
Appeal Decision

Site visit made on 8 August 2017

by Helen Hockenhull BA(Hons) B.PI MRTPI

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

Decision date: 22 August 2017

Appeal Ref: APP/N4720/W/17/3172890

84 Kirkstall Road, Leeds, LS3 1LS

- 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 David Barrass against the decision of Leeds City Council.
 - The application Ref 16/07405/OT, dated 25 November 2016, was refused by notice dated 2 March 2017.
 - The application sought the variation of condition 3 (approved plans) of approval 11/01850/EXT to allow a variation in mix of accommodation, amended drawing to indicate residential use adjacent to Kirkstall Road and amendment to affordable housing requirement without complying with conditions attached to planning permission Ref 15/05029/OT, dated 4 November 2016.
 - The condition in dispute is No 32 which states that: No development shall take place before contract(s) for the carrying out of the redevelopment of the site, including the works contract, have been made, and evidence of such contract(s) has been submitted to and agreed in writing by the Local Planning Authority.
 - The reason given for the condition is: In the interests of sustainable development, and the visual amenities and character of the surrounding area, in accordance with Leeds UDPR Saved Policy GP5, Leeds Core Strategy and the NPPF.
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Decision

1. The appeal is allowed and planning permission is granted for the variation of condition 3 (approved plans) of approval 11/01850/EXT to allow a variation in mix of accommodation, amended drawing to indicate residential use adjacent to Kirkstall Road and amendment to affordable housing requirement at 84 Kirkstall Road, Leeds LS3 1LS in accordance with the application Ref 16/07405/OT dated 25 November 2016, without compliance with condition number 32 previously imposed on planning permission Ref 15/05029/OT dated 4 November 2016 and subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr David Barrass against Leeds City Council. This application is the subject of a separate Decision.

Procedural Matter

3. Outline Planning permission ref 15/05029/OT was granted on the 4 November 2016 to vary Condition 3 (approved Plans) of approval 11/01850/EXT to allow a variation in mix of accommodation and other amendments to a mixed use

development for up to 11 storeys comprising residential with ground floor A3/A4 Unit, undercroft car parking and landscaped public space. A planning application was made on 25 November 2016 for the removal of Conditions 30 and 32 of this permission. This appeal relates to the removal of Condition 32 only. I have dealt with the appeal on this basis.

Main Issue

4. The main issue is whether the condition is necessary and reasonable to safeguard the visual amenities and character of the surrounding area.

Reasons

5. The appeal site is in commercial use and is occupied by a single storey building previously used for a loans shop and laminate flooring warehouse with ancillary car parking. The site lies in the city centre of Leeds in a mixed use area including student housing, offices and leisure uses. The site lies in a prominent position on Kirkstall Road, one of the main routes into the City from the west.
6. I am advised by the Council that the site has a long planning history. The proposed mixed use development was originally granted planning permission in 2008, then extended in 2011 for a further 5 years. In 2015 a planning application to vary the mix of development by increasing the number of flats and reducing the amount of affordable housing provision was approved by the Council with a parallel reserved matters application.
7. The Council imposed Condition 32 requiring a works contract to be submitted and agreed by the local planning authority before the development commenced on site. I am advised this condition was imposed in order to ensure a timely development without years of further delay. The outline planning permission at that time had approximately a year left to run, expiring on 4 November 2017. There was concern that a 'technical start' could be made to prolong a permitted scheme indefinitely and by not completing the scheme, a blighted cleared site would be left making no contribution to the regeneration of the area.
8. Notwithstanding the Council's evidence, I note that the reason given for the condition on the planning permission references the visual amenity and character of the area, not the objective of ensuring the completion of the development. If it was the latter, Planning Practice Guidance¹ (PPG) advises that conditions requiring a development to be carried out in its entirety would fail the test of necessity. It goes on to comment that such a condition would be difficult to enforce due to the range of factors that can influence a decision whether or not to carry out and complete a development.
9. It is understandable that the Council would wish to ensure that the site is not cleared and left in an untidy state, particularly as it is located in a prominent location on a main route into Leeds. However the condition requires evidence of the works contract to be submitted and agreed by the Council. The wording of the condition is very broad in its scope so that it is unclear to me what the Council is looking to approve. It could either be evidence that a contract is in place or it could be the terms of the contract itself. If it is the latter, and the Council did not approve the contract, the Council's intervention in this regard would be unreasonable. I am also mindful that should the contractor go into

¹ Paragraph: 005 Reference ID: 21a-005-20140306

administration during the development, the Council would be unable to enforce the completion of the scheme.

10. Whilst the redevelopment of the appeal site has clearly been stalled, no doubt partly due to the recession, there appears to be no evidence that a developer would not complete the scheme once committed to it. In addition there is no evidence that if the buildings were to be demolished and the site cleared, that the developer would leave the site in an untidy state. If that were to happen, the Council would have other powers open to it, such as a Notice under Section 215 of the Town and Country Planning Act 1990 requiring the condition of the land to be remedied. Furthermore the Council could consider issuing a Completion Notice under Section 94 of the same Act.
11. The appellant has brought my attention to the fact that a condition of this nature, requiring the submission and approval of a works contract has not been imposed by the Council on other schemes in Leeds City Centre. Other development sites, if cleared and schemes not completed would result in the same potential adverse effects on the character of the area.
12. The Council has suggested that they would have no objection to a prior approval application for the demolition of the building on the site and its temporary restoration. However whilst this may overcome the visual amenity issues of a cleared site, it would not achieve the Council's objective to see a completed development.
13. The PPG² advises that conditions precedent should only be used where the local planning authority is satisfied that the requirements of the condition are so fundamental to the development permitted that it would have been otherwise necessary to refuse the whole permission. In light of the evidence before me I am not satisfied that this is the case in this appeal. I agree with the appellant that alternative conditions could have been imposed to secure appropriate remediation works post demolition if considered necessary. Furthermore the original outline permission in 2008 and the renewal in 2011 were not subject to a similar condition.
14. In summary, whilst I acknowledge the Council's concerns to ensure that the redevelopment of the site takes place in a timely manner and that the site is not cleared and left vacant detracting from the character of the area, I consider for the reasons outlined above, that Condition 32 is not necessary, is unreasonable and unenforceable. It therefore fails to meet the tests set down in paragraph 206 of the Framework.

Conditions

15. Advice in the Government's PPG establishes that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) should also repeat the relevant conditions from the original 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 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. I have made minor amendments to the conditions where necessary in the interests of precision and clarity. Where pre-

² Paragraph: 007 Reference ID: 21a-007-20140306

commencement conditions are attached they are necessary to ensure that the proposed development is carried out in line with the relevant details.

Conclusion

16. For the reasons given above and having had regard to all other matters raised I allow this appeal and remove the disputed condition.

Helen Hockenhull

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of one year from the date of approval of reserved matters application 15/05030/RM.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan/Red Line/OS Plan - Drawing No. 2015-113/801
Proposed floor plan(s) - Drawing No 2015-113/081
Landscape Scheme - Drawing No 2015-113-901_D
Sections/Cross Sections - Drawing No 2005-098/061B
Block Plan/Layout Plan - Drawing No 2005-098/35D
Block Plan/Layout Plan - Drawing No 2005-098/601
Sections/Cross Sections - Drawing No 2005-098/062B
Block Plan/Layout Plan - Drawing No 2005-098/803C
Block Plan/Layout Plan - Drawing No 2005-098/021O
Sections/Cross Sections - Drawing No 2005-098/063B
Block Plan/Layout Plan - Drawing No 2015-113_100
Landscape Scheme - Drawing No 2015-113_020

3. No above ground building works shall take place until details and samples of all external walling and roofing materials have been submitted to and approved in writing by the local planning authority. Such materials shall be made available on site prior to the commencement of their use, for the inspection of the local planning authority who shall be notified in writing of their availability. This shall include a large sample panel of all external facing materials and glazing types to be used. The external cladding and glazing materials shall be constructed in strict accordance with the sample panel(s) which shall not be demolished prior to the completion of the development.
4. Notwithstanding details shown on the plans hereby approved, no above ground building works shall take place until typical 1:20/1:50 scale elevations/section/plan working drawings showing the detail of roof line and eaves treatments, ground floor treatments, including shopfronts, car parking grilles and entrance points, and each type of window bay and balcony proposed. Works shall be carried out in accordance with the approved details and retained as such thereafter.
5. No external surfacing works shall take place until details and samples of all external surfacing materials have been submitted to and approved in writing by the local planning authority. Such materials shall be made available on site prior to the commencement of their use, for the inspection of the local planning authority who shall be notified in writing of their availability. The surfacing works shall be constructed from the materials thereby approved prior to occupation of the building.
6. The development shall not be occupied or brought into use until that part of the site shown to be used by vehicles, on the approved plans, has been laid out, drained, surfaced and sealed, as approved, and that area shall not

thereafter be used for any other purpose other than the vehicle related use approved.

7. No hard or soft landscaping works shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include
 - (a) proposed finished levels and/or contours,
 - (b) means of enclosure,
 - (c) car parking layouts,
 - (d) other vehicle and pedestrian access and circulation areas,
 - (e) hard surfacing areas,
 - (f) minor artefacts and structures (e.g., furniture, play equipment, refuse or other storage units, signs, lighting etc.),
 - (g) proposed and existing functional services above and below ground (e.g. drainage, power cables, communication cables, pipelines etc., indicating lines, manholes, supports etc.).

Soft landscaping works shall include:

- (h) planting plans,
- (i) written specifications (including cultivation and other operations associated with plant establishment),
- (j) schedules of plants noting species, planting sizes and proposed numbers/densities,
- (k) details of tree pits
- (l) implementation programme.

All hard and soft landscaping works shall be carried out in accordance with the approved details, approved implementation programme and British Standard BS 4428:1989 Code of Practice for General Landscape Operations. The developer shall complete the approved landscaping works and confirm this in writing to the local planning authority prior to the date agreed in the implementation programme.

8. If, within a period of five years from the planting of any trees or plants, those trees or plants or any trees or plants planted in replacement for them is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective another tree or plant of the same species and size as that originally planted shall be planted at the same place in the first available planting season, unless the local planning authority gives its written consent to a variation. If such replacements die within twelve months from planting these too shall be replaced, until such time as the local planning authority agrees in writing that the survival rates are satisfactory.
9. Prior to the first occupation of the development, a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.
10. No building operations shall take place before 0730 hours on weekdays and 0900 hours on Saturdays nor after 1900 hours on weekdays and 1800 hours

on Saturdays unless otherwise agreed in writing by the local planning authority. There shall be no building operations on Sundays or Bank Holidays unless otherwise agreed in writing with the local planning authority.

11. Development shall not commence until a Phase I Desk Study has been submitted to, and approved in writing by, the local planning authority and:
 - (a) Where the approved Phase I Desk Study indicates that intrusive investigation is necessary, development shall not commence until a Phase II Site Investigation Report has been submitted to, and approved in writing by, the local planning authority,
 - (b) Where remediation measures are shown to be necessary in the Phase I/Phase II Reports and/or where soil or soil forming material is being imported to site, development shall not commence until a Remediation Statement demonstrating how the site will be made suitable for the intended use has been submitted to, and approved in writing by, the local planning authority. The Remediation Statement shall include a programme for all works and for the provision of Verification Reports.
12. If remediation is unable to proceed in accordance with the approved Remediation Statement, or where significant unexpected contamination is encountered, the local planning authority shall be notified in writing immediately and operations on the affected part of the site shall cease. An amended or new Remediation Statement shall be submitted to, and approved in writing by, the local planning authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved Statement.
13. Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works, the Verification Report(s) shall be submitted to the local planning authority in accordance with the approved programme. The site or phase of a site shall not be brought into use until such time as all verification information has been approved in writing by the local planning authority.
14. No development shall take place until a Statement of Construction Practice for that phase has been submitted to and approved in writing by the local planning authority. The Statement of Construction Practice shall include full details of:
 - a) the methods to be employed to prevent mud, grit and dirt being carried onto the public highway from the development hereby approved;
 - b) measures to control the emissions of dust and dirt during construction;
 - c) location of site compound and plant equipment/storage;
 - d) details and location of contractor and sub-contractor parking;
 - e) a local resident and business communications strategy for the duration of the works.

The approved details shall be implemented at the commencement of work on site, and shall thereafter be retained and employed until completion of works on site. The Statement of Construction Practice shall be made publicly available for the lifetime of the construction phase of the development in accordance with the approved method of publicity.

15. No development approved by this permission shall be commenced until the method for piling foundations has been approved in writing by the local planning authority. Piling works shall be carried out in accordance with the approved details.
16. No installation of externally mounted plant or equipment shall take place until details of the installation and/or erection of any air conditioning or extract ventilation system, flue pipes, window cleaning equipment or other excrescences proposed to be located on the roof or sides of the building, including details of their siting, design, and external appearance have been submitted to and approved in writing by the local planning authority. The noise rating level from fixed plant items shall not exceed the prevailing background (LA90) noise level minus 5 dB at nearby noise sensitive receptors, when assessed in accordance with BS 4142:1997. Works shall be carried out in accordance with the approved details and retained as such thereafter.
17. Prior to the commencement of development, details of all refuse storage and recycling facilities for the flats and the café/bar shall be submitted to and approved in writing by the local planning authority. Refuse storage shall be provided in accordance with the approved details and retained as such thereafter. There shall be no external storage of refuse containers whatsoever except immediately before and after collection.
18. Unless otherwise agreed in writing by the local planning authority, the hours of delivery to and from the premises shall be restricted to 0800 hours to 2200 hours Monday to Saturday with no deliveries on Sundays and Bank Holidays.
19. The opening hours of the café/bar premises shall be restricted to 0800 hours to 2330 hours Monday to Saturday, and 1000 hours to 2300 hours on Sundays and Bank Holidays.
20. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification) planning permission shall be obtained before any change of use, of the premises referred to in this permission, to any use within Use Classes A1 and A2 as detailed in the Town and Country Planning (Use Classes) Order 1987 (or any Order revoking or re-enacting that Order with or without modification).
21. The development shall be carried out in accordance with the recommendations specified in the approved Hoare Lea noise report reference REP-1005975-AM-R1. The approved measures shall be retained as such thereafter.
22. The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated March 2006 and the subsequent update to the FRA date stamped 6 May 2011 and the following mitigation measures detailed within the FRA:
 - a. Surface water is managed in accordance with the LCC 'Minimum Development Control standards for flood risk' document.

- b. Provision of compensatory flood storage on / or in the vicinity of the site to a 1 in 100 year standard.
 - c. Identification and provision of safe route(s) into and out of the site to an appropriate safe haven.
 - d. Finished floor levels (excluding basement(s) levels) are set no lower than 31.10m Above Ordnance Datum (AOD).
 - e. Basement pedestrian entry/exit points are set no lower than 30.80m AOD.
23. No development shall take place until details of the proposed means of disposal of separate foul and surface water drainage, including details of any balancing works and off-site works have been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details and retained as such thereafter. Unless otherwise agreed in writing with the local planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works, and no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.
24. Surface water from vehicle parking and hardstanding areas shall be passed through an interceptor of adequate capacity prior to discharge to the public sewer. Roof drainage should not be passed through any interceptor.
25. Prior to the commencement of a phase containing residential units, details of the internal layout shall provide dual aspect flats in accordance with DLA drawing 2005- 098/081 date stamped 3 August 2007. This drawing shall inform the detailed layouts submitted at reserved matters stage.
26. The maximum height of the roof of the development hereby approved shall be no more than 63.2m AOD.
27. Notwithstanding details shown on the approved plans prior to the commencement of above ground works, a car park management plan shall be submitted to and approved in writing by the local planning authority. The drawing and report shall include details of the following facilities:
- a. Details of a servicing strategy including full details of the control and operation of the proposed service lay-by
 - b. Access control system
 - c. Parking provision for disabled users
 - d. Cycle and motorcycle parking
 - e. 3 electric car charging points
 - f. Visibility splays of 2.4m x 70m to the north shall be achieved from the car park entrance/exit. Land within the visibility splay shall be laid out and maintained as adopted highway prior to the occupation of any part of the development. Works shall be carried out in accordance with the approved details prior to first occupation of the site and retained as such thereafter.
28. Prior to the commencement of above ground works, details for the provision of the offsite highways works shown on approved drawing reference DLA 2015-113_100 B shall be submitted to and approved in writing. Works shall be carried out in accordance with the approved details prior to the first

occupation of the development, unless otherwise agreed in writing by the Local Planning Authority, and retained as such thereafter.

29. Prior to the commencement of above ground works an updated Sustainability Statement shall be submitted which will include a detailed scheme comprising:
- a. Recycled material content plan (using the Waste and Resources Programme's (WRAP) recycled content toolkit)
 - b. Site Waste Management Plan (SWMP)
 - c. A pre-assessment demonstrating how the energy credit scores to meet the equivalent of the Code for Sustainable Homes Level 4 standard will be achieved, i.e. that the building will achieve a 20% reduction in carbon emissions over Part L Building Regulations 2013.
 - d. Details of the proposed low carbon combined heat and power system, demonstrating that the system will meet at least 10% of the building's energy use.
 - e. Details of water efficiency measures to meet the higher standard set by Government at 110 litres per person per day.

The development shall be carried out in accordance with the detailed scheme and,

- f. Within 6 months of the first occupation a post-construction review statement shall be submitted by the applicant including demonstration that the building will achieve a 20% reduction in carbon emissions over Part L Building Regulations 2013 has been achieved.
 - g. The development and buildings comprised therein shall be maintained and any repairs shall be carried out all in accordance with the approved detailed scheme and post-completion review statement or statements.
30. Prior to the commencement of development, a survey of the condition of the highway surface on Abbey Street, Bingley Street and Cavendish Street shall be submitted to and agreed in writing with the local planning authority. Prior to the first occupation of the development, a post construction survey including the identification of any necessary mitigation works to reinstate the highway to an acceptable standard and an implementation plan shall be submitted to and agreed in writing with the local planning authority. Works shall be carried out in accordance with the agreed details and timescale.
31. The approved wind mitigation works to the external areas shall be implemented in accordance with approved plans 2015-113/901rev D and 2015-113/020 prior to the first occupation of the development.