



Appeal Decision

Site visit made on 30 September 2019

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2019

Appeal Ref: APP/N1920/W/19/3233010

Fir Spring Cottage, The Pathway, Radlett WD7 8JB

- 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 V and Dr R Cohen against the decision of Hertsmere Borough Council.
 - The application Ref 19/0254/VOC, dated 20 February 2019, was refused by notice dated 10 May 2019.
 - The application sought planning permission for the 'demolition of existing detached garage and erection of 2 storey, detached, 3 bed dwelling adjacent to main house, (amended plan to include access rd, received 11.05.17, and highway assessment received 10.10.17), without complying with a condition attached to planning permission Ref 17/0545/FUL, dated 19 March 2018.
 - The condition in dispute is No10 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: 201687.003 (20.03.2017); 201709.P.002 (20.03.2017); 201709.P.101 (20.03.2017); 2017.P.001 REV A (11.05.2017); 201687.03.301 REV A (20.03.2017); 201687.102 REV A (20.03.2017); 201709.P.003 (20.03.2017); 201709.P.102 (20.03.2017); 201709.P.301 (20.03.2017); LOCATION PLAN (20.03.2017); HIGHWAY ASSESSMENT (10.10.2017); TPA REBUTTAL TO NEIGHBOURS HIGHWAY REPORT (14.11.17);
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of existing detached garage and erection of 2 storey, detached, 3 bed dwelling adjacent to main house, (amended plan to include access rd, received 11.05.17, and highway assessment received 10.10.17, at Fir Spring Cottage, The Pathway, Radlett WD7 8JB, in accordance with the terms of application 19/0254/VOC dated 20 February 2019 without compliance with condition number 10 previously imposed on planning permission Ref 17/0545/FUL, dated 19 March 2018 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject to a new condition number 10 as set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr V and Dr R Cohen against Hertsmere Borough Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission was granted on 19 March 2018, for the demolition of the existing detached garage and erection of a 2 storey, detached, 3 bed dwelling adjacent to the main house. On 17 December 2018, Condition 10 of this permission was varied, by application Ref 18/2044/VOC, to allow for raising the eaves and ridge height by 500 mm, substituting a rear gable roof for a hipped roof and provision of a crown roof. Following the submission of amended plans, this application excluded the two rooflights originally applied for.
4. A further application 19/0254/VOC was submitted to the Council, to once more vary Condition 10 of the original permission Ref 17/0545/FUL by replacing the approved plans. These amended plans seek permission for two additional skylights. I note that the decision notice refers to a revised description although the Appellant has not agreed to this revision. Nonetheless, in a Section 73 appeal, a new permission would be created for the whole of the development, not just the rooflights. I note the plans proposed to be substituted for those approved include additional accommodation at second floor level and this will form part of my considerations.
5. The application has been refused by the Council for reasons of highway safety. As I understand the evidence before me, the Council are concerned that the revised layout of the roof space will result in additional habitable accommodation. This would lead to more people and visitors and the need for additional parking on the surrounding highway network.
6. Taking account of this background, and the Council's reason for refusal, I consider the main issue to be the effect of the proposal on highway safety.

Reasons

7. I saw at my site visit that the approved development had not yet commenced. The appeal site is a large detached dwelling sited to the north west of The Pathway. The dwelling is set back from the road with a timber gated entrance and a detached garage which would be demolished as part of the related permissions. The Pathway is a narrow private residential road providing access to a number of properties. An access between The Pathway and Aldenham Avenue provides an alternative entrance to the site.
8. The Hertsmere Local Plan Parking Standards Supplementary Planning Document (2014) (SPD) gives additional guidance on the off-street parking standards for new developments. This indicates that rooms over 8 square metres, which are not kitchens, utility rooms, bathrooms, WC's or circulation space, are considered to be habitable rooms. However, the room indicated as a cinema, whilst exceeding 8 square metres, would not have any windows and would not benefit from the proposed roof lights. Therefore, in my judgement this should not be considered as a habitable room for the purposes of providing off-street parking.
9. I note that the submitted plans provide one additional parking space which would deliver the additional parking required for the habitable room annotated as a study. Even if the cinema was to become a habitable room, there is no substantive evidence from the Council, beyond reference to its parking standards, that this would, in and of itself, give rise to additional vehicle movements and the need for additional parking. The Council's requirement for

two additional spaces equates to the demand arising from a three bedroom house. However, the provision of the proposed additional ancillary living space would be not be comparable to a separate residential unit with separate occupants in terms of demand for parking or additional vehicular movements. In any event, from what I saw on site, it is possible that any additional off- street parking demand could be accommodated within the site.

10. I note the Council's reference to the appeal decision at High Gables¹, where a proposal for two dwellings to replace one was dismissed on highway safety grounds. However, in the present case, the Council has already approved an additional dwelling on the site and I have found above that the additional space proposed would not create similar vehicular movements. In any event, I saw that the narrow width of the lanes leading to the appeal site and the possible presence of pedestrians mean vehicles are required to negotiate the lanes at low speed. It is reasonable to consider that occupants of the dwelling would be familiar with these constraints and drive accordingly. Therefore, any risk to highway safety from additional vehicular movements on what are infrequently trafficked lanes would be negligible. Accordingly, I find that the size of the resultant dwelling and number of habitable rooms would not generate vehicular movements or parking demand which would harm highway safety.
11. For the above reasons, I conclude that the proposed rooflights would not lead to conditions harmful to highway safety. Accordingly, I do not find conflict with Policy SADM40 of the Hertsmere Local Plan Site Allocations and Development Management Policies Plan (2016) or Policies SP1 and CS25 of the Hertsmere Local Plan Development Plan Document Core Strategy (2013).

Conditions

12. The guidance in the Planning Practice Guidance makes 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. This approach has been agreed by the parties. I have however changed the plan numbers on Condition 10 to reflect this decision.
13. The PPG also indicates that a grant of permission under section 73 should not extend the time period for implementation. At the time of my site visit no development had taken place on the site and the permission remains in time for implementation. I have therefore amended Condition 1 to reflect the date that the original permission 16/2358/FUL was granted.
14. I have had regard to the additional conditions suggested by the Council. However, as a condition to control the proposed materials has already been imposed, I do not consider that this is necessary.

¹ APP/N1920/A/10/2120497

Conclusion

15. I have had regard to all of the matters raised but for the above reasons the appeal is allowed.

Hilary Orr

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of 3 years from 19 March 2018.
2. No development shall take place until details 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.
3. Prior to commencement of the approved development the applicant shall submit a construction management plan to the planning authority setting out details of demolition of existing property, excavation of material, location of storage of construction material, parking of construction vehicles etc.
4. All areas for parking, storage and delivery of materials associated with the construction of this development shall be provided within the site on land which is not public highway and the use of such areas must not interfere with the use of the public highway.
5. The hours of work for all contractors (including sub-contractors) for the duration of site development shall, unless otherwise agreed in writing by the local planning authority, be limited to: 0800 and 1800 hours Mondays to Fridays, 0900 to 1300 hours on Saturdays, and no work shall be carried out on Sundays or Public Holidays.
6. Existing waste and recycling bins and boxes must be kept secure for the duration of any works. Presentation of bins and boxes from the new property must be in-line with neighbouring properties
7. No development shall take place before details of hedges, walls, fences, gates or other means of enclosure to be erected in or around the development have been submitted to, and approved in writing by, the Local Planning Authority. Prior to first occupation or use of the development the hedges, walls, fences, gates or other means of enclosure shall be erected as approved and shall thereafter be retained and maintained in perpetuity. Specifically, the 6m hedge boundary treatment edging the perimeter of the Fir Spring Cottage perimeter indicated on the approved plans i.e. No. 201709.P.003 (20.03.2017) must be retained.
8. No development shall take place before details of all materials to be used for hard surfaced areas within the site including roads, driveways and car parking area have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the details so approved
9. No development (including any demolition, earthworks or vegetation clearance) shall take place before a scheme of landscaping, phased in relation to any phasing of the development, which shall include details of both hard and soft landscape works and earthworks, has been submitted to, and approved in writing by, the Local Planning Authority. The scheme as approved shall be carried out in the first planting season following the completion of each development phase. Any trees, shrubs or plants that die within a period of five years from the completion of each development phase, or are removed and/or

become seriously damaged or diseased in that period, shall be replaced (and if necessary continue to be replaced) in the first available planting season with others of similar size and species, unless the Local Planning Authority gives prior written permission for any variation.

10. The development hereby permitted shall be carried out in accordance with the following approved plans:

- 201709.P.4001 Rev B (03 Feb 2017) Site layout with proposed additional parking space; 201709.P.4101 Rev0 (03 Feb 2017) consented and proposed floor plans; 201709.P.4 Rev A (03 Feb 2017) Consented roof space; 201709.P.4000 Rev0 (18 Feb 2019) OS map; 201687.003 (20.03.2017); 201709.P.002 (20.03.2017); 201709.P.101 (20.03.2017); 2017.P.001 REV A (11.05.2017); 201687.03.301 REV A (20.03.2017); 201687.102 REV A (20.03.2017); 201709.P.102 (20.03.2017); 201709.P.301 (20.03.2017); LOCATION PLAN (20.03.2017); HIGHWAY ASSESSMENT (10.10.2017); TPA REBUTTAL TO NEIGHBOURS HIGHWAY REPORT (14.11.17)