



Appeal Decision

Site visit made on 13 June 2019

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 July 2019

Appeal Ref: APP/V5570/W/19/3220650

18 and a half, Sekforde Street, Islington, London EC1R 0HL

- 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 Mr Greg Marsh against the decision of the Council of the London Borough of Islington.
 - The application Ref P2017/4174/FUL, dated 20 October 2017, was approved on 25 October 2018 and planning permission was granted subject to conditions.
 - The development permitted is described as 'The works to be undertaken are as follows:
 - the partial demolition of the inner leaf wall for the length of the internal courtyard.
 - the insertion of a gate into the historical rear wall located at the point of the existing bricked up doorway to the interior courtyard. The new gate can provide an alternative means of escape from the building. The internal courtyard immediate to the new door is to be dropped in level to match the level of the communal garden. Steps are to be added within the private courtyard to access this new level. Repair and upgrades to wall and landscaping where required. The design proposal removes the overbearing and poorly rendered modern internal wall and opens up the building to the courtyard gardens. This is an enhancement to the setting of the listed building. The new gate and associated landscaping have been designed to sensitively integrate with the existing historical fabric. The new wooden plank gate has been carefully inserted into the wall and designed to match similar gates in the courtyard. The painted finish proposed is intended to match the existing 'false' door. The proposed gate is to be formed in the location of the previous opening to avoid the loss of historic fabric. The design and finishes of the associated landscaping works have been designed to suit the existing architecture and landscaping. The historical brickwork of the wall will be reinstated to the internal face of existing wall; brickwork to be made good, repaired and repointed as required'.
 - The condition in dispute is No 6 which states that: *No works pursuant to this planning permission shall take place until such times as the relevant agreement has been obtained from the Council (as landowner) to access the land labelled 'communal garden' on the approved location plan 0170-GA-000 (including for the purposes of construction).*
 - The reason given for the condition is: *To ensure that access arrangements to the site can be properly managed so as not to prejudice the future development of the adjoining land.*
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the disputed condition is necessary and reasonable in respect of the proposed development.

Reasons

3. The appeal relates to a proposal that would result in the formation of an access at the rear of the appeal site, which is a grade II listed building, to an area of common land behind. Owned by the Council, this triangular piece of land is bounded by Sekforde Street, Woodbridge Street and Skinner Street/Corporation Row. The land is used as amenity space by residents of adjoining properties, some of whom enjoy direct access to the space through gates in their rear boundary walls.
4. Paragraph 55 of the National Planning Policy Framework provides that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
5. Condition 6 seeks to restrict the commencement of the permitted works until such times as the appellant has obtained an agreement from the Council allowing him access to the land, including for construction purposes. The appellant seeks its removal to enable the works to be carried out without further delay, in accordance with all other details approved by the permission.
6. The Council argues that the condition is necessary so that access arrangements to the site can be properly managed so as not to prejudice the future development of the adjoining land. This is on the basis that the access onto the land from the appeal site could potentially impact the redesign of the communal garden area. At the present time, no planning permission exists for such a scheme, and I have not been made aware of any such proposals.
7. The Council refer to the court case Aldergate Projects Ltd V Nottinghamshire County Council, where the judge ruled that the relevant Council had failed to take proper account of Aldergate's concerns about changes to the levels of a road in the Council's bus station redevelopment plans, which could potentially affect a vital access to its own development, which had planning permission. As the development that might be prejudiced already had planning permission, that case cannot be taken to represent a direct parallel to the appeal case before me, which limits the weight I can afford it.
8. However, the Planning Practice Guidance (PPG)¹ says that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body, often fail the tests of reasonableness and enforceability. Nonetheless, it may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) prohibiting development authorised by the planning permission or other aspects linked to the planning permission until a specified action has been taken. Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
9. The disputed condition 6 is essentially a Grampian condition prohibiting development until a specified action has been undertaken, in this instance, the agreement between the appellant and the Council regarding access to the Council's land.

¹ Paragraph: 009 Reference ID: 21a-009-20140306

10. In this case, there is no doubt as to the ownership of the land in question. Furthermore, there is little evidence before me to show that such an agreement could not be reached within the relevant time-limit. In light of both these factors, I am satisfied that it is reasonable to address this matter by means of a negatively worded condition prohibiting development until the specified action has taken place. I note that the PPG does not refer to any exceptional circumstances in the relevant paragraph 009.
11. It is a well-established principle of planning that the rights of adjoining landowners are to be safeguarded during the decision-making process. That being the case, it is necessary to enable the Council to delay the commencement of the development until such times as they have reached an agreement with the appellant over the use of their own land.
12. The appellant disputes the imposition of condition No 6, on the basis that there is no legal foundation for a planning permission to require compliance with other regulatory requirements. However, the examples given by the PPG of other regulatory regimes include Building Regulations and the Environmental Protection Act. It seems to me that the process required for the access agreement between the two parties would not amount to compliance with the kind of regulatory regime referred to by the PPG.
13. With regard to the remaining tests, the condition is relevant to the development to be permitted, insofar as its purpose would be to create a new access directly onto the amenity space owned by the Council. It would be enforceable, as it would be a matter of fact as to whether the agreement had been reached or not. Finally, the condition is precise insofar as its requirements are clearly understandable.

Conclusion

14. For the reasons given above, I conclude that the appeal should be dismissed.

Elaine Gray

INSPECTOR