
Appeal Decision

Site visit made on 1 November 2016

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 4 January 2017

Appeal Ref: APP/Y3615/W/16/3156013

Harpers Night Club, Onslow Street, Surrey GU1 4SQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Michel Harper, Staroyster against the decision of Guildford Borough Council.
 - The application Ref 16/P/00662, dated 24 March 2016, was refused by notice dated 27 June 2016.
 - The application sought planning permission for a casino complex incorporating uses within Classes A2, A3, D2 as more particularly shown on the application drawings, without complying with a condition attached to planning permission Ref 03/P/02069, dated 29 November 2004, granted on appeal under Ref: APP/Y3615/A/03/1133941.
 - The condition in dispute is No 22 which states that:
The development hereby permitted shall be carried out in accordance with the following approved plans: TP.5020148.040, TP.5020148.050, TP.5020148.100, TP.5020148.101, TP.5020148.102B, TP.5020148.103, TP.5020148.104, TP.5020148.105, TP.5020148.106, TP.5020148.107, TP.5020148.110B, TP.5020148.111B, TP.5020148.112B, TP.5020148.113B, TP.5020148.500, TP.5020148.501, TP.5020148.502, and TP.5020148.503.
 - The reason given for the condition is to ensure that the development is carried out in accordance with the approved plans and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Background

2. A planning application for a casino complex incorporating uses within Classes A2, A3, and D2 as shown on the application drawings, with six storeys above ground level and two storeys below, was granted planning permission under appeal ref APP/Y3615/A/03/1133941, in November 2004. The Council does not dispute that the development has been begun and has issued a Certificate of Lawfulness to this effect.
 3. While the original planning permission did not include a plans condition, an application under S96A of the Town and Country Planning Act 1990 for a non-material amendment to the original permission, to add a plans condition, was approved in December 2015 (ref 15/N/00154). In March 2016, the appellant submitted an application under section 73 of the Act, the refusal of which is the subject of this appeal. That application sought to substitute the approved drawings with those showing an amended proposal which would omit the
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lowest basement floor, and add two floors to the building above ground level, together with external and internal alterations.

Main Issue

4. Though the Council has included an informative referring to the planning merits of the proposal, its reason for refusing the application is that the proposal cannot be considered as a minor material amendment of the planning permission. The main issue therefore, is whether the proposed changes to the 2004 permission are minor material amendments.

Reasons

5. The appeal site occupies a prominent, corner position in Guildford town centre, within the Bridge Street Conservation Area. Its front aspect features in views from surrounding approach roads and its rear aspect faces towards the River Wey. Save the open plot behind the site presently used as a car-park, the neighbouring plots are occupied by buildings.
6. While there is no statutory definition of a minor material amendment, both parties have provided counsels' opinions on the matter. In the case of *Bernard Wheatcroft Ltd v SSCLG* [1982] JPL 37, in regard to accepting a condition to modify the development originally proposed, the court set out the test as to whether the effect of the conditional planning permission would be to allow development that is in substance not that which was applied for. Further, in the case of *R v Coventry City Council, ex p Arrowcroft* [2001] PLCR 7, regarding powers under section 73, it was held that a local planning authority is only able to impose different conditions if they are conditions which the Council could lawfully have imposed upon the original permission in the sense that they do not amount to a fundamental alteration of the proposal put forward in the original application.
7. The Planning Practice Guidance offers some advice. First¹, that a minor material amendment is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved. Second², that a condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used. It elaborates³ that in granting permission under section 73, new conditions may be imposed provided they do not materially alter the development that was subject to the original permission and could have been imposed on the earlier planning permission.
8. The Council raises no objection to the proposed internal modifications or alterations to the external envelope of the building. Its focus is on the additional floors proposed above ground and the omission of one of the basement floors. Whilst I note that the original permission includes a condition that no additional floor space shall be created within the approved building, there is no evidence that the double-height, lower basement floor was a decisive factor in allowing the appeal.
9. The omission of the lower basement floor would result in the loss of an area of around 1,104m². However, the addition of two floors above ground floor level

¹ PPG paragraph 017 Reference ID:17a-017-20140306

² PPG paragraph 012 Reference ID:21a-012-20140306

³ PPG paragraph 031 Reference ID:21a-031-20140306

of around 753m² and 620m² would retain the overall area of the development to within around 250m² of the approved area of 7,380m². The development effectively sought by this appeal would not be substantially different in area from the one which has been approved.

10. However, the overall height of the proposed building incorporating these additional floors would increase the overall levels of the highest point and top roof of the building from 58.05m to 66.45m and from 55.40m to 63.20m respectively, above a common ground floor level of 32.60m. I have taken account of my colleague's conclusions in the 2004 appeal⁴ on this site, including the effect of the development on the heritage asset, and I have noted the set-back of the upper floors from the front façade in this proposal. However, in regards to the building itself, the proposed increase in height would result in a substantially different building from that approved. Moreover, in the context of the overall height of the neighbouring buildings which stand at levels between around 47m to 58m, the increase in height of the building to accommodate those additional floors would change substantially the relationship between them and the proposed building in terms of scale.
11. The appellant has referred to several decisions in which he claims the Council has permitted additional floors. However, save for consent 04/P/01305, I have not been provided with the details of these schemes or the considerations which led to their approval, so I am unable to draw any parallels between them and this case. The additional floors under reference 04/P/01305 for a development at St James' Court were granted under an application for full planning permission, rather than under a section 73 application.
12. The addition of two above-ground storeys to the proposed building with consent for six above-ground storeys would alter fundamentally the proposal put forward in the original application. It would result in a development that is substantially different from that which was applied for. The proposed changes to the 2004 permission are therefore not minor material amendments.

Other Matters

13. Whilst I have considered the objection from the Guildford Society, given my findings on the main issue above, it has not led me to a different conclusion. I note the appellant's other arguments concerning the visual effects of the proposed changes. However, none of these factors are sufficient to persuade me that the changes sought by this appeal are minor material amendments, or otherwise lead me to a different overall conclusion.

Conclusion

14. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

Patrick Whelan

INSPECTOR

⁴ Appeal ref APP/Y3615/A/03/1133941