



Appeal Decision

Site visit made on 11 February 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2020

Appeal Ref: APP/C5690/W/19/3240118

72 Loampit Hill, Lewisham, London SE13 7SX

- 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 Andrew Bell against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/19/112066, dated 26 April 2019, was approved on 8 July 2019 and planning permission was granted subject to conditions.
- The development permitted is described as: *An application submitted under Section 73 of the Town and Country Planning Act for variation of condition 2 in connection with the planning permission (DC/18/107893) dated 13th September 2018 for 'the demolition of the existing structures and the construction of a three storey building at 72 Loampit Hill, SE13 to provide a commercial unit (Use Class B1a) on the ground floor and seven self-contained residential units (Use Class C3), together with 22 cycle spaces, a refuse store, a communal garden and a wildlife ecology garden to the rear of the site', in order to increase the number of residential units from 7 to 8 by altering the unit mix of the properties in addition to changes to elevations including the addition of balcony.*
- The condition in dispute is No 8 which states that: (a) *No occupation of the commercial unit shall commence until plans (1:50) and details showing the physical fit out of the commercial unit hereby approved, plus any shopfront to be installed, have been submitted to and approved in writing by the Local Planning Authority.* (b) *The development shall be constructed in full accordance with the approved details.*
- The reason given for the condition is: *To ensure that the fit out of the unit is sufficient to ensure that it is an attractive and commercially viable option and to demonstrate the developers commitment to delivering the commercial unit as part of this development in accordance with Policy 5 Other employment locations of the Core Strategy (June 2011) and DM Policy 11 Other employment locations of the Development Management Local Plan (November 2014).*

Decision

1. The appeal is allowed and the planning permission ref DC/19/112066 for variation of condition 2 in connection with the planning permission (DC/18/107893) dated 13th September 2018 for 'the demolition of the existing structures and the construction of a three storey building to provide a commercial unit (Use Class B1a) on the ground floor and eight self-contained residential units (Use Class C3), together with 22 cycle spaces, a refuse store, a communal garden and a wildlife ecology garden to the rear of the site, in addition to changes to elevations including the addition of a balcony at 72 Loampit Hill, Lewisham, London SE13 7SX granted on 8 July 2019 by the Council of the London Borough of Lewisham is varied by deleting Condition 8.

Procedural Matters

2. For clarity and precision, I have inserted 'Andrew' in the appellant's name in the banner heading above, as it is listed on the appeal form.

3. Interested parties have raised a variety of issues regarding the loss of the existing antique / salvage shop, character and appearance, heritage, vehicle parking, noise and disturbance during construction and ownership, amongst other things. However, such matters were likely considered where relevant by the Council on the original planning application¹, and such issues are not a matter for my consideration in this appeal.

Main Issue

4. The main issue is whether the condition is necessary and reasonable having regard to local and national policy concerning the proposed commercial unit.

Reasons

5. The appeal seeks removal of Condition 8 on the Council's decision notice, which relates to a requirement to provide plans / details of the physical fit out of the approved commercial unit, and any shopfront that is to be installed. Condition no.8 requires plans / details to be first submitted to, and approved in writing by the Council as Local Planning Authority prior to occupation of the premises.
6. Paragraph 55 of the National Planning Policy Framework (the Framework) says planning conditions should be kept to a minimum and only be imposed where, amongst other matters, they are necessary and reasonable. More guidance is given in the Planning Practice Guidance (PPG). PPG paragraph 002² states that Section 70(1) of the Act enables the local planning authority to impose 'such conditions as they think fit'. This power must be interpreted in the light of material factors such as the Framework, the PPG, and relevant case law.
7. PPG paragraph 003³ sets out the 6 tests for conditions. They must be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. Furthermore, the PPG is clear that any proposed condition that fails to meet one of the 6 tests should not be used.
8. On the evidence before me, there is no indication that a shop window is likely to be installed as part of the commercial development⁴ at ground floor and, in any event, it is highly likely that such an installation would require the submission of an appropriate planning application in its own right. Additionally, I am not convinced that the submission of details / plans for the internal 'physical fit out' is reasonable or necessary in this instance. Whilst I note the concerns raised by the Council on this issue and its reasoning behind its imposition, there is little in the way that demonstrates Condition 8 would enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating adverse effects.
9. I consider that Condition 8 would unnecessarily affect the appellant's ability to bring the proposed development into use and allow the development to be occupied. Additionally, I note reference in the Council's submission to minimizing the risk of a subsequent change of use and preventing a loss of employment. However, any future planning application for a change of use

¹ DC/18/107893

² Paragraph: 002 Reference ID: 21a-002-20190723

³ Paragraph: 003 Reference ID: 21a-003-20190723

⁴ Use Class B1a) of the Town and Country Planning (Use Classes) Order 1987 (as amended)

would be assessed on its own merits. Neither do I consider that it has been reasonably substantiated how the submission of details / plans required by Condition 8 would prevent any potential loss of employment in the future or what constitutes inflexible fit out design.

10. Thus, Condition 8 would otherwise impact on the proper implementation of the planning permission contrary to the guidance contained in paragraph 6⁵ of the PPG and should therefore not be used. Whilst Policy 5 of the Council's Core Strategy 2011 and DM Policy 11 of the Council's Development Management Local Plan 2014 were cited as part of the reason for Condition 8 on the Council's decision notice, I do not find that the removal of Condition 8 would undermine the Council's employment aims or the requirements of the Framework.

Conclusion

11. I therefore find that Condition 8 does not meet the requirements of the guidance contained in the PPG and as such, I conclude that Condition 8 is not necessary or reasonable having regard to local and national policy. For the reasons given above, I conclude that the appeal should be allowed and planning permission varied in the terms set out in my decision.

W Johnson

INSPECTOR

⁵ Paragraph: 006 Reference ID: 21a-006-20140306