

UPDATE REPORT

BY THE DIRECTOR OF ENVIRONMENT & NEIGHBOURHOOD SERVICES
READING BOROUGH COUNCIL
PLANNING APPLICATIONS COMMITTEE: 6th February 2019

ITEM NO. 15
Page: 255

Ward: Redlands

Application No.: 180591

Address: Mulberry House, 1a Eldon Road, Reading, RG1 4DJ

Proposal: Demolition of Mulberry House (Class D1) and erection of part 3, part 5 storey building providing 7 (3x1 & 4x2-bed) residential units (Class C3), 5 parking spaces, landscaping and associated works.

Recommendation:

As in main report, with the addition of a further condition:

20. No change to the unit mix (3x1-bed and 4x2-bed units) shall be made to the development hereby permitted without express planning permission from the Local Planning Authority.

1. Further public consultation responses

- 1.1 Subsequent to the publication of the main report, three further public consultation responses have been received. These are addressed individually below.
- 1.2 First, an objection has been received from an address at Firethorn, RG2, summarised as:
 - Loss of sunlight to first floor apartment;
 - The building will also take car park space.
- 1.3 Officer response: Please see paragraphs 6.33 and 4.2 of the main report.
- 1.4 Secondly, two further separate responses have been received from the directors of Hanover House Residents Management Company (“HHRMC”) on behalf of 82 flat owners, current occupiers and the freehold owner of Hanover House. The first response constitutes a further objection to the scheme. The response in full is as follows:
 - HHRMC would like their concerns noted in the report to the planning committee and directly referenced in any planning conditions.
 - The application appears to assert rights over the Hanover House (“HH”) car park that do not exist, yet are required to accommodate;
 - o demolition of the current building
 - o construction for the new building
 - o the waste management plan
 - The owner of Mulberry House has a Right of Way through the HH car park, but this right does not extend to any right to occupy any part of the HH car park. HHRMC are concerned that the distinction between a right to pass and a right to occupy might be lost ‘in translation’ between granting planning consent and implementation of that consent unless the applicant is required, as a condition of the planning consent, to demonstrate that it has the full consent of HH leaseholders and HHRMC.

- The alleged rights are noted in the report to the planning committee. The report should now include an addendum confirming that:
 - o these rights are disputed by HH leaseholders and HHRMC.
 - o all car park spaces in the HH car park are numbered and allocated to individual apartments in HH.
 - o therefore, any new rights that Mulberry House might require over the HH car park can only be (i) subject to leaseholders' rights over individual numbered car park spaces and (ii) no more than as described in the planning report; i.e. a right of way and not a right of occupation.
 - The consequences of the disputed rights over the HH car park:
 - o there are a number of car park spaces that directly abut the Mulberry House site; on the ramp between the lower and upper car parks and along the Mulberry House retaining wall in the lower car park. These can be seen in the photographs accompanying the planning application. The upper HH car park contains a further 15 car park spaces. HHRMC are concerned that the recommended planning conditions do not require the applicant to seek the consent of HHRMC and leaseholders. Currently, the recommendation is "strong advice to liaise" with nearby occupiers and landowners (not even the RMC). The recommendation should be amended to seek consent.
 - o the current report to the planning committee appears to show that RBC has accepted the applicant's interpretation of alleged rights over the HH car park. Clause 6.44 states that the applicant has "unfettered legal right of way ... over the whole of the HH car park" which is incorrect.
 - o the Waste Management strategy suggests that refuse collection "will be the same as HH", which cannot be correct. HH has a refuse storage and handling area within the ground floor of the building and a dedicated collection area close to the boundary with Eldon Terrace. The application has no facilities at all within its demise being without a comparable onsite handling area and without rights to use the HH dedicated collection area. Full details of the Waste Management Plan should be a pre-commencement condition and require HHRMC's formal agreement given the only access is via the HH car park.
- 1.5 Officer response: The Council's Planning Solicitor considers that the issues that have been highlighted are more about the ability of the applicant to implement the planning permission rather than about an obstacle that needs to be overcome before the development is acceptable in planning terms. Officers consider that the majority of the matters raised are landowner disputes (e.g. access rights, or more specifically occupation of land rights), which is not a matter of concern for the local planning authority unless there is little or no prospect of a satisfactory access to the development being provided. It would appear that there is no dispute regarding right of access (referred to as 'right to pass' by HHRMC) and therefore any further matters are outside the realm of the planning process.
- 1.6 With specific reference to the HHRMC request for planning conditions to be subject to consent from HHRMC and HH leaseholders, it is not appropriate for any condition to be subject to the consent of a third party. Officers do not consider that such a condition would pass the required tests of a

planning condition. Generally speaking, it is noted that a third party can apply for and receive a planning permission on land that he has no legal interest in, but that is not a bar to the local planning authority granting planning permission if it is right to do so on the planning merits. It is then up to the applicant to purchase the land which he/she may fail to do.

- 1.7 Regarding the suggestion that “RBC has accepted the applicant’s interpretation of alleged rights over the HH car park”, this is not the case. The final sentence of paragraph 6.44 of the main report merely states that the response from the planning agent to the original concern raised. Ultimately, as indicated above, this is a landowner dispute which is not of concern for the local planning authority.
- 1.8 In relation to the request for the waste management plan to be secured via pre-commencement condition, rather than pre-occupation as recommended in the main report, this has been duly considered by officers. Mindful of Section 100ZA of the Town and Country Planning Act, and PPG (Paragraph: 007 Reference ID: 21a-007-20180615 states “Such conditions should only be used where the local planning authority is satisfied that the requirements of the condition (including the timing of compliance) are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission”), it is however not considered possible for this to be secured via pre-commencement condition and shall remain as stated (pre-occupation) in the main report.
- 1.9 Turning to consider the second separate response from HHRMC, this seeks for Adelais Properties Ltd (as freeholder), HHRMC, HH leaseholders and any associated mortgagees to be part of the Section 106 legal agreement. HHRMC consider this to be required given the applicant’s assertion of certain rights over the HH car park, inclusion of the HH car park in the applicant’s supporting site plan, drawings and reference to it in the main report.
- 1.10 Officer response: The Council’s Planning Solicitor acknowledged the correspondence from HHRMC and advised that, having considered the proposed Section 106 obligations, given as they solely relate to affordable housing there is no need to bind the land owned by Adelais Properties Ltd or the leaseholders referred to by HHRMC.
- 1.11 Thirdly, a further objection has been received from an occupier of a second floor flat at Hanover House (previous objections were received at the time of the initial consultation, as reported at section 4x of the main report). The matters raised at this time repeat the second/third paragraphs and final bullet point of the HHRMC objection detailed at paragraph 1.4 above.
- 1.12 Officer response: Please see paragraphs 1.5-1.6 and 1.8 above.

2. Additional condition

- 2.1 Since the publication of the original main report, upon further reflection, it is recommended that a condition is secured whereby no change to the unit mix (3x1-bed and 4x2-bed units) shall be made to the development hereby permitted without express planning permission from the Local Planning Authority. This is to safeguard the mix altering to potentially unacceptable mixes in the future, while also having a dual benefit of not altering the

sales values of units (which could improve scheme viability) without this being managed and assessed by the local planning authority.

Case Officer: Jonathan Markwell