



Appeal Decision

Site visit made on 18 November 2019

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal Ref: APP/Y5420/W/19/3236190

33 Dagmar Road, Hornsey, London N4 4NY

- 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 Mohammed Khan (Ramsby & Co) against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2019/0989, dated 25 February 2019, was approved on 2 July 2019 and planning permission was granted subject to conditions.
- The development permitted is the demolition of existing buildings and erection of 3-storey building (with basement level) containing 6 self-contained residential units.
- The conditions in dispute are Nos 8 and 12-16 which state that:
 - 8. The proposed development shall have a central dish/aerial system for receiving all broadcasts for all the residential units created, details of such a scheme shall be submitted to and approved by the Local Planning Authority prior to the occupation of the property and the approved scheme shall be implemented and permanently retained thereafter.*
 - 12. All surface and foul water arising from the proposed works must be collected and diverted away from Network Rail property. All soakaways must be located so as to discharge away from the railway infrastructure. The following points need to be addressed:*
 - 1. There should be no increase to average or peak flows of surface water run off leading towards Network Rail assets, including earthworks, bridges and culverts.*
 - 2. All surface water run off and sewage effluent should be handled in accordance with Local Council and Water Company regulations.*
 - 13. All excavations/earthworks carried out in the vicinity of Network Rail property/structures must be designed and executed such that no interference with the integrity of that property/structure can occur. If temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement for approval by Network Rail. Prior to commencement of works, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker and the works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Project Manager should be undertaken. Network Rail will not accept any liability for any settlement, disturbance or damage caused to any development by failure of the railway infrastructure nor for any noise or vibration arising from the normal use and/or maintenance of the operational railway. No right of support is given or can be claimed from Network Rail's infrastructure or railway land.*
 - 14. At least six weeks prior to works commencing on site Network Rail's 'Asset Protection Project Manager (OPE)' MUST be contacted, contact details as below. The OPE will require to see any method statements/drawings relating to any excavation, drainage, demolition, lighting and building work or any works to be carried out on site that may affect the safety, operation, integrity and access to the railway.*
 - 15. Any demolition or refurbishment works must not be carried out on the development site that may endanger the safe operation of the railway, or the stability of the adjoining Network Rail structures. The demolition of buildings or other structures near*

to the operational railway infrastructure must be carried out in accordance with an agreed method statement. Approval of the method statement must be obtained from Network Rail's Asset Protection Project Manager before the development can commence.

16. Where vibro-compaction machinery is to be used in development, details of the use of such machinery and a method statement should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker prior to the commencement of works and the works shall only be carried out in accordance with the approved method statement.

- The reasons given for the conditions are:

8. In order to ensure a satisfactory appearance for the proposed development, to safeguard the visual amenity of neighbouring properties and the appearance of the locality consistent with Policy 7.6 of the London Plan 2016, Policy SP11 of the Haringey Local Plan 2013 and Policy DM1 of The Development Management DPD 2017.

12-16. To ensure the development can be implemented safely in relation to the operational needs and integrity of the adjoining railway line.

Decision

1. The appeal is allowed and the planning permission Ref HGY/2019/0989 for the demolition of existing buildings and erection of 3-storey building (with basement level) containing 6 self-contained residential units at 33 Dagmar Road, Hornsey, London N4 4NY granted on 2 July 2019 by the Council of the London Borough of Haringey, is varied by deleting conditions 12 to 17 and substituting for them the following conditions:
 12. No development shall take place until a scheme for the disposal of surface water and foul sewage has been submitted to and approved by the local planning authority. The scheme shall include measures to ensure that all surface and foul water arising from the development is collected and discharged away from railway property. The approved drainage scheme shall be implemented in full prior to the first occupation of any dwelling.
 - 13 No development shall take place (including any demolition works) until a method statement has been submitted to and approved in writing by the local planning authority. The method statement should address the following matters:
 - Proposed method of construction, including hours of construction work;
 - Risk assessment in relation to the adjoining railways;
 - Security of the railway boundary, including boundary treatments;
 - Details of proposed excavations, earthworks and demolitions; and
 - Details of any proposed use of vibro-compaction machinery.The works shall only be carried out in accordance with the approved method statement.
 - 14 Prior to the installation of any external lighting, full details shall be submitted to and approved by the local planning authority. Any approved lighting shall be installed in accordance with the approved details and shall not be replaced with any alternative type without the prior permission of the local planning authority.

Background and Main Issues

2. Planning permission has been granted for the demolition of existing buildings, and the erection of a new residential building containing 6 flats. The appellant now seeks permission to carry out the development without complying with conditions 8, and 12 to 16. Condition 8 requires the development to have a central dish or aerial system for receiving broadcasts. Conditions 12 to 16 impose various requirements relating to drainage, demolitions, excavations and earthworks because of the development's location adjacent to operational railway lines. Condition 17 also relates to the possible impact of the development on the operational safety of the railway arising from external lighting. Although this condition did not form part of the appellant's submission, in my view it is also necessary to consider it as part of the appeal.
3. The main issues are therefore:
 - whether Condition 8 is necessary and reasonable to protect the character and appearance of the proposed development and the surrounding area; and
 - whether Conditions 12 to 17 are necessary and reasonable in the interests of ensuring that the development can be implemented safely in relation to the integrity, safety and operational needs of the adjoining railway lines.

Reasons

Character and appearance (Condition 8)

4. The appeal site is a redundant commercial building and yard adjoining the end terrace house at No 31 Dagmar Road. Railway lines run to the side and rear of the property. The surrounding area is characterised by two and three storey residential buildings.
5. The appeal site sits within the Stroud Green Conservation Area (SGCA), and Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the character or appearance of the SGCA.
6. I am conscious that the Town and Country Planning (General Permitted Development) (England) Order 2015 already prevents the installation of antennas, including satellite dishes, in a Conservation Area on a chimney, wall or roof slope which faces onto, and is visible from, a highway. There is also a further restriction that there could be no more than two antennas on the building without the need for planning permission.
7. Although the area surrounding the appeal site is not totally free of aerials and dishes, on my site visit there were noticeably fewer visible on Dagmar Road and the surrounding streets than in other areas close by but outside the Conservation Area. The resultant lack of visual clutter contributes considerably in my view to the pleasant and orderly feel of the Conservation Area.
8. The appellant seeks to justify the removal of the condition by suggesting that having a communal system would mean that there would be a joint liability to repair faults, and this may complicate the sale of the leases where the leaseholders may wish to purchase the flats with a share of the freehold. However, this would be purely a private matter between the various owners,

and the planning reasons for which the condition was imposed are not addressed at all in the appellant's evidence.

9. Rather than install a single central dish or aerial system, the appellant wishes for each of the six flats to have its own antenna, and it has been indicated that they would be located on the flat roof or the rear elevation. No further details of the size or siting of the type of antennas which would be used are provided. However, the site's alignment means that the rear wall of the proposed building would face approximately north west, and it would be unlikely to be a suitable location for satellite dishes. It is most likely therefore that dishes would need to be installed on the development's flat roof. No information has been provided about suitable locations for other types of antenna.
10. Although the shape of the appeal site and the set back of the proposed building from the street mean that the development would barely be seen from Dagmar Road itself it would be very clearly visible in views into the Conservation Area by passengers on the mainline railway to the east and, to a lesser extent, from Wightman Road beyond. The drawings provided do not indicate that there is a parapet by which dishes or other antennas would be screened, and a group of several antennas would contribute to visual clutter and would detract from the quality of the development and the wider Conservation Area. To that end, I find that without such a condition, the proposal would not preserve the character or appearance of the SGCA. I acknowledge that the level of harm would not be significant, but nevertheless some harm would result.
11. In coming to the above view, it is clear that the Council's condition is aimed at minimising the number of such antennas on the building. A consequential benefit of this is that a communal provision would provide suitable access to television signals for the future occupiers of all of the flats. Without such a communal provision further planning permission(s) would be required, and it is also entirely possible that an appropriate siting for individual antennas each serving a single flat may not be possible. In any event, the appellant or future occupiers could come forward with a detailed planning application seeking permission for separate antennas. This would allow the details of their proposed size and siting and their subsequent effect on the character and appearance of the development and the wider Conservation Area to be considered.
12. Paragraph 196 of the National Planning Policy Framework (the Framework) states that where a development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In this case, there has been little public benefit outlined by the appellant. Although the provision of additional dwellings could be considered a public benefit this also applies to the originally-approved development, and the already limited public benefits which the development provides would not be increased by the removal of the disputed condition. Taking these factors into account the benefits can only be considered to be very modest, and to my mind they do not outweigh the harm I have found to the SGCA.
13. For the above reasons, I conclude that Condition 8 is necessary and reasonable to protect the character and appearance of the proposed development and the surrounding area (including the SGCA), and to ensure that the development complies with Policy 7.6 of the 2016 London Plan, Policy SP11 of the 2013

Haringey Local Plan (the HLP), and Policy DM1 of the Haringey Development Management DPD (the HMDPD). Together these policies require development to be of a high quality and complement local character. It is also necessary to ensure compliance with the provisions of the National Planning Policy Framework in respect of protecting heritage assets.

Railway operations and safety (Conditions 12-17)

14. The appeal site is very close to two railway lines. The East Coast Main Line (ECML) runs north-south along the site's eastern boundary at approximately the same level as the appeal site, while the Gospel Oak to Barking line of London Overground runs at a lower level in a cutting immediately to the north. Both lines have overhead electrification equipment, and are used by both freight and passenger trains.
15. The proposed development would be built close to the boundaries of the operational railway and would require excavations and other engineering operations to take place. Given this, it is entirely appropriate that there are measures put in place to ensure that the development does not cause harm to the structural integrity or operational safety of the railways either during construction works or once it is occupied.
16. As drafted, conditions 12 to 16 address various matters including drainage, excavations and earthworks, demolition and the use of vibro-compaction machinery with the potential to affect the railway. The appellant contends that the conditions are onerous in that they deal with matters covered by a Basic Asset Protection Agreement (BAPA) with Network Rail and therefore effectively require a 'double approval'.
17. Notwithstanding that, the appellant has provided very little evidence to demonstrate that these matters would be dealt with through the BAPA. Whilst a BAPA may deal with the relationship between the appellant and Network Rail, in the absence of any convincing evidence which demonstrates that the matters outlined in the conditions would be dealt with by other legislation I can only conclude that the essence of Conditions 12 to 16 remain necessary and reasonable to ensure that the development can be implemented safely in relation to the integrity, safety and operational needs of the adjoining railway lines. However, I am conscious of the six tests for conditions as set out at paragraph 55 of the Framework and I consider that some re-drafting is necessary.
18. In my view, this could be done by rewriting the existing condition 12 and replacing conditions 13 to 16 with a single condition requiring the submission of a method statement covering construction methods and risks, security and boundary treatments, excavations, earthworks and demolitions. Given the need to ensure the safety and integrity of the railway before the start of construction works, it is clear that any revised conditions would need to be pre-commencement conditions. As part of the appeal process, I have sought the agreement of the appellant to such conditions. However, no response was received and as such I can therefore impose such conditions.
19. In addition to the above, condition 17 deals with exterior lighting. No scheme of lighting was submitted with the planning application and given the potential for train drivers on the adjacent ECML to be dazzled or confused by lighting the essence of this condition is necessary in the interests of the safe operation of

the railway. This condition was not disputed by the appellant, but I consider that it also should be redrafted to ensure that it complies with the Framework's six tests.

Conclusion

20. I have found that the disputed conditions are necessary and reasonable in order for the proposed development to be acceptable, albeit that condition 12 should be redrafted and conditions 13 to 16 replaced by a single condition, to meet the requirements of Paragraph 55 of the Framework. I have also found that condition 17 should be redrafted to comply with the requirements of the Framework.
21. Taking all matters into consideration I conclude that the appeal should be allowed.

M Cryan

Inspector