



Appeal Decision

Site visit made on 8 January 2020

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

Appeal Ref: APP/Q5300/W/19/3236686 244 Lincoln Road, Enfield, EN1 1TA.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Hartley Developments Ltd. against the Council of the London Borough of Enfield.
 - The application Ref. 19/00909/VAR is dated 7 March 2019.
 - The application sought planning permission for the subdivision of the site and conversion of the property into two single family dwellings comprising 2 X 3 bedroom involving two storey side extension, ground and first floor rear extensions, rear dormer and front rooflights with associated amenity space.
 - The conditions in dispute are No's 4, 6, 7, 8, 11 and 14 which respectively, and in summary, relate to: details of hard surfacing materials; reinstatement of dropped kerb; provision of refuse facilities; provision of cycle parking; details of water use efficiency; and details and implementation of sustainable drainage system.
 - The reasons given for the conditions are:
 - 4 - To ensure the development does not prejudice highway safety and has a satisfactory appearance.
 - 6 - To ensure that the development complies with the Unitary Development Plan and does not prejudice conditions of safety or traffic flow on adjoining highways.
 - 7 - In the interests of amenity and the recycling of waste materials in support of the Borough's waste reduction targets.
 - 8 - To ensure that the provision of cycle parking is in line with Council's adopted standards.
 - 11 - To promote water conservation and efficiency measures in all new developments and where possible in the retrofitting of existing stock in accordance with Policy CP21 of the Core Strategy, and Policy 5.15 of the London Plan.
 - 14 - To ensure sustainable surface water drainage in accordance with Policy CP21 of the Core Strategy, and Policy 5.15 of the London Plan.
-

Decision

1. The appeal is allowed and the planning permission Ref. 18/04356/FUL for the subdivision of the site and conversion of the property into two single family dwellings comprising 2 X 3 bed involving two storey side extension, ground and first floor rear extensions, rear dormer and front rooflights with associated amenity space, at 244 Lincoln Road, Enfield, EN1 1TA, granted on the 11 January 2019 by the Council of the London Borough of Enfield, is varied by deleting conditions 4, 6, 7, 8, 11 and 14, and substituting for them the following conditions:

- 4a The additional residential unit (No.244a) shall not be occupied until the space to the front of both dwellings between the houses and the highway has been surfaced in porous materials previously agreed in writing by the local planning authority.
- 6a The additional residential unit (No.244a) shall not be occupied until the access to the site has been blocked up as shown in the approved plan drawing 1981.P.01 and the kerb to the highway reinstated.
- 8a The additional residential unit (No.244a) shall not be occupied until the two lockable bike stands have been provided as shown on the approved drawing 1981.P.01 and the stands shall be retained thereafter.
- 11a The additional residential unit (No.244a) shall not be occupied until details of a scheme to minimise mains water consumption to ensure a target of 105 litres or less per head per day is met or reduced, and once fitted the scheme for minimising water consumption shall be retained thereafter.
- 14a The additional residential unit (No.244a) shall not be occupied until details of surface water drainage works have been submitted to and approved in writing by the Local Planning Authority. The details shall be based on an assessment of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles as set out in the Technical Guidance to the National Planning Policy Framework and shall be designed to a 1 in 100 year storm event allowing for climate change. The drainage system shall also be installed/operational prior to the first occupation of the new residential unit (244a) and a continuing management and maintenance plan put in place to ensure its continued function thereafter.

Preliminary matter

- 2. An application for costs has been made by the appellant against the Council. This is the subject of a separate decision.

Main Issue

- 3. The main issue is whether the conditions imposed and appealed against meet the tests set out in the National Planning Policy Framework and the Planning Practice Guidance and other related Regulations and serve a reasonable planning purpose.

Reasons

- 4. The conditions imposed need to be considered in the context that Regulations¹, which took effect on the 1st October 2018, indicate that planning permission for the development of land may not be granted subject to a 'pre-commencement' condition without the written agreement of the applicant or the period of

¹ The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018.

notification to the appellant has expired. The original application was decided in January 2019 and is therefore subject to those Regulations.

5. Conditions 4, 6, 7, 8, 11 and 14 are 'pre-commencement' conditions in that they are worded so as to prevent the commencement of the development until some other requirement of the condition is fulfilled. The Council accepts that it did not notify or obtain the agreement of the appellant to the imposition of the conditions. Therefore, there is a clear breach of the Regulations and the conditions should not have been imposed as drafted.
6. The Council refer to the provisions of the development plan as justification for the conditions but even if the conditions are otherwise policy compliant that does not justify the imposition of pre-commencement conditions in breach of the Regulations.
7. Nevertheless, in an appeal of this nature the disputed conditions may be varied or substituted by other conditions, therefore, I will need to assess the planning purpose and justification for each one. Further, it appeared to me at the site visit that the development permitted has not been commenced. Also in assessing these planning aspects I note that the Council's representations on the appeal suggest that many more development plan policies are relevant to the issue to which the condition relates compared to those mentioned in the formal reason for imposing the condition and I will give most weight to the latter.

Condition 4 - Details of hard surfacing materials

8. The proposed ground floor plan (drawing 1981.P.01) indicates that the land to the front of the existing and proposed dwellings will be used for pedestrian access, bin storage and cycle parking but the plan does not specify the type of surfacing of this area. In the interests of maintaining the appearance of the area and to ensure that the surfacing is porous in the interests of avoiding flooding I will impose a condition to require the submission and approval of the materials to be used in this space. In order to ensure that the condition will be complied with the surfacing with the materials approved by the Council needs to be undertaken prior to the new residential unit being occupied.

Condition 6 - Re-instatement of dropped kerb

9. I noted at my site visit that there is an existing dropped kerb in front of the part of the site where unit 244a is proposed, however, the approved plan indicates that the space to the front of this unit will be enclosed and used for pedestrian access and cycle parking so the existing vehicular access and dropped kerb will be superseded. In order to avoid any confusion on the highway over the dropped kerb, which is in close proximity to the junction with Lincoln Way, it is in the interests of highway safety that the kerb is reinstated. This should be undertaken prior to the occupation of No. 244a.

Condition 7 - Provision of refuse facilities

10. The approved plan indicates that provision will be made for refuse and recycling bins in the space at the front of each property. Although these face the public realm the bin areas are small in scale and would not be unduly prominent or harmful to the appearance of the area. I am satisfied that further details of these facilities are not necessary.

Condition 8 - Provision of cycle parking

11. The approved plan indicates that the space to the front of each dwelling will make provision for two bike stands. In the interests of sustainable transport modes it is necessary that this facility is provided before the new dwelling is occupied. However, given that the stands are at the front of the property it is not necessary that the stands must be covered or lit as that would make their presence more imposing. I will therefore amend the condition accordingly.

Condition 11 - Details of water use efficiency

12. Policy 5.15 of the London Plan indicates that water supplies should be conserved and used in a sustainable manner and that new development should be designed to minimise the use of mains water and ensure that mains water consumption would meet a target of 105 litres or less per head per day. The need for the water supply to be sustainable in new residential development is reinforced in Core Policy 21.
13. As the proposal as permitted does not appear to include a detailed scheme that is policy compliant it is reasonable and necessary that one is submitted and approved by the Council prior to the occupation of the additional residential unit and the facility retained afterwards.

Condition 14 - Details and implementation of sustainable drainage system.

14. Policy 5.14 of the London Plan indicates that development must ensure adequate wastewater management and Policy 21 requires sustainable drainage measures with new residential development as a means to manage surface water run-off. Although the surfacing of the front area is required to be porous as per condition No. 4a above, there remains the issue of the disposal of surface water from roofs. A condition requiring a scheme to achieve this prior to the occupation of the new dwelling is reasonable and necessary and I will impose it.

Conclusion

15. The conditions appealed against are 'pre-commencement' conditions and should not have been imposed in contravention of the Regulations stated above. However, I have assessed the planning justification for the specific conditions and where they fulfil a planning purpose and meet the normal tests set out in national guidance, I have imposed new conditions where the 'enforcement' test is the occupation of the new dwelling. Such wording will therefore not hold up the main implementation of the development already permitted.

David Murray

INSPECTOR