

The LPA seems to get a little lost in stretching an interpretation of the Conservation area guidelines. Historic OS maps indicate that No.45 was built with 'in and out' carriage entrances, but without any crossover aligned with the appeal property. The conservation area guidance contains OS plans of 1894 and 1915, which could clarify matters. However, for some reason, the LPA only has a grainy and degraded version of the guidelines available. When viewed at their original resolution (https://www.old-maps.co.uk), the arrangement is clearly shown. In summary:

- The current wall to No.45 is not original.
- The 'in and out' arrangement was created in the late 19th Century, but subsequently lost.
- The wide access in front of the appeal property was added later.

This arrangement, as a whole, is clearly the object of criticism in the guidelines.

The option of walling up the entrance to the northern parking space is contemplated by the LPA in order to address transport concerns (LPA 3.35). This is surely founded upon the LPA's revised belief that the metal gates/railings and brick piers are generally acceptable, except for transport concerns:

'a new boundary treatment which is considered both safe to use and removes the loss of on-street parking, whilst enhancing the character and appearance of the Conservation Area, would be to go car-free and return the front garden to pedestrian access only' (LPA 3.35).'

LPA accepts that *'Some sort of boundary treatment in this space may well be acceptable'* and *'what has been built satisfies that policy'* (LPA 3.35).

The LPA concedes the design argument and references to CS14 (promoting high quality places and conserving our heritage) should therefore be removed from the Notice. The LPA has also referred in their statement to DP25, securing high quality design, which is given as reason for refusal of the planning application (following service of the notice).

If the LPA now accept that the gates and piers are broadly an enhancement over the former open forecourt, then they must also concede that a return to the earlier layout, required by the Notice, represents a diminution in quality. Their remaining concerns relating to on street parking and sightlines must then be sufficient to outweigh this harm.

This points to an implicit acceptance by the LPA that the scope of the Notice is excessive. The LPA raises no objection to the southern space and central pedestrian gates in relation to design, sight lines or impact upon on-street parking. Should the northern gates be simply permanently fixed shut (they remain locked shut), the LPA's concerns would seem to have been fully addressed and the remainder of the requirements of the Notice would then be seen to be excessive.

6. Ground E

Service of the notice

The LPA presents a patchwork of actions and assumptions, which it claims add up to sufficient and reasonable notice to all parties.

The Notice still does not name all those with an interest in the land and the LPA confirms that copies of the notice have still not been served on all those with an interest in the land. The requirements of section 172 have not been met and the appellant's interests have been prejudiced.

The LPA has not provided evidence that the notice was forwarded to the appellant by recorded post. It has not provided evidence that it was signed for by anyone at the appeal property. They assert the notice was sent by recorded post and assume it would have been returned if it were not signed for (LPA 3.37).

The LPA was made aware the appellant was away on holiday. The appellant claims the letters were not sent by recorded post, nor were they forwarded to the agent. The practical effect was that the period of notice was severely foreshortened.

The appellants, upon their return form holiday, faced a patchwork notices, some in force, some rescinded. This was uncoordinated and unnecessarily distressing and the elapsed time created unnecessary duress in trying to untangle the contradictory notices in time to act within the notice period.

The appellant's action to lock the gates thankfully prevented an immediate breach of the notice, had other family members chosen to continue to use the parking space.

Those named on the notice

Mr Ian Green of flat E April House, who it later transpired is the owner of the southern parking space, is still not named on the Notice. We do not know, and the LPA does not know, if Mr Humphreys of flat 2 has received a copy of the notice. This places the appellant at risk of legal action if they are required to comply with the notice and to carry works on/to other people's property.

The LPA's errors and omissions result in the burden of compliance falling unequally upon the appellant and not, as it should, upon all those with an interest in the land. The faulty Notice will also disable the LPA in pursuing compliance with any and all interested parties.

The catalogue of errors and omissions present an opaque picture which may present difficulty in giving proper effect to the notice and give rise to disputes between those with an interest in the land, prejudicing their interests.

Liaison with the agent

A copy of notice was not served on or forwarded to the Agent, who had handled all liaisons until that point, developing a good working relationship with officers. We remain unclear why the LPA switched from dealing with the agent by e-mail, but welcome the LPA's acceptance that not providing notice to the agent amounts to a lesson learnt.

Anticipating the notice

The LPA warned that a notice may be served. However, the appellant took further steps to address the issues raised. It was therefore unreasonable for the LPA to assume the appellant should have discerned and anticipated that the notice would be served because:

- The application was still outstanding (pre-determination)
- A package of information had been submitted
- The gates had been locked (and remain locked), providing an immediate remedy.

7. Ground F: Excessive scope

The appellant considers the scope of the Notice to be excessive and proposes alternative approaches. The LPA also seem to envisage a lesser scope (LPA3.22), providing a description of the current status quo, where the northern parking space gates were locked.

- The LPA has not demonstrated or even provided evidence that the southern space and entrance gates, and the pedestrian entrance gates and piers result in any injury to amenity, harm the conservation area, or affect on street parking or sightlines.
- The LPA has effectively conceded the design grounds for the Notice
- The LPA concede that a return to the previous open forecourt arrangement represents a diminution in environmental quality.
- The LPA concede that some form of landscaping over the northern space with a boundary wall instead of gates would be acceptable.

An alternative scheme is clearly described in the appellant's statement and can be described in any revised notice, should the inspector decide to do so.

The Inspector is also free to revise the Notice to require one of two alternatives, either the retention of the as-built scheme, omitting the northern parking space, or reversion to the former open layout.

Where the Inspector rules that planning permission should be granted, except for the northern parking space, then a revising condition might be considered:

Option A: *'The northern vehicle entrance gates shall be permanently fixed shut and details shall be submitted to and approved in writing by the LPA'.*

Option B: 'The northern vehicle entrance gates shall be removed and details of replacement permanent boundary treatment shall be submitted to and approved in writing by the LPA'.

Finally, it should be noted that revising the requirements of the Notice would alter and simplify the burden of compliance in relation to the different property interests. For example, permanently fixing the northern entrance gates shut requires action by only one property owner, the appellant. This may also reduce the risk of challenge arising from the faulty notice and errors in how it was served and will simplify the LPA's role in ensuring compliance.

8. Neighbour Objections

We refer below to the e-mails in the sequence received with reference to the date. A number of objector's correspondences are duplicated in the pack forwarded by PINS (E-mail 5+6+7, 18/19th October 2015).

Status of the appellant

The pejorative reference to 'greedy, insolent, crass and tasteless developers' (E-mail 1, 13 October 2015) should clearly have been struck from the record by PINS.

Focusing instead on a point of fact, the appeal property is the family home of the Chervinski's and has been adapted and extended by them, for them, and not by a 'developer'.

Private garden amenity

We can see no effect of the development upon the amenity of neighbouring private gardens. (E-mail 1, 13 October 2015). No loss of green garden space will occur.

Interested party

Mr Ian Green is an objector (E-mail 2, 19 October 2015) with an interest in the appeal land (the southern parking space). He raises no technical issue or objection to the requirements of the Notice, but then he is not named on the Notice and his silence may serve his own interests. The omission may complicate compliance by the owners, give rise to legal challenges between owners, and fatally undermine any subsequent enforcement action by the LPA.

Owners of off-street parking spaces

A number of objectors own one or more off-street parking spaces (e.g. e-mail 2, 19 October 2015). Their concern with the availability of on-street spaces should be considered in light of this fact.

Officers report

An objector supports and reiterates issues raised and conclusions reached in the planning officers report (E-mail 3, 19th October 2015). These are rebutted to elsewhere.

Parking stress

Objectors claims of parking stress and the impossibility of finding parking spaces close to their homes is not supported by the submitted parking stress survey (E-mail 4, 18th October 2015 and e-mail 9, 26th October).

The anecdotal perception of parking stress seems to relate to whether or not residents can park in the bay immediately in front of No.45. This interpretation of parking stress is based upon a misunderstanding of the nature of the on-street parking scheme. Permit holders are entitled to park in any available resident bay within the zone; they are not especially entitled to park in a specific bay. The fact that any single bay is sometimes fully occupied is not evidence of wider parking stress across the zone.

Crossover

The proposals necessitate the alteration of an existing crossover. They do not require the creation of a new crossover (E-mail 4, 18th October 2015).

The width of the crossover will not necessarily need to increase where it is split into two crossovers with a central nib. This is clearly shown in Appendix G Option 2 of the main appeal statement.

There will not be an excessive distance between 'places of safety' (E-mail 9, 26th October) where option 2 is subsequently implemented and the crossover will not increase in overall width where a central nib is introduced (E-mail 8, 22nd October and e-mail 10, 26th October). In fact, it will be reduced in overall width. The objector's comments strengthen the view that the most appropriate arrangement for the crossover is to divide it into two with a central nib (Option 2).

An objector advocated a general ban on new crossovers and claims this has been consistently upheld (E-mail 11, 27th October and e-mail 10, 26th October - Netherhall neighbourhood Association). The creation of new crossovers have been approved in the area and each proposals should be judged on its merits

Manhole cover

There is no reason to suppose the existing manhole covers will not be fit for purpose (E-mail 8, 22nd October). The cover is outside the appeal property boundary and on highway land. This is not therefore a planning matter.

Number of parking spaces at the appeal property

Objectors dispute that the previous layout was capable of accommodating up to three cars on plot (E-mail 8, 22nd October). The previous access was over 8m wide from pier to pier. The simple application of a standard 2.4m parking bay width demonstrates that a notional 3.4 cars could park side by side (accepting that this partly relies on driving over the pavement, as is common with other crossovers in the area). Three cars could easily park on plot in an oblique/chevron pattern without crossing over the pavement.

Precedent

An objector claims that consent will establish an undesirable precedent (E-mail 9, 26th October). However, each application can and should be judged on its own merits and will not therefore usually create any precedent.

Both the implemented scheme and the former layout (to be reverted to by the Notice) comprise forecourt parking with at least 2 parking spaces and crossovers equivalent to the width of at least two cars. The precedent is therefore established and will remain whether the appeal succeeds of fails.

9. Point not challenged

The very low frequency of vehicle movements in and out of northern space (one in and one out per day) has not been questioned. The low frequency is an important material consideration.

10. Legal agreement

The attached legal agreement includes provision for a highway contribution and restrictions on the use of the northern parking space.

The undertaking contains 'blue pencil clauses:

- The Inspector may omit reference to the Highway contribution by striking out Clause 4.1(b)
- The Inspector may amend the amount of the Highway contribution at Clause 2.1 (the appellant sought further clarification on the amount from the LPA, but no response has been received in time). To note that the LPA can seek the full costs of the highway works under the definition of the 'residual sum' at Clause 4.1(d).
- The Inspector may omit reference to the restriction on the use of the northern parking space by striking out Clause 4.1(a).
- The Inspector may adjust the maximum number of permits that may be obtained by owners and occupiers (for example by changing 'three or more' to 'two or more') at Clause 4.1(a).

Restricting the use of the northern parking space

The LPA's position on the potential remedy of planning conditions and/or legal agreements is contradictory. Section 4 of the Notice *'The Council do not consider that planning permission should be given because planning conditions could not overcome these problems'.* However, the LPA separately discuss reasons why an agreement restricting parking permits will be unworkable (LPA3.18-3.22). It should also be noted that legal agreements restricting access to parking permits are common practice in Camden and this is supported by development plan policy and guidance (CS11, DP18 and CPG7).

The LPA raise three specific concerns with an agreement to restrict permits:

- Each permit to park on street can be for up to three vehicles
- Each adult in the household is allowed up to three on-street permits
- No mechanism as planning and highway authority

The unilateral undertaking proposed addresses or avoids all of these concerns:

- The agreement meets the requirements of s.106(1)(a)-(d) and accounts for recent cases (*Westminster City Council -v- SSCLG* [2013] EWHC 690 (Admin).
- The restriction relates to the use of a parking space at the appeal property and restricts the use of the appeal land in a specific way (parking) in certain circumstances (where the owners and occupiers of the property hold more than two permits).
- The agreement creates a mechanisms specifically related to the appeal property (the continuing use of the northern bay to park a vehicle).
- The agreement 'runs' with the land and is fully capable of being registered as a local land charge
- The agreement mitigates the potential impact of the proposed development (an alleged increase in parking stress as a result of a reduction in the length of an on street parking bay) and is proportionate to the potential impact.

- The agreement does not rely upon Highway Authority powers (e.g. S.278) and does not place duties or obligations on the LPA (except where a breach of the agreement amounts to a breach of planning control, in which case the LPA's enforcement powers may be engaged).

Thank you for you consideration.

Yours faithfully,

Michael Doyle
Partner