The Planning Inspectorate

Appeal Decision

Site visit made on 20 September 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 6th November 2019

Appeal Ref: APP/T5150/W/19/3230991
49 Brook Road, London NW2 7BN

- 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 Peter McAndrew against the decision of the Council of the London Borough of Brent.
- The application Ref 19/0817, dated 4 March 2019, was refused by notice dated 24 May 2019.
- The application sought planning permission for demolition of dwellinghouse and erection of a two storey building with converted loft space to provide 4 self contained flats (1 x studio, 1 x 1 bed, 1 x 2 bed and 1 x 3 bed), creation of amenity space, cycle and refuse storage and associated landscaping without complying with a condition attached to planning permission Ref 18/0866, dated 17 May 2018 (the planning permission).
- The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out and thereafter retained in accordance with the following approved drawings and documents: PA-01 – Existing floor plans, elevations and location plan; PA-02 C – Proposed floor plans, elevations and section; PA-03 D – Proposed site plan; PA-04 – Existing site plan and garage.*
- The reasons given for the condition is: *For the avoidance of doubt and in the interests of proper planning*.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Peter McAndrew against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are whether the proposed variation of condition:

    - would be a minor material amendment to the planning permission; and
    - would maintain family-sized housing within the Borough.

Reasons

4. Homes of 3 bedrooms or more are considered by the London Borough of Brent Local Plan Development Management Policies (2006) (LP) to be family-sized homes. The LP regards the provision of family housing to meet local needs to be a priority.

5. The planning permission gave consent for the demolition of a 3-bedroom dwellinghouse and erection of a building containing flats. The officer report on that decision is clear that weight was placed on the fact that the scheme on which it recommended consent would include a 3-bedroom, and therefore family-sized, home.

6. The appeal proposal seeks the variation of condition No 2 to alter the layout of the ground floor and the mix of unit sizes to be provided. Instead of a studio flat and a 3-bedroom flat, the ground floor would contain a 1-bedroom flat and a 2-bedroom flat. The first and second floors would remain in accordance with the details approved by the planning permission.

7. There is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved[1]. Given the Council's priority for family-sized homes, the clear placing of weight on the retention of a family-sized home in the original planning permission, and the absence in the appeal proposal of a family-sized home, I consider the appeal proposal to be substantially different to the development which was approved. Therefore, it does not constitute a minor material amendment. Notwithstanding the development of 4 homes in place of 1, the proposal would also result in the net loss of 1 family-sized home.

8. Policy DMP17 identifies circumstances in which the loss of family-sized housing is likely to be acceptable. This Policy refers to larger dwellings which might be able to be converted to more than one dwelling with at least one 3-bedroom dwelling retained. While it is acknowledged that the Policy refers to conversions, and not to demolition and rebuild, the appeal proposal would be in conflict with the Policy's aim of maintaining family-sized housing since at least one 3-bedroom dwelling would not be retained. I note that the Policy does not allow, as argued by the appellant, for the conversion of family-sized homes of less than 130 square metres which would result in the loss of the family-sized unit.

9. New homes created by the appeal proposal would contribute to the supply of needed affordable social housing and I note the appellant's comments as to the views of housing association providers as to the approved studio flat. I also note that the proposal if implemented would preserve the character and appearance of the area, and would cause no harm to living conditions or to parking and highway safety. Notwithstanding these matters, they do not outweigh the harm that would be caused by the appeal proposal in removing a unit of family-sized housing from the Borough.

Conclusion

10. For the above reasons, the proposed variation of condition No 2 does not constitute a minor material amendment to the planning permission. The condition is also necessary to maintain family-sized accommodation. Accordingly, the appeal is dismissed.

Andrew Walker

INSPECTOR

[1] Planning Practice Guidance Paragraph: 017 Reference ID: 17a-017-20140306