



Appeal Decision

Site visit made on 18 August 2020

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/Q4245/W/20/3249283

31 Eyebrook Road, Bowdon WA14 3LH.

- 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 Aadam Aryan (Distillation Equipment Company Ltd) against the decision of Trafford Council.
- The application Ref 97828/FUL/19, dated 10 May 2019, was approved on 18 September 2019 and planning permission was granted subject to conditions.
- The development permitted is demolition of existing dwelling house and erection of a pair of semi-detached dwellings with associated drive and landscaping.
- The conditions in dispute are Nos 4, 5 and 6 which state that:
Condition 4 - a) Notwithstanding the details shown on the approved plans, the development hereby permitted shall not be occupied until full details of both hard and soft landscaping works (including the provision of six trees net of clearance) have been submitted to and approved in writing by the Local Planning Authority. The details shall include the formation of any banks, terraces or other earthworks, hard surfaced areas and materials, planting plans, specifications and schedules (including planting size, species and numbers/densities), existing plants / trees to be retained and a scheme for the timing / phasing of implementation works. (b) The landscaping works shall be carried out in accordance with the approved scheme for timing / phasing of implementation or within the next planting season following final occupation of the development hereby permitted, whichever is the sooner. (c) Any trees or shrubs planted or retained in accordance with this condition which are removed, uprooted, destroyed, die or become severely damaged or become seriously diseased within 5 years of planting shall be replaced within the next planting season by trees or shrubs of similar size and species to those originally required to be planted.
Condition 5 - Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any equivalent Order following the amendment, re-enactment or revocation thereof) upon first installation the ground and first floor windows in the property's side facing elevations shall be fitted with, to a height of no less than 1.7m above finished floor level, non-opening lights and textured glass which obscuration level is no less than Level 3 of the Pilkington Glass scale (or equivalent) and retained as such thereafter.
Condition 6 - The first floor roof terrace hereby approved shall not be brought into use unless and until opaque screens to the side boundaries measuring no less than 1.8m in height have been erected in accordance with the plans hereby approved. The screens shall be retained as such thereafter.
- The reasons given for the conditions are:
Condition 4 - To ensure that the site is satisfactorily landscaped having regard to its location, the nature of the proposed development and having regard to Policies L7, R2 and R3 of the Trafford Core Strategy and the National Planning Policy Framework.
Condition 5 - In the interest of amenity having regard to Policy L7 of the Trafford Core Strategy and the National Planning Policy Framework.
Condition 6 - In the interests of residential amenity, having regard to Core Strategy Policy L7 and NPPF

Decision

1. The appeal is allowed and planning permission ref 97828/FUL/19 for the demolition of existing dwelling house and erection of a pair of semi-detached dwellings with associated drive and landscaping at 31 Eyebrook Road, Bowdon WA14 3LH granted on the 18 September 2019 by Trafford Council, is varied by deleting conditions 4, 5 and 6 and replacing them with the following conditions:

Condition 4: a) Notwithstanding the details shown on the approved plans, the development hereby permitted shall not be occupied until full details of both hard and soft landscaping works have been submitted to and approved in writing by the Local Planning Authority. The details shall include the formation of any banks, terraces or other earthworks, hard surfaced areas and materials, planting plans, specifications and schedules (including planting size, species and numbers/densities), existing plants / trees to be retained and a scheme for the timing / phasing of implementation works. (b) The landscaping works shall be carried out in accordance with the approved scheme for timing / phasing of implementation or within the next planting season following final occupation of the development hereby permitted, whichever is the sooner. (c) Any trees or shrubs planted or retained in accordance with this condition which are removed, uprooted, destroyed, die or become severely damaged or become seriously diseased within 5 years of planting shall be replaced within the next planting season by trees or shrubs of similar size and species to those originally required to be planted.

Condition 5: - The first-floor windows in the side elevations of the dwellings hereby approved shall be permanently retained with obscured glazing (at Pilkington Glass Level 3 or equivalent) and remain non-opening and fixed shut for any part of the windows that is less than 1.7 metres above the floor of the room in which it is installed.

Condition 6: The first-floor roof terrace hereby approved shall not be brought into use unless and until opaque screens to the side boundaries measuring no less than 1.7m in height have been erected in accordance with the plans hereby approved. The screens shall be retained as such thereafter.

Application for costs

2. An application for costs was made by Mr Aadam Aryan (Distillation Equipment Company Ltd) against Trafford Council. This application is the subject of a separate Decision.

Background and Main Issues

3. The appeal site is a detached house in a residential street. The dwellings in the vicinity of the site, including neighbouring properties, are mainly detached houses of various sizes and design set back from the street frontage. The development permitted, which has yet to be implemented, would replace the existing property with a pair of semi-detached houses.
4. Planning permission was granted for the semi-detached properties at the appeal site in April 2019¹. Subsequently the appellant sought amendments to the previously approved scheme through the submission of a further planning

¹ 94357/FUL/18

application². The appellant contends that conditions 4, 5 and 6 of the later permission are more onerous and is seeking their variation or removal.

5. Having regard to the reasons for imposing the conditions set out in the banner heading, the main issues are:
- the effect that varying condition 4 would have on the character and appearance of the area; and,
 - the effect that removing or varying conditions 5 and 6 would have on the living conditions of neighbouring residential properties.

Reasons

Condition 4

6. The existing dwelling within the appeal site is relatively modest in the context of the area's character. There is a low boundary wall to the street frontage and good-sized gardens around it defined by mature, and in parts, overgrown vegetation. The side boundary is adjacent to a public footpath and therefore the plot is open to greater public view than some of its neighbours.
7. The appellant's concern is that the specific requirement to provide no less than six trees as part of the landscaping scheme was not sought on the previous application. However, there is no disagreement between the parties that a landscaping condition is needed, and I would agree.
8. The Council refer to the Trafford Local Plan Supplementary Planning Document 1 – Planning Obligations (SPD). The SPD seeks to ensure that development contributes to the enhancement of Green Infrastructure. The table in paragraph 3.53, which is indicated to be a guide, states that as part of the landscaping within developments 3 trees will be sought for each dwelling. However, the table also indicates that alternative Green Infrastructure in lieu of or in combination with trees could be provided.
9. It appears to me that the SPD provides parameters within which the soft landscaping can be appropriately designed to meet the particular site circumstances. Whilst this may include six trees this is not the only approach that would comply with the guidance within the SPD.
10. Consequently, I agree with the appellant that the reference to six trees in the landscaping condition is too prescriptive. I will therefore delete this condition and replace it with a landscaping condition that removes reference to the six trees. This would allow the appellant an opportunity to design a scheme that is appropriate to the site circumstances having regard to the Council's SPD. Such an approach would also be consistent with Policies L7, R2 and R3 of the Trafford Local Plan Core Strategy (Core Strategy) which together seek, among other things, to achieve design quality through the appropriate landscaping of development.

Condition 5

11. The Council accept that there is no need for obscure glazing or for the windows to be fixed shut on the ground floor side elevations of the proposed dwellings.

² 97828/FUL/19

However, the Council would like to see condition 12 amended to retain the existing boundary treatment.

12. I agree that obscure glazing of the ground floor windows is not necessary to protect the living conditions of adjacent occupiers. Existing or replacement boundary treatment would provide the necessary privacy between plots. I see no reason to amend condition 12, which seeks to agree details of the proposed boundary treatment at the site.
13. I have been provided with a copy of drawing no A1145-A-G200-E-02 which is specified in condition 2 as one of the approved plans. The drawing indicates that the first floor side ensuite and WC windows would be obscure glazed and that the first floor gym window on the side elevation of the dwelling next to No 29 Eyebrook Road would also be partly obscure glazed. However, all the windows are indicated to be opening lights and the gym window in the side elevation of the dwelling closest to No 33 Eyebrook Road is not shown to be obscure glazed.
14. The side elevation facing No 29 would be protected by obscure glazing according to the drawings and I consider it is reasonable and necessary for the level of the glazing to be specified and that such glazing should be provided to a level of 1.7 metres from the floor level to achieve the required privacy between plots. However, I am satisfied that the obscure glazing would sufficiently protect the adjacent occupiers without the need to require the windows to be completely fixed shut. I shall amend the condition to allow opening lights above 1.7 metres. This would protect the living conditions of the neighbouring property, but the rooms could be naturally ventilated.
15. The proposed first floor gym window facing towards No 33 would be a wide opening set close to the side boundary. Without obscure glazing it would afford views towards No 33 over parts of the rear garden. Although there is extensive planting along the boundary which would currently reduce overlooking, such planting could be cut back. I note the Council's Planning Guidance: New Residential Developments acknowledges that planting is not a substitute for adequate distance, and I would agree.
16. Thus, without the first-floor window being obscure glazed I find the proposed window would reduce the privacy in the rear of No 33 and would be harmful to the adjacent occupiers living conditions. I am however satisfied that opening lights above 1.7 metres would not detract from the living conditions of the neighbouring property if the windows are obscure glazed to a level of 1.7 metres above the floor level.
17. I appreciate that the existing property has a large side facing window, however, the existing side window facing No 33 is further from the joint boundary. In this regard I also note that the previous planning permission acknowledged the proximity to the boundary by proposing high level windows for the gym rooms on the side elevation of both proposed properties.
18. I note the example provided of a nearby development where there are first floor windows on the side elevations. The juxtaposition between buildings is not the same at that site and that development does not lead me to a different conclusion.

19. Overall, I shall amend condition 5 to remove the requirement that windows on the ground floor of the development be obscure glazed and fixed shut. Further, I shall remove the requirement for the first-floor windows to be non-openable; allowing openings above 1.7 metres from floor level. In respect of the requirement for obscure glazing to the side elevation windows I consider that condition 5 is reasonable and necessary and that obscure glazing should be provided to a height of 1.7 metres above the floor level. In addition, I consider that identifying the level of obscure glazing aides the enforceability and precision of the condition.
20. I am satisfied that condition 5, amended as set out, is reasonable and necessary and would accord with Policy L7 of the Trafford Local Plan Core Strategy (Core Strategy) which seeks to ensure that the living conditions of adjacent properties are protected from overlooking.

Condition 6

21. The balcony would be sited above the proposed single storey element to the rear of the proposed semi-detached dwelling closest to the boundary with the footpath. Without opaque screens, the balcony would afford its users an elevated view over neighbouring gardens. I appreciate that existing landscaping to the boundaries would restrict views towards existing adjacent properties, however, as I have indicated above, landscaping is not a permanent feature and should not be relied on to screen development. In addition, without opaque screens the future occupiers of the attached dwelling would also be overlooked. I consider that the requirement for privacy screens is necessary and reasonable.
22. I agree with the Council that a reduction in the height of the screens to 1.7 metres would be acceptable and would provide an adequate height for the protection of adjacent development from overlooking in this case, and I shall vary the condition accordingly.
23. The imposition of condition 6 would accord with the requirements of Policy L7 of the Core Strategy where it seeks to protect the living conditions of neighbouring development.

Other matters

24. I have considered the Council officer's report and I have noted the concerns raised by third parties about matters related to the principle of the development as well as the support comments. However, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Conclusion

25. For the reasons given above, I conclude that the planning permission should be varied as set out in the formal decision.

Diane Cragg

INSPECTOR

