



Appeal Decision

Site visit made on 10 March 2020

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 6th April 2020

Appeal Ref: APP/N5090/W/18/3214723

47 Woodstock Road, Golders Green, London NW11 8QD

- 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 Mr Morris against the Council of the London Borough of Barnet.
 - The application Ref 18/3948/S73 is dated 21 June 2018.
 - The application sought planning permission for demolition of existing pair of semis and erection of a new build 4 storey building accommodating 9 self contained flats with accommodation at roof space and associated off-street parking, cycle storage, waste and recycling storage facilities and associated landscaping without complying with a condition attached to planning permission Ref APP/N5090/W/15/3003500, dated 27 March 2015.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos WR13-PP-01, WR13-PP-02, WR13-PP-06, WR13-PPA-200 Rev C, WR13-PPA-201 Rev C, WR13-PPA-202 Rev C, WR13-PPA-203 Rev C, WR13-PPA-204 Rev C, WR13-PPA-206 Rev A and WR13-PPA-101 Rev C.
 - The reason given for the condition is: Standard conditions that set a time limit on the development and would ensure that it is carried out in accordance with the submitted plans are, of course, necessary.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Philip Morris against London Borough of Barnet. This application is the subject of a separate Decision.

Main Issue

3. The Council initially considered that the development had not commenced and that the planning permission was therefore not extant. However, during the course of the appeal, the Council accepted that the planning permission granted under appeal reference Appeal Ref: APP/N5090/W/15/3003500 (2015 appeal) had commenced and was extant. Therefore, from the evidence before me, the main issue is whether the proposed development would fundamentally alter the approved planning permission granted under the 2015 appeal and thus whether it can be determined under the provisions of Section 73 of the Act¹.

¹ Town and Country Planning Act 1990

Reasons

4. Section 73 of the Act allows for applications for the development of land without complying with the conditions imposed on an existing planning permission. The Planning Practice Guidance (PPG) states that, although conditions can be used to make a minor modification to a proposal, conditions that would make a development substantially different from that set out in the application should not be used.
5. This appeal seeks the variation of Condition 2² which specifies plans, and requests a condition specifying a different set of drawings. The proposed changes to the approved scheme include the overall change in style of the building from a pitched roofed building with gable ends and bay windows fronting the street in a traditional style, to a flat roofed building with large areas of glazing and a modern style. Other significant changes include the removal of the lower basement level, the inclusion of a 'living wall' and internal alterations to the layout such as changes to accommodate religious beliefs. In addition, the number of parking spaces would be reduced.
6. I note the case law cited by the appellant³. However, while I note that the number of dwellings would be unaltered, given the removal of the lower basement level together with the significantly altered massing and appearance of the building, the proposed changes amount to a fundamental alteration of the proposal approved at appeal 2015.
7. Consequently, having regard to all the facts of the case, it is evident that Condition 2 cannot be amended in the way proposed by the appellant without fundamentally altering the approved planning permission granted under the 2015 appeal. The appeal to vary Condition 2 in the proposed way therefore cannot be determined under the provisions of Section 73 of the Act.

Other Matters

8. I am aware of the similarities between this appeal proposal and a scheme approved by the Council under a subsequent Section 73 application⁴. However, the validity of that application is not before me and has not altered my overall decision.
9. I note that the Council appears to have consulted the public and statutory consultees on the Section 73 application subject of this appeal. However, while I also note that the appellant could submit the same set of drawings under a full planning application, since the application subject of this appeal was nevertheless made under Section 73 and the proposal would fundamentally alter the original approved scheme, this point has not altered my overall decision.
10. The appeal scheme has clearly raised questions regarding the effect of the proposed development on the character and appearance of the area, the living environment of future occupiers with particular regard to light, outlook and privacy as well as the living conditions of neighbouring occupiers. I note the comments of the Inspectors for the cases at Wentworth Road⁵ and West Heath

² Permission granted at appeal - appeal ref: APP/N5090/W/15/3003500

³ R v Coventry CC ex p Arrowcroft Group plc [2001] PLCR 7, R (Wet Finishing Works Ltd) v Taunton Deane BC [2017] EWHC 1837 (Admin), [2018] PTSR 26, Finney v Welsh Ministers & others [2019] EWCA Civ 1868

⁴ Council's Ref: 19/0996/S73

⁵ Appeal Ref: APP/N5090/W/18/3206337

Drive⁶. In addition, I acknowledge the various measures included in the appeal scheme, such as the reduction in quantity of excavation, installation of the living wall and changes to the ventilation system, to reduce the carbon footprint of the development. I also acknowledge proposals in relation to fire safety, accessibility and religious inclusion. These matters serve to highlight that the changes proposed would be significant such that they would fundamentally alter the approved scheme and have not altered my overall decision.

Conclusion

11. For the reasons given above the appeal is dismissed.

R Sabu

INSPECTOR

⁶ Appeal Ref: APP/N5090/A/10/2140184