
Appeal Decisions

Site visit made on 22 May 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 30th May 2017

Appeal A Ref: APP/Q5300/W/17/3169758 18 Salisbury Road, Enfield EN3 6HQ

- 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 L Giroud against the decision of the Council of the London Borough of Enfield.
 - The application Ref 16/05100/VAR, dated 25 October 2016, was refused by notice dated 20 December 2016.
 - The application sought planning permission for demolition of site and erection of 2 x 3 bed semi-detached single family dwellings involving rooms in roof and off street parking without complying with a condition attached to planning permission Ref 15/04667/FUL, dated 1 August 2016.
 - The condition in dispute is No 4 which states that: The development shall not commence until an 'Energy Statement' has been submitted and approved in writing by the Local Planning Authority. Submitted details will demonstrate the energy efficiency of the development and shall provide for no less than a 35% improvement in total CO2 emissions arising from the operation of a development and its services over Part L of Building Regs 2013 utilising gas as the primary heating fuel. Should Low or Zero Carbon Technologies be specified as part of the build the location of the plant along with the maintenance and management strategy for their continued operation shall also be submitted. The Energy Statement should outline how the reductions are achieved through the use of Fabric Energy Efficiency performance, energy efficient fittings, and the use of renewable technologies. The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.
 - The reason given for the condition is: In the interest of sustainable development and to ensure that the Local Planning Authority may be satisfied that CO2 emission reduction targets are met in accordance with Policy CP20 of the Core Strategy, Policies 5.2, 5.3, 5.7 & 5.9 of the London Plan 2011 and the NPPF.
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Appeal B Ref: APP/Q5300/W/17/3169759 18 Salisbury Road, Enfield EN3 6HQ

- 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 L Giroud against the decision of the Council of the London Borough of Enfield.
- The application Ref 16/05382/VAR, dated 22 November 2016, was refused by notice dated 17 January 2017.
- The application sought planning permission for demolition of site and erection of 2 x 3 bed semi-detached single family dwellings involving rooms in roof and off street parking without complying with a condition attached to planning permission Ref 15/04667/FUL,

dated 1 August 2016.

- The condition in dispute is No 14 which states that: The development shall not commence until details of bird and/or bat nesting boxes/bricks shall be submitted to and approved in writing by the Local Planning Authority. No less than 8 nesting boxes/bricks shall be provided and the details shall include the exact location, specification and design of the habitats. The boxes/bricks shall be installed with the development prior to the first occupation of the building to which they form part or the first use of the space in which they are contained. The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.
 - The reason given for the condition is: To minimise the impact of the development on the ecological value of the area and to ensure the development provides the maximum possible provision towards the creation of habitats and valuable areas for biodiversity in accordance with Policy CP36 of the Core Strategy, the Biodiversity Action Plan and Policy 7.19 of the London Plan.
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Decisions

1. Appeal A is allowed and planning permission is granted for demolition of site and erection of 2 x 3 bed semi-detached single family dwellings involving rooms in roof and off street parking at 18 Salisbury Road, Enfield EN3 6HQ in accordance with the application Ref 16/05100/VAR dated 25 October 2016, without compliance with condition number 4 previously imposed on planning permission Ref 15/04667/FUL dated 1 August 2016 and subject to the conditions set out in the Schedule attached to the decision.
2. Appeal B is dismissed.

Procedural Matter

3. There are two appeals relating to this site. They both relate to the Council's refusal to permit the erection of 2 x 3 bed semi-detached single family dwellings involving rooms in roof and off street parking without complying with a condition. Appeal A concerns condition 4 regarding the need for the development to meet specific energy efficiency standards. Appeal B concerns condition 14 requiring the provision for bird and/or bat nesting boxes/bricks.
4. As both appeals relate to the same development they are covered in this single decision letter. However the issues and decisions over each condition are dealt with separately.

Main Issues

5. The main issue in Appeal A is whether condition 4 is reasonable and necessary in the interest of addressing climate change.
6. The main issue in Appeal B is whether condition 14 is reasonable and necessary in the interest of enhancing biodiversity.

The Development

7. The development comprises the replacement of a detached dwelling with a pair of semi-detached dwellings which appeared to be nearing completion on the date of my visit. The site is within the urban area of Enfield and forms part of a residential frontage of closely arranged housing on both sides of the street comprising detached, semi-detached and terraced housing. The Small River Lea runs along the rear boundary of the housing along the east side of

Salisbury Road, including that of the appeal site, confined within the narrow area between this and the rear of the housing along Medcalf Road.

Reasons

Appeal A

8. Policy DMD 51 of Enfield's Development Management Document (DMD), adopted in November 2014 requires all major residential development to achieve as a minimum (a) 25% reduction in carbon dioxide emissions over Part L1A of Building Regulations (2010) in line with best practice to 2013; (b.) 40% improvement from 2013 to 2016; and (c.) moving towards zero carbon from 2016.
9. Although this proposal is not a major residential development, Policy DMD 51 will for minor residential development seek to encourage all residential developments to achieve the above targets where it is demonstrated that this is technically feasible and economically viable. In the supporting text this policy is justified through Policy 5.2 of the London Plan which sets out targets including for residential development for up to 2031 and forms the backbone of Enfield's energy efficiency targets.
10. The supporting text also refers to the expectation for energy statements to accompany proposals to demonstrate compliance with this policy, which are independently audited through nationally recognised schemes such as the Code for Sustainable Homes (CSH) for new built residential.
11. The condition in dispute requires the proposal demonstrates an energy efficiency of no less than a 35% improvement in total CO2 emissions arising from the operation of a development and its services over Part L of Building Regs 2013 which is an update to the requirement for major residential development as set out in Policy DMD 51. The Council's statement has not provided me with any more detailed clarification over this requirement and added very little to the original delegated report other than that the condition is required for the proposal to adhere to the originally submitted energy strategy and that otherwise the scheme would not be policy compliant.
12. I find the appellant's case to be more persuasive in that with the removal of condition 4 the development would still remain subject to Part L of the Building Regulations. Having been tightened in both 2013 and 2016, and with the Government having withdrawn its support for the CSH, Part L provides very strict standards for energy efficiency and emissions and provides the most relevant and up-to-date industry standard.
13. The Written Ministerial Statement (WMS) of 25 March 2015 stated: *"From the date the Deregulation Bill 2015 is given Royal Assent, local planning authorities and qualifying bodies preparing neighbourhood plans should not set in their emerging Local Plans, neighbourhood plans, or supplementary planning documents, any additional local technical standards or requirements relating to the construction, internal layout or performance of new dwellings. This includes any policy requiring any level of the CSH to be achieved by new development; the government has now withdrawn the code, aside from the management of legacy cases."*
14. The Council has included an email from the Department of Communities and Local Government dated 1 October 2015 with advice about legacy cases of

planning permissions granted with CSH conditions and appeals against such following the Written Ministerial Statement of 25 March 2015. The Council's statement again provides no clarification over how this relates specifically to this appeal. However, I note this advice is that, as Royal Assent for the Bill was granted on 26 March 2016, legacy cases are planning permissions granted before that date, which would not apply in this case. In my view, this lends no support to the Council's defence of a condition reflecting an energy strategy based on a CSH audit.

15. The appellant refers to the requirement for new homes to be 'nearly zero carbon' being not introduced until 2019 under Part L1A of the Building Regulations. Pending this I consider the requirement for the two dwellings under construction to be subject to the current Part L would mean that this development would satisfy the Council's Core Strategy¹ (CS) Core Policy 20 in respect of addressing the causes of climate change by minimising energy use.
16. Insofar as these relate to minor residential development I find this proposal to give rise to no material conflict with either Policy 5.2 of the London Plan in respect of minimising CO2 emissions, with aforementioned Policy DMD 51 or with the National Planning Policy Framework (the Framework). Therefore, condition 4 is neither reasonable nor necessary in the interest of addressing climate change.

Appeal B

17. The site abuts an urban river which connects areas of larger biodiversity habitat in the wider environs. Despite its confined nature this linear water habitat is likely to attract some wildlife and act as a corridor for the movement of birds and bats. Small roosting habitats for bats or nesting sites for birds, such as swifts, might conveniently and inexpensively be incorporated into the development and these might prove attractive to species using the river corridor. Increasing the provision of such sites in buildings would be of general benefit to urban biodiversity.
18. Policy 118 of the Framework encourages opportunities to incorporate biodiversity in and around developments. Policy 7.19 of the London Plan seeks that planning decisions on development proposals should wherever possible make a positive contribution to the protection, enhancement, creation and management of biodiversity. CS Core Policy 36 seeks similar aims. DMD Policy 79 would require the provision of on-site ecological enhancements which I am not persuaded would be either unfeasible or not viable. The condition in dispute to provide 8 nesting boxes/bricks would therefore gain the support of these policies.
19. Whilst no disputing the appellant's evidence that there are areas of open water, grassland and woodland which provide more suitable wildlife habitats in the area, this would not alter the overall benefits of policies which seek include modest biodiversity within new developments. Consequently, I find that Condition 14, as part of a general approach taken by the Council to new developments, reasonable and necessary in the interest of enhancing biodiversity.

¹ The Enfield Plan – Core Strategy 2010-2025 – adopted November 2010.

Conditions

20. The guidance in the Planning Practice Guidance 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. As I have no information before me about the status of the other conditions imposed on the original planning permission, 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.

Conclusions

21. For the reasons set out above, having taken into account all other matters raised, I conclude that the appeal A should be allowed and that appeal B should be dismissed.

Jonathan Price

INSPECTOR

Schedule of Conditions
Appeal A Ref: APP/Q5300/W/17/3169758
18 Salisbury Road, Enfield EN3 6HQ

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: FRA1152 110, FRA1152 111E, FRA1152 11, FRA1152 114E, FRA1152 112E.
- 2) The development shall not commence until details of the external finishing materials to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
- 3) The development shall not commence until details of a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The detailed landscaping scheme shall include the following details:
 - a. Schedules of plants and trees, to include native and wildlife friendly species and large canopy trees in appropriate locations (noting species, planting sizes and proposed numbers / densities) to be planted;
 - b. Plans showing retention of existing shrubs and trees;
 - c. Soft plantings: including grass and turf areas, shrub and herbaceous areas;
 - d. Enclosures: including types, dimensions and treatments of walls, fences, screen walls, barriers, rails, retaining walls and hedges;
 - e. Hard landscaping: including ground surfaces, kerbs, edges, ridge and flexible pavings, unit paving, furniture, steps and if applicable synthetic surfaces; and any other landscaping features forming part of the scheme.

All landscaping in accordance with the approved scheme shall be completed/planted during the first planting season following practical completion of the development hereby approved. The landscaping and tree planting shall set out a plan for the continued management and maintenance of the site and any planting which dies, becomes severely damaged or diseased within five years of completion of the development shall be replaced with new planting in accordance with the approved details or an approved alternative and to the satisfaction of the Local Planning Authority. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.

- 4) The development shall not commence until details of surface drainage works have been submitted and approved in writing by the Local Planning Authority. The details shall be based on an assessment of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles as set out in the Technical Guidance to the National Planning Policy Framework and shall be designed to a 1 in 100 year storm event allowing for climate change. The drainage system

shall be installed/operational prior to the first occupation and a continuing management and maintenance plan put in place to ensure its continued function over the lifetime of the development. The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.

- 5) Prior to occupation details of the internal consumption of potable water have been submitted to and approved in writing by the Local Planning Authority. Submitted details will demonstrate reduced water consumption through the use of water efficient fittings, appliances and recycling systems to show consumption equal to or less than 105 litres per person per day. The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.
- 6) The development shall not commence until details of the siting, number and design of secure/covered cycle parking spaces have been submitted to and approved in writing by the Local Planning Authority. The approved details shall thereafter be installed and permanently retained for cycle parking.
- 7) Following practical completion of works a final Energy Performance Certificate shall be submitted to and approved in writing by the Local Planning Authority. Where applicable, a Display Energy Certificate shall be submitted within 18 months following first occupation.
- 8) The development shall not commence until details of the surfacing materials to be used within the development including footpaths, access roads and parking areas and road markings have been submitted to and approved in writing by the Local Planning Authority. The surfacing shall be carried out in accordance with the approved detail before the development is occupied or use commences.
- 9) The site shall be enclosed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The means of enclosure shall be erected in accordance with the approved detail before the development is occupied.
- 10) The parking areas forming part of the development shall only be used for the parking of private motor vehicles and shall not be used for any other purpose.
- 11) Notwithstanding the provisions of Class A and Class D of the Town and Country Planning (General Permitted Development) Order 2015 or any amending Order, no buildings or extensions to buildings shall be erected without the prior approval in writing of the Local Planning Authority.
- 12) The development shall not commence until details of bird and/or bat nesting boxes/bricks shall be submitted to and approved in writing by the Local Planning Authority. No less than 8 nesting boxes/bricks shall be provided and the details shall include the exact location, specification and design of the habitats. The boxes/bricks shall be installed with the development prior to the first occupation of the building to which they form part or the first use of the space in which they are contained. The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.

- 13) The new dwelling hereby approved shall be built in accordance with Requirement M4(2) of Building Regulations and shall be maintained as such thereafter. Prior to occupation evidence of compliance with Requirement M4(2) across the development shall be submitted to and approved in writing by the Local Planning Authority.

---End of Conditions---