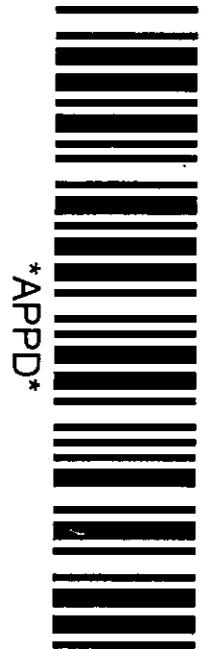


ROYAL BOROUGH
OF
KENSINGTON & CHELSEA

DOCUMENT SEPARATOR

DOCUMENT TYPE:

APPEAL DECISION



APPD



Appeal Decision

Site visit made on 24 July 2003

by **John Millard** DipArch RIBA FCIArb

an Inspector appointed by the First Secretary of State

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Date

25 SEP 2003

Appeal Ref: APP/K5600/A/03/1114614

12-14 Pottery Lane, London, W1 4LZ

- 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 Mr Colin Day, trading as The Radio Consultancy, against the decision of Royal Borough of Kensington and Chelsea Council.
- The application (Ref: PP/02/01933/CUSE), dated 16 August 2002, was granted planning permission by the Council on 8 October 2002 subject to conditions.
- The development permitted is change of use from studio/offices to one residential unit.
- The condition in dispute is No 2 which states that: *The whole of the car parking space shown on the drawings hereby approved shall be provided before the dwellings are occupied and the spaces shall thereafter be permanently retained for the parking of vehicles in connection with the residential use of the dwellings and for no other purpose.*
- The reasons given for the condition is: *To prevent obstruction of the surrounding streets and safeguard the amenity of the area.*

Summary of Decision: The appeal is allowed and the planning permission varied as set out in the formal decision below

Procedural Matters

1. The appeal falls to be determined under section 79(1) of the Town and Country Planning Act 1990. The whole of the permission, and any conditions which were or should have been attached, are matters for my consideration.
2. I note that the wording of Condition 2 is largely in the plural but that the application and permission are for the creation of a single residential unit with a single parking space. I shall therefore import the singular into the plural wording of the Condition.

Main Issue

3. I consider the main issue in this appeal to be the effect of removing Condition 2 on the availability of on-street parking space in the area.

Development Plan and other Planning Policies

4. The Development Plan for the area is the Royal Borough of Kensington and Chelsea Unitary Development Plan 1995 as amended by modifications adopted in May 2002 (UDP). UDP Policy TR47 advises that development which results in the loss of off-street residential parking will be resisted, although paragraph 7.6.16a of the supporting text indicates that the provision of off-street parking may not be appropriate in all cases.
5. Paragraph 40 of PPG1 highlights the duty imposed on decision makers by section 54A of the Town and Country Planning Act 1990 to determine applications in accordance

with Development Plan policies, where such exist and are relevant, unless material considerations indicate otherwise. Conversely, applications which are not in accordance with the Plan should not be allowed unless material considerations justify the granting of permission. The broad thrust of national Planning Policy Guidance Note 3 - *Housing*, is to promote more sustainable patterns of housing development and make better use of previously developed land for housing. Planning Policy Guidance Note 13 - *Transport* reinforces the concept of sustainability and advises that developers should not be required to provide more parking spaces than they themselves wish, except where there are significant implications for road safety.

6. DoE Circular 11/95 offers detailed advice on the imposition of conditions on planning permissions and sets out six tests which need to be satisfied before a condition is imposed. The first of these is "necessity" and paragraph 15 indicates that a condition is only necessary if permission would have to be refused if that condition were not imposed.

Reasons

7. The appeal property is a modest, single aspect, two-storey building situated on the eastern side of Pottery Lane, about 75 metres north of its junction with Portland Road. It is not listed but lies within the Norland Conservation Area. The rear of the property immediately adjoins the small rear gardens of more substantial properties in Portland Road. The street is largely residential in character although, towards the northern end, a number of the properties are in commercial use, mainly as small offices. Pottery Lane is narrow and carries two-way traffic, as a result of which on-street parking spaces are extremely limited. Surrounding streets have a more plentiful supply of controlled parking spaces although, at the time of my visit, relatively few were vacant.
8. Considering the implications of the proposed change of use, I note that UDP Policies STRAT3, STRAT14 and H3 encourage the use of property, where appropriate, for residential purposes. From its appearance and location, I am of the opinion that the appeal property was originally purpose-built for residential use and its restoration to that use would thus accord with both the council's objectives and the government's policy as set out in PPG3. Because of its single aspect, use of the property for residential purposes would not, in my view, adversely affect the living conditions of any surrounding occupiers and I conclude that the change of use is acceptable in principle.
9. The property includes an area which, from its external appearance, is a garage and which is annotated as such on the submitted plans. The appellant contends, however, that the space has not been used for parking for at least 16 years and that, for a variety of reasons, is unlikely to be used for that purpose in the future. It is suggested that, firstly, the internal dimensions of the garage are below the minimum recommended by the council and that the space is too small to accommodate an average car, secondly, because of its narrow entrance, manoeuvring in and out would be likely to obstruct the carriageway, to the detriment of highway safety, and, thirdly, the appellant neither owns nor drives a car.
10. The council contends that the garage is of adequate size to accommodate 85% of cars on the British market and that its transport policies support its wish to retain the garage in order not to exacerbate the problem of saturation parking which, on the basis of 1996 survey data, is said to exist in the area. I note, however, that, while in some streets

covered by the survey the saturation level of 90% was recorded, occupancy in Pottery Lane and Portland Road was only 85%. The average for the whole of the area identified in the survey was 88%, just below the saturation threshold.

11. Whilst, from the council's point of view, there are potential benefits in retaining the garage, government advice in PPG3, PPG13 and elsewhere seeks to reduce the dependence on car travel and to discourage the provision of parking facilities where they are not essential. The appeal property lies within an area well served by public transport and by local services. There is accordingly, in my view, a reasonable prospect that future occupiers would not require the use of a car. I am also of the opinion that, because of the minimal size of the garage, occupiers who did own cars would probably be reluctant to park them in this very confined space. Indeed, I noted at the site visit that a large proportion of the dwellings in Pottery Lane had what appeared outwardly to be similar garages to that in the appeal property but that they had, in many cases, been converted to additional living space. I saw little evidence, except in some of the commercial premises at the northern end of the street, of garages in the street actually being used for the parking of cars.
12. The property is of limited size, having, apart from the garage, just three habitable rooms and a bathroom. There is currently no kitchen and no outdoor amenity space. It is therefore not suitable for family use and is likely to be occupied by one or two people. In the event that future occupiers required the use of a car, the additional demand for on-street parking space would be very modest and, in my judgement, insufficient to materially affect the current parking position. As the whole of the area is within a Controlled Parking Zone, parking is permitted only in defined bays and I consider that the removal of Condition 2 would not result either in the surrounding streets being obstructed or in any diminution of the amenity of the area. In my judgement, and applying the test in Circular 11/95, the application would not have to be refused if Condition 2 was not attached and I conclude that the condition fails the test of necessity.

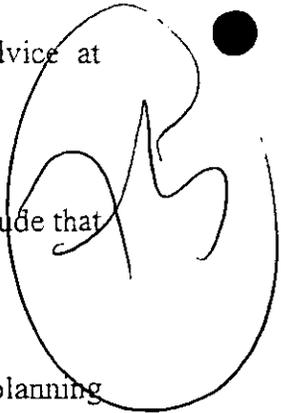
Other Considerations

13. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes on decision makers the duty to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. I am unaware of any application for planning permission to alter the exterior of the building and, since residential use is appropriate within what is a predominantly residential area, I conclude that the effect of the proposal on the character and appearance of the Conservation Area would be neutral and thus in accordance with paragraph 4.20 of Planning Policy Guidance Note 15 – *Planning and the Historic Environment*.

Conditions

14. In granting planning permission, the council imposed, in addition to the statutory time limit and the disputed condition, a further condition removing Permitted Development rights. Because of the close proximity of the appeal property to the buildings in Portland Road, any openings formed in the rear wall could have significant implications for the privacy of occupiers of these adjoining buildings. I therefore consider it appropriate and necessary to impose a condition requiring permission to be obtained from the council for the formation of any such openings. However, I consider the

council's wording to be unduly wide in its scope, and contrary to the advice at paragraph 17 of Circular 11/95, and I shall amend the wording appropriately.



Conclusion

15. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Formal Decision

16. In exercise of the powers transferred to me, I allow the appeal and vary the planning permission Ref. PP/02/01933/CUSE for change of use from studio/offices to one residential unit at 12-14 Pottery Lane London, W11 4LZ, granted on 8 October 2002 by the Royal Borough of Kensington and Chelsea Council by deleting Conditions 2 and 3 and substituting the following condition:

- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows or similar openings shall be constructed in the east elevation of the development hereby permitted without the prior written approval of the local planning authority.

Information

- 17. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.
- 18. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
- 19. An applicant for any approval required by a condition attached to this permission has a statutory right of appeal to the Secretary of State if that approval is refused or granted conditionally or if the authority fails to give notice of its decision within the prescribed period.

A handwritten signature in black ink, written over a circular stamp. The signature is stylized and appears to be 'M. J. ...'. A horizontal line extends from the right side of the signature.

INSPECTOR
