

Appeal Decision

Site visit made on 20 March 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 12th April 2017

Appeal Ref: APP/R5510/W/16/3166103 40 Frays Avenue, West Drayton UB7 7AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Neraj Karwal against the Council of the London Borough of Hillingdon.
 - The application Ref 3650/APP/2016/1437 is dated 29 March 2016.
 - The application sought planning permission for a two-storey, 6 bed, detached dwelling involving demolition of existing detached dwelling without complying with a condition attached to planning permission Ref 3650/APP/2013/2962, dated 25 June 2014.
 - The condition in dispute is No 2 which states that: The development shall not be carried out otherwise than in strict accordance with the plans hereby approved, reference PS/40/2012/A Rev J, PS/40/2012/B Rev J, PS/40/2012/C Rev J, PS/40/2012/D Rev J, Design & Access Statement and Flood Risk Assessment (received 03/01/2014) unless consent to any variation is first obtained in writing from the Local Planning Authority.
 - The reason given for the condition is: To ensure that the external appearance of the development is satisfactory and complies with Policy BE13 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).
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Decision

1. The appeal is allowed and planning permission is granted for a two-storey, 6 bed, detached dwelling involving demolition of existing detached dwelling at 40 Frays Avenue, West Drayton UB7 7AG in accordance with the application Ref 3650/APP/2016/1437 dated 29 March 2016 without compliance with condition No 2 previously imposed on the planning permission Ref 3650/APP/2013/2962 dated 25 June 2014 and subject to the conditions set out in the Schedule attached to this Decision.

Background and Main Issue

2. The application subject to this appeal is made under Section 73 of the Planning Act for minor material amendments. It seeks a revised but not substantially different design to a dwelling which was approved in June 2014. This type of application is possible as a condition was imposed on the original permission specifying the approved plans. The appeal seeks removal of the condition and replacement with a condition specifying the plans that reflect the amended design.
 3. Permission was granted for a two-storey, 6 bed detached dwelling which was designed to retain the appearance of two dwellings by virtue of a gap between the wings at first floor and roof level. The appeal seeks to alter the roof design to create habitable roof space and to re-position windows. The Council consider that
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the proposed alterations to the roof would be detrimental to the visual amenities of the street scene and the character and appearance of the West Drayton Garden City Area of Special Local Character.

4. Taking the above into account, I consider the main issue in this appeal is the effect that replacing the condition would have on the character and appearance of the area.

Reasons

5. The appeal site is situated on the north-west side of Frays Avenue and comprises of a two-storey detached dwelling. Frays Avenue is within the West Drayton Garden City Area of Special Local Character which is characterised by large, individually designed detached dwellings set along tree lined avenues with substantial front and rear gardens. These factors combine to create a spacious and open feel to the area which is characteristic of the garden city principles upon which the area was designed. Properties to the north of Frays Avenue are generally two-storey whilst properties to the south of Frays Avenue are generally one to one and a half storey chalet style bungalows.
6. The individual design of properties is reflected in the variety of roof profiles. The adjacent property on one side has a gable roof with a front gable feature and the property to the other side also has a gable roof. There are examples of gable roofs which run front-to back, as opposed to flank to flank. I also noted that there have been a number of roof alterations including front and side dormer windows. Indeed I consider that the individual design of properties and varying roof profiles adds to the character of the area.
7. The Council has not raised concerns regarding the proposed re-positioning of the windows and from everything which I have seen in submissions and on my site visit I have no reason to disagree. However, the Council consider that the proposed roof alterations would result in a disproportionality large, over-dominant and incongruous form of development.
8. The overall ridge height of the roof would be the same as previously approved. There would be a small increase in the volume of the roof in order to achieve the crown roof; however, I consider that this would be barely perceptible in the street scene compared to the previous scheme. Consequently, I consider that the proposed roof would be proportionate to the host property and would not appear dominant in the street scene.
9. Furthermore, although the proposal would introduce a small flat top, the profile would, nevertheless, be perceived as a hipped roof when seen in views from the side. The flat element of the roof would only be visible in views from the front and rear of the property. Whilst crown roofs may not be a feature of the area, I do not consider that the proposal would appear incongruous taking into account the diversity of roof profiles in the street.
10. The Council contends that the proposal would be detrimental to the character and appearance of the West Drayton Garden City Area of Special Local Character; however, there is no evidence before me which identifies the elements of character or identity which the Local Planning Authority wishes to preserve. Saved Policy BE5 of the Council's Unitary Development Plan (UDP) 1998 states that within areas of special local character new development should harmonise with the materials, design features, architectural style and building heights predominant in the area. The building would be a similar height to other two-storey properties in the area

and the materials would be sympathetic to the surrounding properties. The proposal would not detract from the spacious or open character of the garden city and in light of the variety of roof profiles in the vicinity I do not consider that the proposal would appear as an incongruous feature.

11. For the reasons stated, I conclude that the proposal would not harm the character or appearance of the area or the West Drayton Garden City Area of Special Local Character and would not, therefore, be contrary to Policy BE5 of the UDP. In addition, no conflict would arise with Policy BE1 of the Hillingdon Local Plan Part 1 - Strategic Policies 2012, saved policies BE13, BE15 and BE19 of the UDP and the Hillingdon Design and Accessibility Statement (HDAS) Supplementary Planning Document Residential Layouts 2006 which taken together seek to ensure a high quality of design.
12. Furthermore, no conflict would arise with Policy 3.4 of the London Plan 2016 which seeks to optimise housing potential taking into account local context and character. Moreover, no conflict would arise with paragraph 17 and 56 of the National Planning Policy Framework which seek to secure high quality design which contributes positively to making places better for people.

Other matters

13. The walnut tree in the rear garden of the appeal property is protected by a tree preservation order. The proposed house would be situated at a reasonable distance from the tree and I have also carried forward a condition which requires details of a construction method statement including details of protective fencing around the tree which would be retained during the construction works. Consequently, I am satisfied that the proposal would not have a harmful effect on the protected tree.

Conditions

14. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I am aware of an application¹ in relation to the discharge of some of the conditions attached to the original application. However, as there is limited information before me about this application and the status of the other conditions imposed, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
15. Paragraph 015² of the PPG makes clear that a Section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. I have, therefore, referenced the original permission in condition 1. I have deleted the plans condition (2) attached to the original permission and replaced it with a new condition reflecting the revised plans which form part of this appeal. I have also amended conditions 6, 8 and 9 to refer to The Town and Country Planning (General Permitted Development) (England) Order 2015 as opposed to its predecessor.
16. The Government has created a new approach for the setting of technical standards for new housing. It sets out its policy on the application of these standards in

¹ Planning application reference: 3650/APP/2014/3660

² Planning Practice Guidance paragraph 015 Reference ID: 17a-015-20140306

decision taking and plan making in a Written Ministerial Statement³, which also withdraws the Code for Sustainable Homes aside from legacy cases. Legacy cases include circumstances where planning permission has been granted subject to a condition stipulating discharge of a code level and developers are not appealing the condition nor seeking to have it removed or varied. Whilst the appellant has not sought to remove or vary the condition this Decision is, nevertheless, creating a new permission which will stand alongside the original. Consequently, I do not consider that it is as a legacy case in the terms of the Planning Practice Guidance⁴.

17. The Mayor of London's Housing Supplementary Planning Guidance March 2016 has been updated to reflect the WMS and new technical housing standards. I note that references/requirements to Code Level 4 for Sustainable Homes have been removed. I acknowledge the Council's concerns, however, the removal of the condition would not materially alter the nature of the development and I do not consider that anyone would be prejudiced by this approach. Consequently, in light of the WMS I have not carried forward the condition.
18. The London Plan does, however, replace the Lifetime Home requirement with a requirement that 90% of homes should meet building regulation M4 (2) in relation to accessible and adaptable dwellings. It is, therefore, reasonable to replace the previous condition with a new condition specifying that the proposal should meet building regulation M4 (2).

Conclusion

19. For the reasons stated and taking all other considerations into account the appeal should be allowed subject to the conditions set out in the attached Schedule.

Caroline Mulloy

Inspector

³ New National technical standards, Eric Pickles statement to Parliament 25 March 2015 "Steps the government is taking to streamline the planning system, protect the environment, support economic growth and assist locally-led decision making"

⁴ Paragraph: 001 Reference ID: 56-001-20150327

Schedule

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of the decision made by the Council of Hillingdon in relation to planning permission reference 3650/APP/2013/2962.
- 2) The development shall not be carried out otherwise than in strict accordance with the plans hereby approved, reference AG/AC/40/16 Site Plan and Location Plan dated 04/04/2016; AG/AC/40/16 Existing plans/elevations dated 16/03/2016; AG/AC/40/16 Rev C Proposed plans/elevations dated 4 April 2016, revised 11 July 2016; AG/40/16 Street Scene dated 13 April 2016; Design & Access Statement and Flood Risk Assessment (received 03/01/2014) unless consent to any variation is first obtained in writing from the Local Planning Authority.
- 3) No development shall take place until details and/or samples of all materials, colours and finishes to be used on all external surfaces, full details of the proposed porch and full details of windows/doors/eaves design have been submitted to and approved in writing by the Local Planning Authority.
- 4) No development shall take place until plans of the site showing the existing and proposed ground levels and the proposed finished floor levels of all proposed buildings have been submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed and known datum point. Thereafter the development shall not be carried out other than in accordance with the approved details.
- 5) No development shall take place until detailed drawings, to an appropriate scale, in respect of the following shall be submitted to and approved in writing by the Local Planning Authority:
 - (a) Porch
 - (b) Windows
 - (c) EavesThereafter, the development shall be completed in strict accordance with the approved details.
- 6) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no additional windows, doors or other openings shall be constructed in the walls or roof slopes of the development hereby approved.
- 7) The first floor windows in the side elevations facing No.38 Frays Avenue or No.44 Frays Avenue shall be glazed with permanently obscured glass and non-opening below a height of 1.7 metres taken from internal finished floor level for so long as the development remains in existence.
- 8) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension to any

dwellinghouse(s) nor any garage(s), shed(s) or other outbuilding(s) shall be erected without the grant of further specific permission from the Local Planning Authority.

- 9) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no addition to or enlargement of the roof of any dwellinghouse shall be constructed.
- 10) The residential unit hereby approved shall be built in accordance with Building Regulation requirement M4 (2) 'accessible and adaptable dwellings'.
- 11) No development shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority detailing refuse storage and secure and covered cycle storage. Thereafter the development shall be carried out and maintained in full accordance with the approved details.
- 12) No development shall take place until final details of all access points to the dwelling have been submitted to, and approved in writing by the Local Planning Authority. The details shall demonstrate appropriate level/ramped access to the dwelling. Thereafter, the development shall be carried out in full accordance with the approved details.
- 13) Prior to commencement, a scheme for the provision of sustainable water management shall be submitted to, and approved in writing by the Local Planning Authority. The scheme shall clearly demonstrate how it follows the strategy set out in Flood Risk Assessment produced by GTA dated January 2014 2nd Issue, and incorporates sustainable urban drainage in accordance with the hierarchy set out in Policy 5.15 of the London Plan and will:
 - i. provide information on all Suds features including the method employed to delay and control the surface water discharged from the site and:
 - a. calculations showing storm period and intensity and volume of storage required to control surface water and size of features to control that volume.
 - b. any overland flooding should be shown, with flow paths depths and velocities identified as well as any hazards, (safe access and egress must be demonstrated).
 - c. measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - d. how they or temporary measures will be implemented to ensure no increase in flood risk from commencement of construction.
 - ii. provide a management and maintenance plan for the lifetime of the development of arrangements to secure the operation of the scheme throughout its lifetime. Including appropriate details of Inspection regimes, appropriate performance specification, remediation and timescales for the resolving of issues.
 - iii. provide details of the body legally responsible for the implementation of the management and maintenance plan.The scheme shall also demonstrate the use of methods to minimise the use of potable water through water collection, reuse and recycling and will:
 - iii incorporate water saving measures and equipment.
 - iv. provide details of water collection facilities to capture excess rainwater;
 - v. provide details of how rain and grey water will be recycled and reused in the development.Thereafter the development shall be implemented and retained/maintained in accordance with these details for as long as the development remains in existence.

- 14) All soils used for gardens and/or landscaping purposes shall be clean and free of contamination. Prior to the occupation of the development, site derived soils and imported soils shall be independently tested for chemical contamination, and the results of this testing shall be submitted to the Local Planning Authority for approval. Note: The Environmental Protection Unit (EPU) must be consulted for their advice when using this condition.
- 16) No site clearance or construction work shall take place until the details have been submitted to, and approved in writing by, the Local Planning Authority with respect to:
1. A method statement outlining the sequence of development on the site including demolition, building works and tree protection measures.
 2. Detailed drawings showing the position and type of fencing to protect the entire root areas/crown spread of trees, hedges and other vegetation to be retained shall be submitted to the Local Planning Authority for approval. No site clearance works or development shall be commenced until these drawings have been approved and the fencing has been erected in accordance with the details approved. Unless otherwise agreed in writing by the Local Planning Authority such fencing should be a minimum height of 1.5 metres.

Thereafter, the development shall be implemented in accordance with the approved details. The fencing shall be retained in position until development is completed. The area within the approved protective fencing shall remain undisturbed during the course of the works and in particular in these areas:

- 2.a There shall be no changes in ground levels;
- 2.b No materials or plant shall be stored;
- 2.c No buildings or temporary buildings shall be erected or stationed.
- 2.d No materials or waste shall be burnt; and.
- 2.e No drain runs or other trenches shall be dug or otherwise created, without the prior written consent of the Local Planning Authority.

- 17) No development shall take place until a landscape scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include: -
1. Details of Soft Landscaping
 - 1.a Planting plans (at not less than a scale of 1:100),
 - 1.b Written specification of planting and cultivation works to be undertaken,
 - 1.c Schedule of plants giving species, plant sizes, and proposed numbers/densities where appropriate
 2. Details of Hard Landscaping
 - 2.c Means of enclosure/boundary treatments
 - 2.d Car Parking Layouts
 - 2.e Hard Surfacing Materials
 - 2.f External Lighting
 - 2.g Other structures
 3. Schedule for Implementation
- Thereafter the development shall be carried out and maintained in full accordance with the approved details.

- 18) Trees, hedges and shrubs shown to be retained on the approved plan shall not be damaged, uprooted, felled, lopped or topped without the prior written consent of the Local Planning Authority. If any retained tree, hedge or shrub is removed or severely damaged during construction, or is found to be seriously diseased or dying another tree, hedge or shrub shall be planted at the same place or, if planting in the same place would leave the new tree, hedge or shrub susceptible to

disease, then the planting should be in a position to be first agreed in writing with the Local Planning Authority and shall be of a size and species to be agreed in writing by the Local Planning Authority and shall be planted in the first planting season following the completion of the development or the occupation of the buildings, whichever is the earlier. Where damage is less severe, a schedule of remedial works necessary to ameliorate the effect of damage by tree surgery, feeding or groundwork shall be agreed in writing with the Local Planning Authority. New planting should comply with BS 3936 (1992) 'Nursery Stock, Part 1, Specification for Trees and Shrubs' Remedial work should be carried out to BS BS 3998:2010 'Tree work -Recommendations' and BS 4428 (1989) 'Code of Practice for General Landscape Operations (Excluding Hard Surfaces)'. The agreed work shall be completed in the first planting season following the completion of the development or the occupation of the buildings, whichever is the earlier.

- 19) The dwelling shall achieve 'Secured by Design' accreditation awarded by the Hillingdon Metropolitan Police Crime Prevention Design Adviser (CPDA) on behalf of the Association of Chief Police Officers (ACPO). No dwelling shall be occupied until accreditation has been achieved.