
Appeal Decision

Site visit made on 20 March 2017

by **B Bowker Mplan MRTPI**

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

Decision date: 14 July 2017

Appeal Ref: APP/Q5300/W/16/3164473
1-24 River Bank, Southgate N21 2AA

- 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 R Nicholas against the decision of the Council of the London Borough of Enfield.
- The application Ref 16/04139/VAR, dated 8 September 2016, was refused by notice dated 3 November 2016.
- The application sought planning permission for formation of third floor involving extension to roof and dormer windows to all elevations to provide 2 x 2 self contained flats, 3-storey rear extension to provide lift shaft and installation of French doors and Juliet balconies to rear of all four blocks to provide a total of 8 additional residential units without complying with a condition attached to planning permission Ref P12-02105PLA, dated 14 May 2014.
- The condition in dispute is No 12 which states that [sic]:
Evidence confirming that the development achieves a Code for Sustainable Homes rating of no less than 'Level 3' shall be submitted to and approved in writing by the Local Planning Authority. The evidence required shall be provided in the following formats and at the following times:
 - a. a design stage assessment, conducted by an accredited Code Assessor and supported by relevant BRE interim certificate, shall be submitted at pre-construction stage prior to the commencement of superstructure works on site; and,
 - b. a post construction assessment, conducted by and accredited Code Assessor and supported by relevant BRE accreditation certificate, shall be submitted following the practical completion of the development and prior to the first occupation.

The development shall be carried out strictly in accordance with the details so approved, shall be maintained as such thereafter and no change there from shall take place without the prior approval of the Local Planning Authority.

- The reason given for the condition is:
In the interests of addressing climate change and to secure sustainable development in accordance with the strategic objectives of the Council and adopted policy.
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Decision

1. The appeal is allowed and planning permission is granted for the formation of third floor involving extension to roof and dormer windows to all elevations to provide 2 x 2 self contained flats, 3-storey rear extension to provide lift shaft and installation of French doors and Juliet balconies to rear of all four blocks to provide a total of 8 additional residential units, at 1-24 River Bank, Southgate N21 2AA, in accordance with the application Ref 16/04139/VAR, dated 8 September 2016, without compliance with condition No 12 previously imposed
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on planning permission Ref P12-02105PLA, dated 14 May 2014, but subject to the attached schedule of conditions.

Main Issue

2. The main issue is whether the condition is reasonable and necessary in the interests of addressing climate change and achieving sustainable development.

Reasons

3. The Written Ministerial Statement¹ (WMS) and related changes made to Planning Practice Guidance² (PPG) withdrew the Code for Sustainable Homes (CSH) from national planning policy and replaced it with a number of new standards. For decision taking during the transitional period, the WMS states that when an existing plan policy refers to the CSH, authorities may apply a requirement for a water efficiency standard equivalent to the new national technical standard, or in the case of energy, a standard consistent with the WMS concerning energy performance.
4. The WMS also states that for legacy cases, the CSH still applies. Legacy cases are defined as residential development that are legally contracted to apply a code policy such as affordable housing through the National Affordable Housing Programme 2015 to 2018, or where planning permission has been granted subject to a condition stipulating discharge of a code level which a developer is not appealing or seeking to have removed or varied. As the proposal does not fall into either exception, it cannot be considered a legacy case.
5. The starting point for the decision maker is the development plan as outlined at Section 38 (6) of the 2004 Planning and Compulsory Purchase Act and Section 70 (2) of the 1990 Town and Country Planning Act. In this context, the Council contend that the proposal should be considered in line with a number of policies cited from its Core Strategy (CS) and Development Management Document (DMD). Of particular relevance to the proposal, CS Policy CP4 and DMD Policy DMD50 require residential development to exceed CSH levels 3 and 4 respectively. I also note that the DMD was prepared and adopted in accordance with the National Planning Policy Framework.
6. Notwithstanding the proposals conflict with CS Policy CP4 and DMD Policy DMD50 and the Council's comments on this matter, I attach great weight to the WMS and the PPG. In the context of Section 38 (6) of the PCPA and Section 70 (2) of the TCPA, the great weight I attribute to the WMS and PPG outweighs the weight I afford to CS Policy CP4 and DMD Policy DMD50.
7. In reaching this view, I note that a supporting pre-assessment document accompanied the original application and raised no issues in achieving the required CSH level from a technical or viability point of view. However, the changes made to national policy by the WMS do not require consideration of such matters. Moreover, owing to the new standards outlined in the WMS and Building Regulations Part L (2013) requirements being equivalent to CSH level 3, despite the removal of the condition, the proposal would still address climate change and achieve sustainable development.

¹ Dated 25 March 2015

² Dated 27 March 2015, Paragraph: 001 Reference ID: 56-001-20150327

8. Therefore I conclude that the condition is not reasonable or necessary in the interests of addressing climate change and achieving sustainable development.

Conclusion

9. 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.
10. For the reasons given above I conclude that the appeal should succeed. As a result I will vary the planning permission by deleting the disputed condition.

B Bowker

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the approved plans including plans(s) that may have been revised, as set out in the following plans: 922.01.01 Rev C, 922.01.03 Rev A, 922.01.04 Rev A, 950.01.02 Rev B, Design and Access Statement.
- 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 the surfacing materials to be used within the development including footpaths, access roads and parking areas and road marking 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.
- 4) Pedestrian access levels – The development shall not commence until details of levels of any new/modified pedestrian footways for all persons including disabled persons in the new flats have been submitted to and approved in writing by the Local Planning Authority. The facilities shall be provided in accordance with the approved details before the development is occupied or use commences.
- 5) Work shall not commence until a mechanism is in place to improve pedestrian crossing and carriageway visibility at the junction of River Bank with Firs Lane. The details should be submitted to the Local Planning Authority for approval and thereafter implemented prior to the occupation of the new development hereby approved.

- 6) The development shall not commence until details of design and modifications to the corners of the River Bank access road, including the design and widths/lengths of the new parking spaces have been submitted to and approved in writing by the Local Planning Authority. These works shall be carried out in accordance with the approved details before development is occupied or the use commences.
- 7) The parking area(s) 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.
- 8) The development shall not commence until details of refuse storage facilities including facilities for the recycling of waste to be provided within the development, in accordance with the London Borough of Enfield – Waste and Recycling Planning Storage Guidance ENV 08/162, have been submitted to and approved in writing by the Local Planning Authority. The facilities shall be provided in accordance with the approved details before the development is occupied or use commences.
- 9) During the construction period of the approved development an area shall be maintained within the site for the loading/unloading, parking and turning of delivery, service and construction vehicles.
- 10) The development shall not commence until details of the siting and design of at least 8 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.
- 11) Prior to commencement of the approved parking space details, including siting, of electric vehicular charging points to be provided in accordance with London Plan standards (minimum 20% of spaces to be provided with electric charging points and a further 20% passive provision for electric vehicles in the future) shall be provided to the Local Planning Authority for approval in writing. All electric charging points shall be installed in accordance with the approved details prior to occupation of any of the units and permanently maintained and retained.
- 12) The development shall not be occupied until details of a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The details landscaping scheme shall include the following details:
 - a. Proposed trees; their location, species and size;
 - b. Soft plantings: including grass and turf areas, shrub and herbaceous areas;

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.

- 13) The development shall not commence until a Construction Site Waste Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include as a minimum:
- I. Target benchmarks for resource efficiency set in accordance with best practice.
 - II. Procedures and commitments to minimize non-hazardous construction waste at design stage. Specify waste minimisation actions relating to at least 3 waste groups and support them by appropriate monitoring of waste.
 - III. Procedures for minimising hazardous waste.
 - IV. Monitoring, measuring and reporting of hazardous and non-hazardous site waste production according to the defined waste groups (according to the waste streams generated by the scope of the works).
 - V. Procedures and commitments to sort and divert waste from landfill in accordance with the waste hierarchy (reduce; reuse; recycle; recover) according to the defined waste groups.

In addition, no less than 85% by weight or by volume of non-hazardous construction, excavation and demolition waste generated by the development has been diverted from landfill.

- 14) The development shall not commence until an undertaking to meet with best practice under the Considerate Constructors Scheme and achieve formal certification has been submitted to and approved in writing by the Local Planning Authority.
- 15) No development shall take place until Construction Management Plan, written in accordance with the 'London Best Practice Guidance: The control of dust and emissions from construction and demolition' detailing how dust and emissions will be managed during demolition and construction work shall be submitted to the local planning authority for approval. Once approved the Construction Management Plan shall be fully implemented for the duration of any demolition and construction works.
- 16) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date of the decision notice.