



Appeal Decision

Site visit made on 20 June 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 12th July 2017

Appeal Ref: APP/E5330/W/17/3172017

224 Trafalgar Road, Greenwich SE10 9ER

- 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 Ismet Dinc against the decision of Royal Borough of Greenwich Council.
 - The application Ref 17/0116/V, dated 12 January 2017, was refused by notice dated 9 March 2017.
 - The application sought planning permission for the construction of a mansard roof extension to accommodate the creation of 2 x 1-bed self contained flats without complying with conditions attached to planning permission Ref 16/2000/F, dated 9 December 2016.
 - The conditions in dispute are Nos 3 and 7 which state that:
(3) Prior to the implementation of the development details shall be submitted to and approved by the Council demonstrating that the extract ducting will utilise a 3 stage filtration process and carbon activated filters complies with the DEFRA requirements as set out in "Guidelines on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems". The approved extract ducting shall be installed in conjunction with the approved extensions and shall be completed prior to the first occupation of the residential flats. The extract ventilation system shall thereafter be maintained in full working order.
(7) All dwellings within the development hereby permitted must achieve the following energy performance standards:
(i) All apartments whose material operations have commenced prior to 1 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 apartments whose material operations have commenced on or after 1 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) or (ii) of this Condition (where relevant) having been achieved, has been submitted to, and approved in writing by, the Local Planning Authority.
 - The reasons given for the conditions are:
(3) To protect the residential amenity of adjacent residential accommodation from air pollution and ensure compliance with Policy 7.14 of the London Plan and Policies E(a) and E(c) of the Royal Greenwich Local Plan; Core Strategy with Detailed Policies (adopted 30 July 2014).
(7) To minimise future carbon dioxide emissions and mitigate climate change, and to comply with Policy 5.2 of the London Plan (2015) and Policy E1 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (adopted 30 July 2014).
-

Decision

1. The appeal is allowed and planning permission is granted for the construction of a mansard roof extension to accommodate the creation of 2 x 1-bed self contained flats at 224 Trafalgar Road, Greenwich SE10 9ER in accordance with the application Ref 17/0116/V dated 12 January 2017, without compliance with condition numbers 3 and 7 previously imposed on planning permission Ref 16/2000/F dated 9 December 2016, subject to the conditions set out in the attached schedule.

Background and Main Issue

2. Planning permission is in place to construct a mansard roof extension to the existing building to create 2 flats. The appellant contests that Condition 3 relates to commercial units and, therefore, is not relevant to two roof flats and, as such, the condition is not necessary. The Council does not contest the removal of this condition and I have no reason before me that would lead me to take a different view in relation to this condition.
3. Condition 7 relates to controlling carbon dioxide emissions from the development in order to mitigate climate change. However, the appellant contests that this requirement applies to major developments only. The appellant considers this condition is not relevant and seeks its removal.
4. Taking the above background into account the main issue is whether Condition 7 is reasonable and necessary in the interests of minimising future carbon dioxide emissions and mitigating climate change.

Reasons

5. The appellant indicates that the first part of condition 7 does not apply as building operations have not commenced prior to 1 October 2016. Indeed the planning permission relating to the roof flats post-dated this date (9 December 2016). I agree with the appellant on this point. The second part of this condition requires flats constructed on or after 1 October 2016 to have zero carbon dioxide emissions.
6. Policy 5.2 of the London Plan seeks to minimise carbon dioxide emissions. Part A of this Policy seeks development proposals to make the fullest contribution to minimising carbon dioxide emission by using less energy (be lean), supply energy efficiently (be clean) and use renewable energy (be green). Policy E1 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (the Core Strategy) reflects this. Part B of London Plan Policy 5.2 sets a requirement upon developers to ensure that major residential development would lead to zero carbon developments from 2016.
7. Part B of Policy 5.2 requires major development to meet targets to reduce carbon dioxide emissions in buildings. The interpretation provided within the Town and Country Planning (Development Management Procedure) (England) Order 2010 Part 1 as to what constitutes "major development" is residential development comprising ten dwellinghouses or more. The proposal would create two residential flats. Therefore, the scheme would not be a major development to which Part B of Policy 5.2 would apply. I therefore consider the Council's requirement for the flats to achieve zero carbon dioxide emissions to be overly onerous in this case. Whilst the Council Sustainability Team Leader's indicates that local authorities are allowed to set standards beyond

those of Building Regulations I have not been directed to any such alternative standards that the Council might apply.

8. Nonetheless, both Policy 5.2 Part A of the London Plan and Policy E1 of the Core Strategy seek to minimise carbon dioxide emissions and this applies to all developments. In this respect I conclude that a condition is reasonable and necessary in the interests of ensuring the flats minimise carbon dioxide emissions by requiring the details of the energy performance of the flats to be subject to local authority approval. Such control would ensure that the proposed development complies with Policy 5.2 Part A of the London Plan and Policy E1 of the Core Strategy.

Other Matters

9. The appellant has also drawn my attention to an informative that relates to Condition 5 imposed upon planning permission Ref 16/2000/F. Informatives although forming part of the Council's decision notice pertain to information only and, as such, the appellant is not bound to the information contained within it. Furthermore, informatives are not subject to a right of appeal under section 73 of the Town and Country Planning Act 1990. I therefore cannot remove this informative from the Council's decision notice (Ref 16/2000/F).

Conditions

10. The guidance in the Planning Practice Guidance makes it 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.
11. Section 73 of the Town and Country Planning Act 1990 indicates that planning permission must not be granted under this section to extend the time within which development must be started therefore the timeframe for implementation of the development runs from the date of the original permission.
12. I have considered the planning conditions previously imposed by the Council in light of paragraph 206 of the National Planning Policy Framework and the advice in the Planning Practice Guidance. In the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans.
13. A condition relating to materials is appropriate in the interests of the character and appearance of the area, as is a condition relating to the refuse storage enclosure. A condition to secure the development as a 'car-free' scheme and to provide cycle parking spaces is appropriate to promote sustainable transport by reducing the need for car travel. A condition restricting the use of the flat roof is required in the interests of the living conditions of adjoining occupiers. To minimise future carbon dioxide emissions and mitigate climate changes a condition relating to the energy performance of the flats is necessary. In the interests of insulation, biodiversity, reduced flood risk and character and appearance of the area a condition relating to the details of the grass roof is

necessary. A construction method statement is required to ensure safety and the character and appearance of the area and an operational working hours condition would protect the living conditions of adjoining occupiers. A condition requiring built-in storage is required to ensure a good standard of habitable accommodation for future occupiers.

14. A condition relating to extract ducting is not necessary as the proposed development relates to two flats rather than commercial units with kitchen. I consider a condition requiring the confirmation of the details of the green roof installed at the appeal site to be overly onerous as the condition requiring the details of the green roof to be submitted for local planning authority approval also requires installation as per the details approved.

Conclusions

15. As I have concluded that a condition to minimise carbon dioxide emissions relating to the proposed flats to be reasonable and necessary in the interests of reducing future carbon dioxide emissions and mitigating climate change, I will replace Condition 7 with one that refers to the details of the energy performance of the flats. This will be subject to local authority approval. In arriving at this conclusion I have had regard to the advice within the Planning Practice Guidance and Chapter 10 of the National Planning Policy Framework that seek resilience to the impact of climate change and supports the delivery of renewable and low carbon energy.
16. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting Conditions 3 and 7 and substituting another condition, together with the imposition of those previously imposed conditions considered appropriate above.

Nicola Davies

INSPECTOR

SCHEDULE

CONDITONS

- 1) The development hereby permitted shall begin no later than 9 December 2019.
- 2) The development hereby permitted shall be carried out in accordance with approved plan PRO1 (PROPOSED PLANS & ELEVATIONS).
- 3) No development shall take place until details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until arrangements have been made to secure the development as 'car-free' in accordance with a detailed scheme or agreement that has been submitted to and approved in writing by the local planning authority. The approved scheme or agreement shall ensure that: -
 - All future occupiers of the approved development cannot apply for, obtain, or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled persons Act 1970 or similar legislations);
 - All occupiers of the approved development are required to surrender any such permit wrongly issued or held; and

The scheme or agreement shall be implemented prior to the occupation of the development hereby permitted and shall be retained and operated for the lifetime of the development.

- 5) Prior to the occupation of the development hereby permitted six secure cycle parking spaces shall be provided solely for the use by the occupiers of the residential flats and thereafter the six secure cycle parking spaces shall be retained and maintained for cycle parking for the lifetime of the development.
- 6) No part of the roofs of the proposed flats hereby approved shall be used as, or altered to form, a balcony, roof garden, roof terrace or similar amenity area. No external access to the flat roof shall be provided from the windows of the development hereby approved.
- 7) No development shall take place until details of the refuse storage enclosure, including separate residential bin store, have been submitted to and approved in writing by the local planning authority. The refuse storage enclosure shall be constructed in accordance with the approved details, completed prior to the first occupation of the development hereby permitted and thereafter shall be retained as such for the lifetime of the development.

- 8) No development shall take place until details of the energy performance of the flats have been submitted to and approved in writing by the local planning authority. The energy performance measures shall be carried out in accordance with the approved details, completed prior to the first occupation of the development hereby permitted and thereafter shall be retained as such for the lifetime of the development.
- 9) No development shall take place until details of the green roof, compliant with GRO Green Roof Code 2011, has been submitted to and approved in writing by the local planning authority. The details shall include:-
- A report from a suitably qualified ecologist specifying how the living roof will be developed for biodiversity with details of landscape features and a roof cross section.
 - The green roof shall comprise of, but not necessarily limited to: -
 - Biodiversity based with extensive/semi-intensive soils
 - Substrate which is commercial brick-based aggregate or equivalent with a varied substrate depth of 80-150mm planted with 50% locally native herbs/wildflowers in addition to sedum, include additional features such as areas of bare shingle, areas of sand for burrowing invertebrates, individual logs or log piles, and an area suitable for Black Redstarts.

The development shall be implemented in accordance with the approved details, completed prior to the first occupation of the development hereby permitted and thereafter shall be retained as such for the lifetime of the development.

- 10) No development shall take place until a construction method statement has been submitted to and approved in writing by the local planning authority. The method statement shall include details of the following: -
- Haulage routes
 - Measures to ensure the footway and carriageway is not blocked.
 - Likely noise levels to be generated from plant
 - Details of any noise screening measures
 - Proposals for monitoring noise and procedures to be put in place where agreed noise levels are exceeded
 - Where works are likely to lead to vibration impacts on surrounding properties, proposal for monitoring vibration and procedures to be put in place if agreed vibration levels are exceeded. Note: it is expected that vibration over 1mm/s measured as a peak particle velocity would constitute unreasonable vibration.
 - Likely dust levels to be generated and any screening measures to be employed.
 - Proposals for monitoring dust and controlling unacceptable releases

- Wheel washing facilities and facilities for discharging the water.

The development shall be carried out in accordance with the approved construction method statement.

- 11) The demolition, earth removal, infilling, landscaping, foundation and building works required to implement this development shall only be carried out between the hours of 08:00 to 18:00 Mondays to Fridays, 08:00 to 13:00 Saturdays and no audible work on Sundays and Bank Holidays.
- 12) No development shall take place until details of built-in storage facilities of a minimum 1.5 m² for each 1-bed flat has been submitted to and approved in writing by the local planning authority. The built-in storage facilities shall be carried out in accordance with the approved details and completed prior to the first occupation of the development hereby permitted.