



Appeal Decision

Site visit made on 9 March 2020

by D Hilton-Brown BSc (Hons) CIEEM

an Inspector appointed by the Secretary of State

Decision date: 28 April 2020

Appeal Ref: APP/D5120/W/19/3243868 166 Penhill Road, Bexley DA5 3EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 Mysave Ltd against the decision of the Council of the London Borough of Bexley.
 - The application Ref 19/02421/FUL, dated 2 October 2019, was refused by notice dated 3 December 2019.
 - The application sought planning permission for demolition of the existing dwelling and erection of one 3 storey block comprising 8 x 1 bed apartments with ancillary parking and bin storage facilities without complying with a condition attached to planning permission Ref 19/00866/FUL, dated 10 September 2019.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans, being Drawing Nos. 4447-PD-01 Rev A, 4447-PD02 Rev A and 4467-PD-03 Rev A and any approval granted subsequently pursuant to this permission.
 - The reason given for the condition is: To prevent an unacceptable deviation from the approved plans.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing dwelling and erection of one 3 storey block comprising 8 x 1 bed apartments with ancillary parking and bin storage facilities at 166 Penhill Road, Bexley DA5 3EA. This is in accordance with the application Ref 19/02421/FUL dated 2 October 2019, without compliance with condition number 2 previously imposed on planning permission Ref 19/00866/FUL dated 10 September 2019 and subject to the conditions attached to the schedule at the end of this decision.

Procedural Matters

2. Work has taken place at the site in relation to the demolition of the existing dwelling. However, there is no reason to believe that this has been carried out in breach of any conditions imposed on the existing permission. I shall therefore consider the appeal under section 73 (s73), rather than 73A of the Town and Country Planning Act 1990.
3. The Council have noted a typographical error in the original planning permission as 18/00866/FUL rather than 19/00866/FUL. I have taken this into consideration and determined the appeal on this basis.

4. The Council have indicated that they consider the enlargement of the 2 dormer windows and the terrace, both to the rear of the proposed dwelling, would have been considered minor material amendments to the parent planning permission. From my site visit and the evidence before me I concur with the Council's conclusion on these issues. Consequently, my decision considers only the matter of the increase in depth of the proposed building.

Main Issues

5. The main issues are whether or not the proposed development would:
 - (a) comprise a minor material amendment and;
 - (b) effect the character and appearance of the proposed dwelling and the surrounding area and;
 - (c) effect the living conditions of the occupiers of No 168 Penhill Road, having particular regard to outlook and privacy.

Reasons

Minor material amendment

6. The Council considers that the proposal would not constitute a minor material amendment of the approved scheme. It deems that by comparison to the approved dwelling, the proposal would be out of keeping with the character of the surrounding area and have a detrimental impact on the neighbouring property of No 168 Penhill Road.
7. It is explained in the Planning Practice Guidance¹ (PPG) that "An application can be made under s73 to vary or remove conditions associated with a planning permission. One of the uses of a s73 application is to seek a minor material amendment, where there is a relevant condition that can be varied". It then goes on to state that "There is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved".
8. The proposal would result in the increase in the depth of the proposed building, across all 3 storeys by only about 1m. This would provide improvements to the internal layout by creating more useable floor space for the proposed apartments.
9. The proposed alterations would result in minimal change to the layout and design and no changes to the height, number of units or materials to be used. I acknowledge that there would be an increase in the volume of this building. However, this would not alter the width of the dwelling and would only increase the footprint to the rear of the proposed building from approximately 210m² to 225m². I do not consider that an increase in footprint of around 15m² would be significant in relation to the overall dimensions of the proposed building and a site of this size. Consequently, I deem this to be a minor amendment to the proposals.

¹ PPG "Appeals", paragraph: 013 Reference ID: 17a-013-20140306; Revision date: 06 03 2014.

Character and appearance

10. The proposed changes would be mostly to the rear of the property and would not be visible from Penhill Road. The development would be set well back from Penhill Road with no properties located directly to the rear. Furthermore, the existing mature trees would provide additional screening of the proposed property. Therefore, the proposals would not have a detrimental effect on the character and appearance of the proposed dwelling or the surrounding area.

Living conditions

11. The nearest residential property to the proposed apartments is No 168 Penhill Road. However, this dwelling is set well forward of the proposed apartments and would have a good separation distance between the flank wall of the proposed development. In addition, the 2 properties would be slightly angled away from each other which would prevent any issues regarding outlook for the occupiers of No 168. Furthermore, there are no additional windows proposed within the amended plans which would affect the privacy of this property. I therefore consider that these proposed variations would not have effect on the living conditions of the occupiers of No 168.
12. I have taken into consideration that the approved planning application (19/00866/FUL) was assessed against the footprint and design of a previously approved scheme (15/02558/FUL) on the same site. However, I have determined this appeal on its own individual planning merits and for the reasons given above, I do not consider it would be substantially different from the most recently approved scheme.
13. As a result of these factors, I conclude that the proposed dwelling would comprise a minor material amendment, which is not significantly different to that previously approved and would not harm the character and appearance of the locality or have a detrimental effect on the living conditions of No 168.

Conditions

14. The guidance in the PPG makes clear that decision notices for the grant of planning permission under s73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
15. The Council have imposed a number of conditions in the previous planning permission which I have considered alongside the advice in the National Planning Policy Framework 2019 (the Framework) and PPG. I find the majority to be reasonable and necessary in the circumstances of this case; however, some have been edited for precision and clarity and to better reflect the relevant guidance.
16. I have amended the statutory implementation condition in line with s73, to reflect that the time period for development should not be extended and must run from the date of the original permission. I also consider that it is necessary in the interests of clarity to require compliance with the submitted approved plans, unless further modified by any condition set out below. A condition

requiring details of the external materials is necessary to safeguard the character and appearance of the building and its surroundings.

17. The living conditions of the occupants of the neighbouring properties will be protected during the construction process, by a condition relating to the submission of a Construction Method Statement.
18. In the interests of highway safety, conditions for adequate visibility splays at the proposed site access, parking provision and parking allocation are necessary, while conditions relating to bicycle parking are also required to promote sustainable transport.
19. Conditions relating to refuse and recycling storage, and hard and soft landscaping will safeguard the visual amenity of the future occupants of the building and the occupiers of neighbouring properties.
20. I consider the current scheme is compatible with the previous decision and there is no reason to believe that the conditions I have imposed could not be complied with.

Conclusion

21. I conclude that the development proposed would not be substantially different, in scale and nature, from the previous approval and does constitute a minor material amendment. Having taken all other matters into account I conclude the appeal should be allowed.

D Hilton-Brown

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of 10 September 2019.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 4467-PD-01 C, 4467-PD-02 B and 4467-PD-03 B.
- 3) No development shall commence until details/samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples.
- 4) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) measures to control the emission of dust, dirt and smoke and a means of minimising noise and vibration during construction;
 - iv) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - v) construction of site lighting
 - vi) delivery, demolition and construction working hours.
 - vii) Contact arrangements for the public, including 'out of hours' telephone numbers for named contacts.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 5) The building shall not be occupied until the area shown for vehicle parking on drawing no. 4467-PD-01 C has been laid out, drained and surfaced in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and that area shall thereafter be kept available at all times for the parking of vehicles.
- 6) Before the access is first brought into use, a 2.4m x 2.4m emerging pedestrian visibility splay and a 2.4m x 43m emerging vehicular visibility splay shall be provided. These visibility splays shall thereafter be retained free of any obstruction to visibility exceeding a height of 600mm above the adjoining footway level.
- 7) The building shall not be occupied until space has been laid out within the site for bicycles to be parked and that space shall thereafter be kept available for the parking of bicycles.
- 8) The building shall not be occupied until details of the allocation of both the car and bicycle parking facilities to each residential unit shall first have been submitted to and approved in writing by the local planning authority, and such allocation shall be retained thereafter.
- 9) The building shall not be occupied until details of facilities for the storage of refuse and recycling shall first have been submitted to and approved in writing by the local planning authority, and that area shall thereafter be kept available at all times for the storage of refuse and recycling.

- 10) The building shall not be occupied until details of a scheme for the management of car and bicycle parking facilities shall first have been submitted to and approved in writing by the local planning authority, and shall be managed and operated in accordance with the approved scheme thereafter.
- 11) The building shall not be occupied until details of both hard and soft landscape works, boundary treatments and biodiversity enhancement measures have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details and retained thereafter.