
Appeal Decision

Site visit made on 2 May 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 1 June 2017

Appeal Ref: APP/E5330/W/16/3165949

Blackheath Autos, Diamond Terrace, Greenwich SE10 8QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Blackheath Motor Services Ltd against the decision of Royal Borough of Greenwich Council.
 - The application Ref 16/0371/F, dated 5 February 2016, was approved on 18 November 2016 and planning permission was granted subject to conditions.
 - The development permitted is the demolition of existing garage and construction of a 3-bed house with basement. Previously approved planning permission dated 30/01/2013.
 - The conditions in dispute are Nos 14, 15 and 18 which state that:
 - Condition 14: *The demolition, earth removal, foundation and building works required to implement this development shall be carried out between the hours of:
Monday to Friday 10.00am to 4.00pm
Saturday 8.00am to 12pm (noon)
And not at all on Sunday and Bank Holidays*
 - Condition 15: *All dwellings within the development hereby permitted must achieve the following energy performance standards:
(i) All houses and flats whose material operations have commenced prior to 1st October 2016 must achieve a minimum of a thirty five per cent (35%) reduction in building carbon dioxide emissions beyond Part L of the Building Regulations 2013.
(ii) All houses and flats whose material operations have commenced on or after 1st October 2016 must achieve zero carbon dioxide emissions.
(iii) No part of the development hereby permitted shall be occupied until evidence of the energy performance standard referred to in part [(i)] [(ii)] of this Condition having been achieved, has been submitted to, and approved in writing by, the Local Planning Authority.*
 - Condition 18: *There shall be no closure of Diamond Terrace at any time during the development, other than for reasons of health and safety. Full details of any closure shall be submitted to and be approved in writing by the Local Planning Authority, two (2) months before any closure takes place. These details shall include evidence that consultation has been undertaken with residents, any responses received and how these have been addressed and if not reasons why.*
 - The reasons given for the conditions are:
 - Condition 14: *To safeguard the amenities of neighbouring properties and the area generally and ensure compliance with Policy E(a) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014).*
 - Condition 15: *To minimise future carbon dioxide emissions and mitigate climate change, and to comply with Policy 5.2 of the London Plan (2016) and Policy E1 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014).*
 - Condition 18: *To ensure the development does not adversely impact on existing public usage of the road, in accordance with Policy 6.3 of the London Plan (March 2016) and Policy IM(b) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014).*
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Decision

1. The appeal is allowed and the planning permission Ref 16/0371/F for demolition of existing garage and construction of a 3-bed house with basement at Blackheath Autos, Diamond Terrace, Greenwich SE10 8QL granted on 18 November 2016 by Royal Borough of Greenwich Council, is varied by deleting condition Nos 14 and 15, but subject to condition No 18 imposed therein, so far as the same is still subsisting and capable of taking effect and subject to substituting condition No 14 for the following condition:
 - 14) *The demolition, earth removal, foundation and building works required to implement this development shall be carried out between the hours of:
Monday to Friday 08:00am to 18:00pm
Saturday 8.00am to 12pm (noon)
And not at all on Sunday and Bank Holidays*

Background

2. In January 2013, planning permission was granted to demolish the existing garage and construct a three bed house with a basement¹ subject of a number of planning conditions. This planning permission lapsed in January 2016. However in November 2016² planning permission was granted by the Council for the demolition of the existing garage and construction of a three bed house with a basement subject to a number of planning conditions.
3. The appellant seeks to remove or vary condition Nos 14, 15 and 18 on the basis that they fail to six tests set out in paragraph 206 of the National Planning Policy Framework. The Council consider that each of the conditions meet the relevant tests and should be retained.
4. Diamond Terrace is a private road that extends between Point Hill and Hyde Vale within the West Greenwich Conservation Area. The terrace is a quiet, narrow access that serves a number of residential properties. Vehicles and pedestrians use the access. Diamond Terrace is signposted as 'residents parking only', unlike Point Hill and Hyde Vale which are subject to residents permit holder parking within designated bays. Point Hill has a single junction with Diamond Terrace whereas Hyde Vale has two. One is tarmacked and rises gradually before extending to Point Hill. The other is initially cobbled and capable of taking a vehicle, but this narrows substantially and is only suitable for pedestrians, before joining the rest of the terrace.
5. Residential properties are close to the southern side of the terrace near to the site. Sutlers Cottages (Nos 1, 1a and 2) are behind a high brick wall, but No 2 has a pedestrian gate opposite to the appeal site. Terraced properties on Hyde Vale back on to the appeal site. Each property and their rear gardens are sited on considerably lower land levels. The upper floor rear elevation windows of each property are visible above the site's timber boundary fence. Detached garages and an area of hardstanding adjoin the western boundary of the site.

Main Issues

6. I consider the main issues to be: (i) the effect that removing or varying condition No 14 would have on the living conditions of neighbouring residents on Diamond

¹ Council Application Refs: 12/2529/F

² Council Application Ref: 16/0371/F

Terrace and Hyde Vale; (ii) the effect that removing condition No 15 would have on future carbon dioxide emissions and the dwelling's role in mitigating the effects of climate change; and (iii) the effect that removing of condition No 18 would have on the safety of pedestrians, cyclists and drivers using Diamond Terrace.

Reasons

Condition 14

7. The Council accept that by limiting the hours of work as set out in condition No 14 it will increase the build time. Nonetheless they consider the special backland circumstances of the site, the nature of the works being undertaken and the relationship with adjoining properties warrants a more confined period of activity, as it would avoid significant adverse noise, dust and light impacts.
8. There are however inconsistencies between the hours stated in condition No 14 and the hours stated in condition Nos 6 and 7. These two conditions set out that 'works of demolition' and 'works of construction' should be carried out during normal working hours. These hours are 08:00 to 18:00 hours Monday to Friday, and 08:00 to 13:00 hours on Saturdays, with no noisy working audible at the site boundary being permitted on Sundays or Bank Holidays. While I note the reason given for condition No 14, the same policy is relied upon in the reasons for condition Nos 6 and 7. Even though they are stand-alone conditions and require, among other things, submission of details of measures to address noise and dust, in practice, the appellant would need to comply with two separate sets of times. This raises precision and enforceability issues.
9. Despite the unique nature of the site's location and the extent of works that will be required, it is unclear why a more onerous restriction is necessary and reasonable. I gather that there would be noisy aspects of the work, but during the hours of 08:00 to 18:00 noise levels are generally higher and the effects of noise are in comparison to evening hours not felt as much. These hours, for most of the year, benefit from daylight, but even during winter months, I am not satisfied that longer hours would necessarily equate to a significant harm to residents' living conditions. However, it does remain reasonable and necessary to control the hours to avoid a significant adverse effect being created during more sensitive times of the day.
10. So, even though some residents nearby may be elderly and house bound, I do not consider that there are sufficient reasons to confine working hours beyond what are typical working hours. While there are no direct assurances that a longer working period would result in the development being completed sooner, it would help in enabling the completion of the scheme quicker without having a significant adverse effect on the living conditions of residents during what are daytime hours.
11. Although reference is made in evidence to condition No 14 controlling delivery hours, on my reading of the condition, this is not specified. Such a restriction may avoid conflicts with residents using Diamond Terrace during morning and evening rush hour periods especially. However, despite the appellant's willingness to amend the condition, I note the Council is currently considering an application to vary condition No 14. This would give the parties and in particular residents' who depend upon the terrace for access the opportunity to discuss and for appropriate consultation to take place on this matter.

12. For these reasons, I conclude that condition No 14 is reasonable and necessary to limit the hours in which this development can be implemented in the interests of living conditions of neighbouring residents on Diamond Terrace and Hyde Vale. However, I will replace the version of condition No 14 that is subject of this appeal with one that refers to longer hours. The development would comply with Policy E(a) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014) (Core Strategy) and London Plan Policy 7.15.

Condition 15

13. Core Strategy Policy E1 requires all development to reduce energy demands in the borough. However support Core Strategy paragraph 4.6.6 explains that *all development should achieve carbon dioxide reductions in line with policy 5.2 of the London Plan*. The carbon dioxide reductions in London Plan Policy 5.2 are set in part B and the table. However, as the appellant rightly points out, these apply to major developments. The proposal is not a major development.
14. Also, a Written Ministerial Statement³ (WMS) sets out two important considerations. The first is an expectation that in applying existing policies, conditions would not be set with requirements above the outgoing Code for Sustainable Homes (CfSH) level 4 equivalent. The second is the *exemption for small housing sites of 10 units or fewer* from the zero carbon homes target. In terms of the first point, the development amounts to an improvement of between 25% and 39.6% depending on the respective parties' figures. Either way, the improvement is at a level equivalent to CfSH level 4. Insofar as the second point, the development is a single dwelling and would be, as the WMS suggests be exempt in any event.
15. So, even though the Core Strategy has been the subject of examination and was considered to be in general conformity with the London Plan, I do not consider Core Strategy Policy E1 or London Plan Policy 5.2 require the imposition of this condition for a development of this scale, aside to whether the carbon reduction is at CfSH level 4. The dwelling would reduce demand for energy through its design as sought by Core Strategy Policy E1, despite the Council's point around the need for this policy given the content of the London Plan.
16. I conclude that condition No 15 is not necessary, relevant to planning, to the development to be permitted, enforceable, precise and reasonable in the interests of future carbon dioxide emissions and the dwelling's role in mitigating the effects of climate change. Removing this condition would not conflict with Core Strategy Policy E1 and London Plan Policy 5.2; which seek development to reduce demand for energy through its design by being lean.

Condition 18

17. The site lies off a very narrow access and on a bend. There is a very limited amount of space available for vehicles and or pedestrians to pass one another, except in front of Nos 2 to 15 Diamond Terrace. Here the access is just wide enough for a vehicle to park next to the front garden of each property and for a vehicle and or pedestrians to pass.
18. I understand the appellant's points around the construction process and potential delays to the development, however residents of the terrace especially are dependent on access being available as it is the sole means by way they can

³ Written Ministerial Statement, 25 March 2015

access their properties and the wider area. Given this and as it is heavily constrained, it is reasonable and necessary to ensure that all concerned are aware when a closure is needed and appropriate procedures put in place. Notwithstanding this, the condition as currently drafted, would allow for the closure of Diamond Terrace if required for health and safety reasons.

19. While the appellant has engaged with the Council and residents, so that access along Diamond Terrace is managed effectively, an agreement has not been reached between the two main parties. Still, the appellant confirms that they have adapted their site operations so that they can proceed with the development without needing to close the terrace, even if this has borne extra cost and the condition was not imposed on the 2013 planning permission. However, the appellant recognises that the sequence and approach to the construction will need to be continually reviewed. Given the uncertainty, even if Council officers did not recommend that this condition be attached to any approval, I am satisfied that the condition remains reasonable and necessary.
20. Accordingly, I conclude that the removal of condition No 18 would have a significant effect on the safety of pedestrians, cyclists and drivers using Diamond Terrace. This would conflict with Core Strategy Policy IM(b) and London Plan Policy 6.3; which together seek to ensure development should not adversely affect safety on the transport network and promoting walking and cycling safety.

Other Matter

21. I recognise the appellant's points in respect of the Council's approach and timeliness in considering applications, nevertheless there are routes available outside of this appeal to the appellant if they are not satisfied with the Council's actions. In any event I have considered this appeal on its planning merits.

Conclusion

22. I have concluded that condition No 14 should be varied and condition No 15 should be removed. On this basis, the appeal should be allowed, but for the reasons given above, I conclude that it is necessary to continue to impose condition No 18.

Andrew McGlone

INSPECTOR