



Appeal Decision

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 May 2020

Appeal Ref: APP/F5540/W/19/3243811

78 Upper Sutton Lane, Hounslow TW5 0PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Gurpal Singh Gill, Beacon Care Services against the decision of the Council of the London Borough of Hounslow.
 - The application Ref: 01143/78/P18, dated 28 August 2019, was refused by notice dated 23 October 2019.
 - The application sought planning permission for the proposed creation of nine self-contained flats (six studio flats and three one-bedroom flats), a communal lounge, a manager's office and a residents' gym on the first and second floors in place of the approved development of eight self-contained flats, together with alterations to planning permission 01143/78/P8 to allow retention of the elevations and footprint as built. Drawing Numbers: Planning Statement by DLP; Design and Access Statement by DLP; Location and Block Plan; 013/PL04 Rev B; Received 02/12/2015; 013/PL02 Rev D; 013/PL03 Rev G; 013/PL05; 013/PL07 Rev A; ; received 23/03/2016 without complying with a condition attached to planning permission Ref: 01143/78/P16, dated 5 December 2016.
 - The condition in dispute is No. 21 which states that: *Notwithstanding the approved drawings, prior to occupation of the flats full details of works to the highways shall be submitted to and approved by the local planning authority, to include:*
 - "" widening of the access onto Sutton Way to 4.5m
 - "" resurfacing of the crossover on Upper Sutton Lane to provide clear delineation of the back edge of footway and formal dropped kerbs at either end
 - These details shall be carried out to the satisfaction of the local planning authority and be completed no later than 3 months after the first occupation of any flat.*
 - The reason given for the condition is: *In the interests of the free flow and safety of traffic and pedestrians in the area in accordance with the policies quoted in the reason for grant of this planning permission.*
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Gurpal Singh Gill, Beacon Care Services against the Council of the London Borough of Hounslow. This application is the subject of a separate Decision.

Procedural Matter

3. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a

physical site visit. This is because I have been able to reach a decision based on the information already available, supplemented by additional photographic evidence supplied by the Council and not objected to in its use in my decision by the appellant. Both the appellant and the Council have agreed to the appeal proceeding on this basis.

Background

4. The appeal concerns a former public house site that has been redeveloped to provide a retail shop at ground floor level with residential and ancillary development above. The site lies on the corner of Upper Sutton Lane, Sutton Way and The Crossways. The immediate surroundings are a mix of local commercial and residential uses.
5. Planning permission¹ was originally granted for the development in 2012. Subsequently, an amended proposal was approved² by the Council in 2016 (the 2016 permission). This altered the residential element of the scheme, as well as allowing for the retention of the elevations and footprint of the development as built.
6. The 2016 permission included full details of highway works that were required, under condition 21. These included the resurfacing of the crossover on Upper Sutton Lane to provide a clear delineation of the back edge of the footway and formal dropped kerbs at either end, as well as the widening of the access onto Sutton Way to 4.5 metres. The condition was applied in the interests of the free flow and safety of traffic and pedestrians in the area.
7. Whilst the development has been brought into use, it is not in accordance with condition 21. The appellant now wishes to vary the condition to provide for a delineation of the back edge of the footway and existing dropped kerbs at either end, thereby avoiding works to the public highway. The Council has raised highway safety concerns, especially for pedestrians and other vulnerable road users. The requirement to widen the access onto Sutton Way would be unaffected.

Main Issue

8. The main issue is whether condition 21 is reasonable and necessary in the interests of highway safety and the free flow of traffic, in particular the safety of pedestrians and other vulnerable road users.

Reasons

9. The Upper Sutton Lane frontage of the site contains a long open access, beyond which is a line of car parking spaces associated with the development. The crossover arrangement means that the footway along Upper Sutton Lane has to be traversed in order for cars to utilise the access and these spaces, along with the associated manoeuvring.
10. There is no obvious delineation between the footway and the adjacent parking area. Both are of a similar tarmac construction. As the footway is not easily distinguishable from the parking area, this puts pedestrians and other vulnerable users at risk from cars trying to utilise these parking spaces. The confined arrangement of the parking to the footway further adds to these

¹ Council ref: 01143/78/P8

² Council ref: 01143/78/P16

concerns, as vehicles attempt to manoeuvre. The potential risk is also heightened because of the length of the access. As a consequence, pedestrians and other vulnerable users could also be in danger where a number of vehicular movements are occurring at the same time.

11. Accordingly, providing a clear means of delineation that is apparent to the drivers of vehicles is reasonable and necessary to avoid conflicts with pedestrians and other vulnerable users. A drainage gully or channel would not adequately provide such a function. This is not a safety feature but would be intended to prevent water escaping onto the highway from the parking area. The widening of the access onto Sutton Way does not have a bearing, as it is on a different site frontage.
12. Both main parties have made reference to the levels of parking associated with the former public house. I have limited evidence before me on whether or not it generated more or less use of the access. Nevertheless, it is clear from the photographic evidence submitted that the parking area is well used. Hence, there is clear justification for ensuring that the development does not jeopardise the safety of pedestrians and other vulnerable users, even though it employs the same vehicular access.
13. Condition 21 would result in works to the footway. This is outside of land under the appellant's control as it lies within the public highway. The Planning Practice Guidance: Use of Conditions (PPG), whilst expressing general caution against the use of a condition which require works on land that is not controlled by an applicant, states that it may be possible to achieve a similar result using a condition worded in a negative form, known as a 'Grampian Condition'. Condition 21 is such a condition as it prohibits the occupation of part of the development until a specified action takes place, namely the full details of works to the highways to be submitted to and approved by the local planning authority. Thereafter, those works are to be completed no later than 3 months after the first occupation of any flat.
14. In light of the highway safety concerns that I have set out, the resurfacing of the crossover on Upper Sutton Lane would be required. It would result in drivers being considerably more aware that they are crossing a footway and so they would be likely more attentive to that pedestrians and other vulnerable users may also be present. Condition 21 is, therefore, reasonable, necessary and related to the development in this regard. The appellant's proposed condition would not adequately address my concerns. In avoiding works to the highway, it would not provide for the resurfacing that is required for the clear delineation.
15. The circumstances also mean this is not a situation under the PPG where there were no prospects at all of the action in question being performed within the time-limit imposed by the permission. The Highway Authority, whose consent would be required, have stated they want the works to take place, as is confirmed in the appeal submissions. Hence, the condition is also enforceable. A lack of agreement from the appellant to the condition does not overcome the highway safety concerns.
16. The National Planning Policy Framework (Framework) states that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. The PPG also advises that where it would be equally possible to overcome an objection via a condition or

an obligation, a condition should be used. The existing condition simply requires the works to be agreed and carried out and does not positively require the payment of a sum of monies. I see no substantive reason why a condition cannot be utilised and, thus, the absence of a related Section 106 Agreement under the Town and Country Planning Act 1990 does not alter my conclusion.

17. In addition, a payment that is made under the Community Infrastructure Levy Regulations (CIL) is not intended for works that are required to make a development that is the subject of an individual planning application acceptable in planning terms. The Planning Practice Guidance: Community Infrastructure Levy acknowledges that some site specific impact mitigation may still be necessary for a development to be granted planning permission, even with CIL. As such, that the appellant has made a CIL payment to the Council does not negate the need to carry out the required works.
18. Nor do the highway works place an unjustifiable and disproportionate financial burden on the appellant. They are required in order to make the development acceptable in planning terms. There is no substantive viability evidence before me. Condition 21 is, thus, not unreasonable in this regard.
19. That the descriptions of development on the planning permissions do not refer to highway works do not make the condition invalid. It is not unusual for a description to not encompass every aspect of the works, including those required by condition. The Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Condition 21 performs such a function, to make the development acceptable in highway safety terms.
20. The discharge of the condition would thereafter be a matter for the appellant and the Council, as the development has not taken place in accordance with how the condition comes into effect by way of when the details of the highway works need to be submitted, agreed and completed. It is not the purpose of my decision to remedy such a situation as the appeal fails on the matter of dispute, highway safety. A breach of a condition does not, in itself, render a condition unreasonable, when its requirements seek to address a valid planning reason, as with highway safety concerns in this case. In any event, the appellant has made me aware that details pursuant to other outstanding conditions have been submitted to the Council for approval since the development has been completed.
21. I conclude that condition 21 is reasonable and necessary in the interests of highway safety and the free flow of traffic, in particular the safety of pedestrians and other vulnerable road users. It complies with the tests that are set out in paragraph 55 of the Framework and the related advice in the PPG.
22. Furthermore, the removal of condition 21 and its replacement by the condition suggested by the appellant does not comply with Policy EC2 of the Council of the London Borough of Hounslow, Local Plan 2015-2030 (2015), and with Policies 6.3 and 6.10 of the London Plan (2016). These policies concern demonstrating that adverse impacts on the transport network are avoided, not adversely affecting safety on the transport network, and that development should ensure high quality pedestrian environments, amongst other considerations.

Conclusion

23. For the reasons set out above and having regard to all matters raised, the appeal should be dismissed.

Darren Hendley

INSPECTOR