

Appeal Decision

Site visit made on 15 May 2017

by C Jack BSc(Hons) MA MA(TP) MRTPI

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

Decision date: 22nd May 2017

Appeal Ref: APP/A5270/W/17/3168410

23 Berrymede Road, Chiswick, W4 5JE

- 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 Dudley Mills of Kebbell Homes against the decision of the Council of the London Borough of Ealing.
 - The application Ref 164775VAR, dated 16 September 2016, was refused by notice dated 11 November 2016.
 - The application sought planning permission for the redevelopment of the site (following demolition of No 19 and 23 Berrymede Road and machine workshop) to provide 2 x one bedroom and 7 x two bedroom flats and associated car parking, landscaping and refuse store without complying with a condition attached to planning permission Ref PP/2013/1259, dated 18 December 2013.
 - The condition in dispute is No 2 which states that: *The development hereby approved shall be carried out in accordance with drawing numbers: BR/CD/19j; BR/CD/20e; BR/CD/21b; BR/CD/22n; BR/CD/23L; BR/CD/24m; BR/CD/25n; BR/CD/26c; BR/CD/28g; BR/CD/29j; BR/CD/30h; BR/CD/32v.*
 - The reason given for the condition is: *For the avoidance of doubt and in the interests of proper planning.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address given on the application form is 23 Berrymede Road but it is apparent from the appeal documents and my visit that the proposal relates to Nos 19 to 23 and I have considered the appeal on that basis. By the time of my visit the site had been cleared.
 3. The appellant originally sought to vary condition 2 of planning permission PP/2013/1259 to refer to replacement plans to allow for the provision of a total of 15 residential units within the development, comprising 12 x 1 bed flats, 2 x 2 bed flats and 1 x 3 bed flat, a net increase of 6 units compared to the planning permission. It was proposed that the increased number of flats would be accommodated within the parameters of the building as approved, together with some associated alterations, including in relation to fenestration, landscaping and cycle parking.
 4. During the course of the application, the appellant provided the Council with further revised drawings showing the mix of the proposed 15 units revised to 12 x studio flats, 2 x 2 bed flats and 1 x 3 bed flat. The Council considered
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that the further revisions did not address its concerns that the proposed variation did not represent a minor material amendment and proceeded to determine the application on the basis of the plans first submitted.

5. The appellant requests that I consider the appeal on the basis of the further revised drawings. Given that both the plans upon which the Council determined the application and the further revisions relate to 15 residential units within the originally approved building, I am satisfied that the scheme proposed in the further revisions is not so changed from the plans determined by the Council that any party's interests would be prejudiced by my consideration of them. I have therefore determined the appeal on the basis of the further revised drawings provided with the appeal.

Main Issue

6. Although the Council provided informatives referring to the planning merits of the proposal, its reason for refusal is that the proposal does not represent a minor material change to the planning permission. Therefore, I consider the main issue to be:
 - Whether or not the proposed variation to condition 2 would constitute a minor material amendment to planning permission Ref PP/2013/1259.

Reasons

7. The appeal site is situated in a predominantly residential street comprising principally of terraced houses. The local area is more mixed comprising a wider variety of residential properties, including some flats, together with various local commercial uses.
8. 'Minor material amendments' (MMA) to a planning permission may be sought by making an application under Section 73 of the Town and Country planning Act 1990 to vary or remove a condition attached to that permission. There is no statutory definition of a MMA although the Planning Practice Guidance (PPG) explains that a MMA *'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'*¹.
9. The Council's 'Protocol for minor material amendments following a grant of planning permission' 2011 is essentially consistent with the PPG. It further advises that there is no set of prescriptive rules to decide what is a MMA, and sets out that a judgment on materiality in any particular case is one of fact and degree, along with taking into account the likely impact of the amendment on the local environment, among other things. The Protocol goes on to set out a number of tests for considering the acceptability of a proposed revision as a MMA. While the status of the Protocol is not clear, it does not constitute adopted policy. Nevertheless, it provides a helpful starting point for considering the proposed MMA in conjunction with the PPG.
10. While the change proposed would not modify the approved residential use of the scheme, the increase from 9 to 15 units would be significant in terms of the overall scale and nature of that use. While I accept that the further revised scheme, which would include a significant proportion of studio flats, would be likely to result in fewer total residents, the overall operation and nature of an

¹ Paragraph: 017 reference ID 17a-017-20140306

increased number of smaller flats, whether mainly studio flats or 1 bed flats as previously proposed, would potentially be significantly different from the permitted scheme, including in terms of the nature of associated activity and general patterns of movements and behaviour of the occupants. I therefore consider that the net increase of 6 units would significantly alter the scale and nature of the proposal, notwithstanding that the size of the host building would be unchanged, thereby making the proposed variation substantially different from the permitted scheme. In my view, this would go beyond the scope of a MMA to the permitted scheme.

11. Furthermore, the exceedance of the threshold at which the policy assumption of the London plan 2016 for the provision of affordable housing comes into effect, and the consideration of the viability or otherwise of such provision, is a significant material consideration. I note that the appellant has provided a Viability Assessment Report indicating that the proposed scheme cannot support the provision of affordable housing. However, I consider that the potential capacity of the site and/or scheme to provide affordable housing, whether concluded to be viable or not, is a further indication that the overall scale and nature of the revised scheme is substantially different from that permitted. Therefore, I consider that the merits or otherwise of the provision of affordable housing also goes beyond the scope of a MMA in relation to the permitted scheme.
12. I have also considered the appellant's various other reasons that the revisions would constitute a MMA, including that the external alterations to the building and grounds would be limited, that the further revisions would mean no further cycle would be required, that no overspill parking would take place due to the controlled parking zone and a Unilateral Undertaking that occupants would not be entitled to a parking permit, that housing mix should be considered against the local area rather than the individual scheme, that boroughs should exceed their housing targets and increased density would help to realise the optimum potential of the site, that the bin storage would be reduced, details of balconies could be secured by condition, and that the internal living space of the further revised scheme would accord with standards. However, while individually some of these factors may have constituted a MMA in relation to the permitted scheme, in the context of my findings above and the evidence before me, none of these factors are sufficient to persuade me that the overall increase of 6 residential units would constitute a MMA, or to lead me to a different overall conclusion.

Other Matters

13. I note the appellant's view that in validating the application the Council essentially accepted that the minor material amendments procedure was appropriate and therefore the scheme falls within the remit of a MMA. However, I consider that the acceptance of an application for validation purposes should not be construed as a precursor for its acceptance in terms of the outcome, or as a replacement for due consideration of the merits and circumstances of the case, which in this instance help to inform a judgement as to whether the proposals constitute a MMA. Accordingly, my findings above are unaltered.

Conclusion

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

Catherine Jack

INSPECTOR