



Appeal Decision

Site visit made on 4 February 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 3 April 2020

Appeal Ref: APP/M5450/W/19/3239882

28 Nicola Close, Harrow HA3 5HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mr Suraj Vithlani, Motion Architecture against the decision of the Council of the London Borough of Harrow.
- The application Ref P/1081/19, dated 6 March 2019, sought approval of details pursuant to conditions Nos (2), (3), (5), (7), (8), (9), (12), (13), (14) and (16) of planning permission Ref P/5633/17, granted on 29 March 2018.
- The application was refused by notice dated 22 May 2019.
- The development proposed is conversion and extension of garage to provide a two storey building for two flats; separate amenity space, parking and bin storage.
- The details for which approval is sought are:
 - details and samples of the materials to be used in the construction of the external surfaces of a: the external surfaces of the buildings b: the ground surfacing c: the boundary treatment (Condition No (2)).
 - details of the levels of the building(s), road(s) and footpath(s) in relation to the adjoining land and highway(s), and any other changes proposed in the levels of the site (Condition No (3)).
 - details of hard and soft landscape works. Soft landscape works shall include: details of the green roof to the flat roof area, planting plans, and schedules of plants, noting species, plant sizes and proposed numbers / densities. Hard landscape works shall include details of secure and safe cycle parking. (Condition No (5)).
 - a plan indicating the positions, design, materials and type of boundary treatment including its height to be erected (Condition No (7)).
 - details of works for the disposal of sewage (Condition No (8)).
 - details of works for the disposal of surface water and surface water storage and attenuation works (Condition No (9)).
 - a Tree Protection Plan and Method Statement in relation to the adjacent protected Lombardy Poplar tree (Tree Preservation Order No. 462) (Condition No (12)).
 - the hard surfacing shall EITHER be constructed from porous materials OR provision shall be made to direct run-off water from the hard surfacing to a permeable or porous area or surface within the curtilage of the site (Condition No (13)).
 - the frontage and the boundary of the site is enclosed by a close boarded fence to a minimum height of 2 metres (Condition No (14)).
 - measures to minimise the risk of crime in a visually acceptable manner and to meet the specific security needs of the development (Condition No (16)).

Decision

1. The appeal is dismissed and approval of details is refused, namely: details submitted pursuant to condition Nos (2), (3), (5), (7), (8), (9), (12) and (13) of planning permission Ref P/5633/17, dated 29 March 2018.

Application for Costs

2. An application for costs was made by Mr Suraj Vithlani, Motion Architecture against the Council of the London Borough of Harrow. This application is the subject of a separate Decision.

Procedural Matters

3. The reason for the appeal as cited on the appeal form is a failure by the Council to give notice of its decision within the appropriate period (usually eight weeks) on an application for permission or approval. However, the Council has confirmed that the application was not validated until 27 March 2019 and the decision date was 22 May 2019, eight weeks later. Furthermore, the appellant did not submit the appeal after the eight week period of submission of the application and before 22 May 2019 for it to be considered as an appeal against failure by the Council to give notice of its decision within the appropriate period. Therefore, the appeal has proceeded against the refusal of the application dated 6 March 2019 and refused by notice dated 22 May 2019. The appellant has confirmed that this is acceptable. I have therefore determined the appeal on this basis.
4. Section 4 of the application for the approval of details reserved by condition states that the condition numbers to which the application relates are Nos (2), (3), (5), (7), (8), (9), (12), (13), (14) and (16). However, the Council's description of development states that the application is for details pursuant to condition Nos 2 (materials), 3 (levels), 5 (landscaping), 8 (sewage details), 9 (surface water attenuation), 12 (tree protection) and 13 (hard surfacing). Although condition No (7) (boundary treatment) is not referred to in the Council's description of development, it is referred to in its delegated report, and 'boundary treatment' is referred to in its reason for refusal and decision notice. In addition, condition Nos (14) and (16) are not referred to in the Council's delegated report or its reason for refusal. The Council has confirmed that condition No (14) was an operational condition and therefore not for discharge and that the discharge of condition No (16) had been withdrawn from the application. This has been verified by the appellant. Taking the above into account, I have therefore considered the appeal on the basis that it is for the approval of details reserved by condition for condition Nos (2), (3), (5), (7), (8), (9), (12) and (13).
5. There is inconsistency between some of the drawing revision references as stated in the list of plans submitted by the appellant and those listed in the Council's decision notice, namely 28NC_011, 28NC_014 and 28NC_020. The appellant states that drawing revision references 28NC_011 Rev 05, 28NC_014 Rev 04 and 28NC_020 Rev 06 were submitted to the Council for its consideration. However, the Council has confirmed that the drawing revision references used in the determination of the application were 28NC_011 Rev 03, 28NC_014 Rev 04 and 28NC_020 Rev 05. I am mindful that it is important that what is considered by the Inspector is essentially what was considered by the Council as local planning authority, and on which interested people's views were sought. Therefore, and for the avoidance of doubt, I have determined the appeal on the basis of the following revision references for these drawings, 28NC_011 Rev 03, 28NC_014 Rev 04 and 28NC_020 Rev 05.
6. I observed on my site visit that the proposed development is substantially complete and occupied. I have no information before me to confirm when the

proposed development commenced and there is no suggestion that the submission of the application to discharge the conditions, which is the subject of this appeal, post-dated the commencement of the proposed development on site or its first occupation. I have therefore determined the appeal on its merits, but noting that the proposed development has, to a large extent, already occurred.

Background and Main Issue

7. The appeal site fronts onto Nicola Close, a small cul-de-sac within an established residential area. The buildings in Nicola Close are a mixture of two and three storey dwellings.
8. This appeal follows the refusal of an application for the approval of details required by conditions attached to the original planning permission¹ by reason of insufficient information. As part of the appeal the appellant has submitted copies of the drawings which were submitted to the Council in support of the application. He contends that they are clear and sufficient to discharge the conditions.
9. Taking the above into account, I consider that the main issue is, whether the details submitted in respect of the materials, levels, landscaping, boundary treatment, sewage, surface water attenuation and tree protection aspects of the proposal meet the requirements of condition Nos (2), (3), (5), (7), (8), (9), (12) and (13) and demonstrate that the proposed development would be of a high quality, have an acceptable impact on the character and appearance of the area, provide acceptable drainage facilities, contribute to a managed reduction in flood risk and ensure the retention of trees of high amenity value.

Reasons

10. The National Planning Practice Guidance states that conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects². It is therefore vital that the Council is content that the details submitted to discharge any conditions are sufficient to meet their specific requirements.

Condition No (2)-Materials

11. The requirement for details of materials to be submitted is to ensure that the proposed development would be of a high quality and would respond to its context.
12. Condition No (2) attached to the planning permission states:

"Notwithstanding the details shown on the approved plans and documents, details and samples of the materials to be used in the construction of the external surfaces noted below shall be submitted to, and approved in writing by, the Local Planning Authority before the commencement of any work above DPC level of the buildings hereby permitted is carried out. a: the external surfaces of the buildings b: the ground surfacing c: the boundary treatment. The development shall be carried out in accordance with the approved details and shall thereafter be retained."

¹ Ref: P/5633/17.

² National Planning Practice Guidance, Paragraph: 001 Reference ID: 21a-001-20140306.

13. The details submitted pursuant to this condition comprise a materials schedule and drawings refs: 28NC_011 Rev 03, 28NC_012 Rev 04, 28NC_014 Rev 04, 28NC_015 Rev 03, 28NC_016 Rev 02, 28NC_020 Rev 05, 28NC_021 Rev 05, 28NC_022 Rev 03, 28NC_025 Rev 05 and 2018 148-018 2C. Reference is also made to materials in the email correspondence between the Council and the appellant.
14. The Council has confirmed that the proposed materials of red brick and grey roof tiles for the external surfaces of the building are considered to be acceptable, and there is no information before me which would cause me to disagree with this assessment.
15. I acknowledge that the condition does not specify the exact details that are required to be submitted regarding this aspect of the proposal, and that some details regarding parts b) and c) of the condition have been provided by the appellant, and are illustrated on a variety of plans and in correspondence.
16. However, with regard to ground surfacing, although the materials schedule confirms the detail of the resin driveway and is considered acceptable by the Local Drainage Authority, this is not annotated on the plans used in the determination of the application by the Council. Drawing revision references 28NC_011 Rev 03 and 28NC_020 Rev 05 state that the ground surfacing on the drive would be block paving. Even if I were to accept the materials schedule and the drawing revision references 28NC_011 Rev 05 and 28NC_020 Rev 06 submitted by the appellant, there is still a discrepancy in relation to the actual material proposed with 28NC_011 Rev 05 stating that it would be loose gravel and 28NC_020 Rev 06 stating that it would be water permeable resin.
17. In addition, with regard to boundary treatment, although some references to its form and height are made on the drawings and in email correspondence, no specific details, such as manufacturers information and/or images of the proposed retaining wall and boundary fence have been provided.
18. These considerations therefore lead me to the conclusion that the details submitted in relation to the materials aspects of the proposal are inconsistent and insufficient and, therefore, would not fully meet the requirements of condition No (2). As a consequence, these details would fail to meet the expectations of Policies 7.4B and 7.6B of The London Plan (consolidated with alterations since 2011) 2016 (LP). They would also not comply with Policy CS1B of the Harrow Core Strategy 2012 (HCS) and Policies DM1 and DM2 of the Harrow Council Development Management Policies 2013 (HDMP). Taken together, and amongst other things, these policies seek to ensure that new developments are of a high standard of design, are of complementary materials and that they respond to the local context.

Condition No (3)-Levels

19. The requirement for details of levels to be submitted is to ensure that the proposed development is acceptable in terms of its relationship with adjacent land and neighbouring occupiers, appearance, drainage, gradient of access and relationship with the public highway.
20. Condition No (3) attached to the planning permission states:

“No site works or development shall commence until details of the levels of the building(s), road(s) and footpath(s) in relation to the adjoining land and

highway(s), and any other changes proposed in the levels of the site, have been submitted to, and approved by, the Local Planning Authority. The development shall be carried out in accordance with the approved details.”

21. The details submitted pursuant to this condition comprise drawings refs: 28NC_010 Rev 02, 28NC_011 Rev 03, 28NC_014 Rev 04, 28NC_015 Rev 03, 28NC_020 Rev 05, 28NC_021 Rev 05 and 28NC_022 Rev 03. Reference is also made to levels in the email correspondence between the Council and the appellant.
22. The wording of the condition is quite specific in relation to the details required. I note the plans and information submitted by the appellant. Nevertheless, it is apparent that the scale of the drawings does not provide sufficient detail; some of the existing and proposed drawings are inconsistent, with some showing the location of trees and others not; and the cross sections through the front of the site do not show the relationship of the site with the adjacent trees.
23. Therefore, I conclude that the details submitted in relation to the levels aspects of the proposal are inadequate and, as such, would not meet the specific requirements of condition No (3). As a consequence, these details would fail to meet the expectations of Policies 7.4B and 7.6B of the LP and Policies DM1 and DM10 of the HDMP. Taken together, and amongst other things, these policies seek to ensure that developments are of a high standard of design, do not harm the living conditions of neighbouring occupiers and are appropriate in terms of on site water management and surface water attenuation.

Condition Nos (5) and (7)-Landscaping and boundary treatment

24. The requirement for details of landscaping and boundary treatment to be submitted is to ensure that the proposed development is of a high quality and responds to its context.
25. Condition No (5) attached to the planning permission states:

“Notwithstanding the details on the approved plans, the development hereby permitted shall not be occupied until details of hard and soft landscape works have been submitted to, and approved in writing by the Local Planning Authority. Soft landscape works shall include: details of the green roof to the flat roof area, planting plans, and schedules of plants, noting species, plant sizes and proposed numbers / densities. Hard landscape works shall include details of secure and safe cycle parking.”
26. Condition No (7) attached to the planning permission states:

“Prior to the occupation of the development hereby permitted, a plan indicating the positions, design, materials and type of boundary treatment including its height to be erected shall be submitted to, and approved in writing by, the Local Planning Authority. The boundary treatment shall be completed in accordance with the approved details before the houses are occupied and thereafter retained.”
27. The details submitted pursuant to these conditions comprise a materials schedule and drawings refs: 28NC_011 Rev 03, 28NC_012 Rev 04, 28NC_014 Rev 04, 28NC_015 Rev 03, 28NC_016 Rev 02, 28NC_020 Rev 05, 28NC_021 Rev 05, 28NC_022 Rev 03 and 2018 148-018 2C. Reference is also

made to landscaping and boundary treatment in the email correspondence between the Council and the appellant.

28. The wording of the conditions is quite precise in terms of the information required in relation to hard and soft landscaping and boundary treatment. I appreciate that some of these details are annotated on the drawings submitted and/or referred to in the email correspondence by the appellant. However, from the information before me, I have been unable to find all of the details as required by these conditions, such as, planting plans, and schedules of plants; details of secure and safe cycle parking; and a plan showing all of the proposed boundary treatments.
29. Accordingly, I conclude that the details submitted in relation to the landscaping and boundary treatment aspects of the proposal are deficient and would not meet the requirements of condition Nos (5) and (7). As a consequence, these details would fail to meet the expectations of Policies 7.4B and 7.6B of the LP. They would also fail to comply with Policies DM1, DM22 and DM23 of the HDMP. Taken together, and amongst other things, these policies seek to ensure that developments are of a high standard of design, respond to local context and incorporate hard and soft landscaping and streetside greenness.

Condition Nos (8) and (9)-Sewage details and surface water attenuation

30. The need for details of sewage and surface water attenuation to be submitted is to ensure that the proposed development meets the requirements of the Local Drainage Authority.
31. Condition No (8) attached to the planning permission states:
- “The development hereby permitted shall not be commenced until details of works for the disposal of sewage have been submitted to and approved in writing by, the Local Planning Authority. The works shall be implemented in accordance with the approved details and shall thereafter be retained.”
32. Condition No (9) attached to the planning permission states:
- “The buildings hereby permitted shall not be commenced until details of works for the disposal of surface water and surface water storage and attenuation works have been submitted to and approved in writing by, the Local Planning Authority. The works shall be implemented in accordance with the approved details and shall thereafter be retained.”
33. The details submitted pursuant to this condition comprise drawings refs: 28NC_011 Rev 03 and 28NC_020 Rev 05. Reference is also made to sewage details and surface water attenuation in the email correspondence between the Council and the appellant.
34. I am aware that the wording of the conditions relating to these aspects of the proposal is quite vague and does not specify the full details that are required as stated by the Local Drainage Authority in its consultation comments.
35. Furthermore, I recognise that the location of pipe runs, drains and soakaways are illustrated on the drawings submitted, and are asserted by the appellant to have been agreed by Building Control. However, there is no evidence before me as part of the appeal which would cause me to take a different view on the information the Local Drainage Authority consider is necessary to discharge

these conditions. Furthermore, it is apparent that the appellant was aware of these requirements prior to submitting the application and the appeal.

36. Therefore, I conclude that the details submitted in relation to the sewage details and surface water attenuation aspects of the proposal would not meet the requirements of condition Nos (8) and (9). As a consequence, these details would not comply with Policy DM10 of the HDMP insofar as it seeks to ensure that developments provide for the appropriate on site water management and surface water attenuation.

Condition No (12)-Tree protection

37. Adjacent to the appeal site are two Poplar trees which are protected by a Tree Preservation Order (No. 462 Nos T10 and T11) (TPO). This condition is to protect these trees.

38. Condition No (12) attached to the planning permission states:

"Prior to the commencement of the development a Tree Protection Plan and Method Statement shall be submitted and approved in writing by the Local Planning Authority in writing to be agreed in relation to the adjacent protected Lombardy Poplar tree (No. 462). The development shall be carried out in accordance with the approved details and the tree protection measures shall be erected before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

39. The details submitted pursuant to this condition comprise a Tree Protection Plan and drawing ref: 28NC_TP&RP Rev 03. Reference is also made to tree protection in the email correspondence between the Council and the appellant.
40. There is a dispute between the parties as to whether the tree protection details are in accordance with BS5837:2005³. However, no information has been provided in relation to this document for me to confirm if the information accords with its recommendations. Even if I was to accept that the information provided by the appellant is correct, it is apparent from the drawing that the Root Protection Area protective barrier of Heras fencing would extend into the ground protection zone of one of the trees along with part of the raft foundation for the proposed development. As the condition is imposed to protect the TPO'd trees, the information submitted would not meet its requirements.
41. I note the comments made by the Council's arboricultural officer regarding the adjacent Maple Tree and the potential impact that one of the proposed soakaways, the connecting underground services, the retaining wall and future parking in this location could have on the root system of this tree. However, the condition only relates to the TPO'd poplar trees and so these comments cannot be taken into consideration with reference to this condition.

³ British Standard: Trees in Relation to Construction – Recommendations 2005.

42. Accordingly, I conclude that the details submitted in relation to the tree protection aspects of the proposal would not meet the requirements of condition No (12). As a consequence, these details would fail to meet the expectations of Policy 7.21 of the LP. It would also fail to comply with Policy DM22 of the HDMP. Taken together, and amongst other things, these policies seek to ensure that existing trees of value are retained and protected during construction.

Condition No (13)-Hard surfacing

43. Condition No (13) attached to the planning permission states:

"Before the hard surfacing hereby permitted is brought into use the surfacing shall EITHER be constructed from porous materials, for example, gravel, permeable block paving or porous asphalt, OR provision shall be made to direct run-off water from the hard surfacing to a permeable or porous area or surface within the curtilage of the site."

44. This is an operation condition and, as such, cannot be discharged.
45. As noted in respect to condition No (2), conflicting details and plans have been submitted with regard to the hard surfacing materials. It is unclear whether porous materials are proposed, though from my site visit it appeared that they had not been provided. The appeal scheme as implemented may not comply with this condition. This forms a separate enforcement issue for the Council and is not a matter I need to address.

Other Matter

46. I have had regard to the appellant's comments concerning the length of time it took the Council to validate and determine the application and his frustration with the, alleged, lack of co-operation by the Council. However, such matters are not material considerations to which I can give any significant weight in the context of an appeal under Section 78 of the Act.

Conclusion

47. For the reasons given above, I conclude that the information submitted does not meet the requirements of condition Nos (2), (3), (5), (7), (8), (9), (12) and (13). As such, it does not demonstrate that the proposed development would be of a high quality, have an acceptable impact on the character and appearance of the area, provide acceptable drainage facilities, contribute to a managed reduction in flood risk and ensure the retention of trees of high amenity value. Therefore, the appeal is dismissed.

F Cullen

INSPECTOR