



Appeal Decisions

Site visit made on 12 November 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2020

Appeal A Ref: APP/T5150/W/20/3251011

Garage next to 21 Spezia Road, London NW10 4QJ

- 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 ('the 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 A. Clerk against the decision of the Council of the London Borough of Brent.
 - The application Ref 19/4407, dated 28 November 2019, was refused by notice dated 11 February 2020.
 - The application sought planning permission for the demolition of an existing garage and construction of a single storey dwellinghouse with converted loft space, 1 rear rooflight, waste storage and boundary wall without complying with a condition attached to planning permission Ref: 19/3001, dated 17 October 2019.
 - The condition in dispute is condition 3 which states: The development shall not be occupied unless the following highway works have first been carried out at the developer's expense;
 - (i) the reinstatement of the existing crossover back to footway and the provision of new on street car parking bays
 - (ii) with all associated changes to line marking and associated Traffic Regulation Order costs.
- The development shall not be occupied until all associated highway works have been completed to the satisfaction of the Local Highway Authority.
- The reason given for the condition is: To ensure the safety and free flow of the surrounding highway network.
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Appeal B Ref: APP/T5150/W/20/3251285

Garage next to 21 Spezia Road, London NW10 4QJ

- 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 A. Clerk against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/0473, dated 10 February 2020, was refused by notice dated 7 April 2020.
 - The application sought planning permission for the demolition of an existing garage and construction of a single storey dwellinghouse with converted loft space, 1 rear rooflight, waste storage and boundary wall without complying with a condition attached to planning permission Ref: 19/3001, dated 17 October 2019.
 - The condition in dispute is Condition 2, which states: The development hereby permitted shall be carried out in accordance with the following approved drawing(s) and/or document(s): GSR(31) Rev.H, GSR(32) Rev.J, GSR(33) Rev.C
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision: Appeal A Ref: APP/T5150/W/20/3251011

1. The appeal is dismissed.

Decision: Appeal B Ref: APP/T5150/W/20/3251285

2. The appeal is dismissed.

Applications for costs

3. Applications for costs were made by A.Clerk against the Council of the London Borough of Brent in respect of both appeals. These applications are the subject of a separate Decision.

Procedural Matters

4. On the application form, the appellant details the description of the approved development as shown on the decision letter as 'Demolition of an existing garage and construction of a single storey dwellinghouse with loft space'. However, the decision notice issued by the Council on 17 October 2019, reference 19/3001 details the proposal as 'Demolition of an existing garage and construction of a single storey dwellinghouse with converted loft space, 1 rear rooflight, waste storage and boundary wall'. Since this is the planning permission that the appellant is seeking to vary, I have taken the description of the development from the decision notice.
5. The dwelling, the subject of permission 19/3001, appeared to have been largely constructed by time of my site visit.

Appeal A Ref: APP/T5150/W/20/3251011

Main issue

6. Condition 3 states that the development shall not be occupied unless the following highway works have first been carried out at the developers [sic] expense;
 - (i) The reinstatement of the existing crossover back to footway and the provision of new on street car parking bays
 - (ii) With all associated changes to line marking and associated Traffic Regulation Order costs.

The development shall not be occupied until all associated highway works have been completed to the satisfaction of the Local Highway Authority.

7. The reason given for the condition is to ensure the safety and free flow of the surrounding highway network. Given the above, the main issue is whether condition 3 is reasonable or necessary in the interests of highway and pedestrian safety.

Reasons

8. Paragraph 55 of the National Planning Policy Framework (the "Framework")(2019) sets out that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

9. The appeal site is located in a generally residential area within a controlled parking zone. Parking bays are a common feature of the area and enable on-street parking. During my visit, around 3pm, I saw that on-street parking along Spezia Road and surrounding roads was well used with few spaces available. Although this is just a snapshot in time, I see no reason why this is not likely to be typical of on-street parking demand in the area.
10. Road markings to prevent parking in front of crossovers are also widely used in the area. The appeal site was previously occupied by two garages and is served by a vehicle crossover which enables vehicular access. Where the crossover is provided, the footway is uneven.
11. Policy DMP1 of the London Borough of Brent Local Plan Development Management Policies (DMP)(2016) seeks to ensure that development is satisfactory in terms of parking and does not have an adverse impact on the movement network, amongst other things. Policy DMP12 of the DMP seeks to ensure that development does not add to on-street parking demand where on-street parking spaces cannot meet existing demand such as on heavily parked streets, or otherwise harm existing on-street parking conditions.
12. The appellant asserts that there is no breach with Policy DMP12, which states the removal of surplus parking spaces will be encouraged. However, whilst the previous owner may have chosen to use the garages for storing furniture, there is no suggestion that the parking provided by the garages is surplus for the purposes of applying Policy DMP12. As set out in the delegated officer report, the garages were in good condition and remained suitable for two off-street parking spaces.
13. The demolition of two garages and the addition of a dwelling, the occupant of which may choose to have a car, is highly likely to place additional pressure on on-street parking. The Council considered the implications of the loss of parking provided by the garages, as well as the demand created by the proposed 1-bedroom dwelling, in its delegated report. Since vehicular access to the site would no longer be required, it is possible to provide a new on-street parking bay along the site frontage. It is clear that the Council considered the increased demand for on-street parking arising from the loss of the garages and from the new house could be safely accommodated because of the provision of new bays in Spezia Road.
14. Reference within the report to compliance with standards was made in relation to the provision of off-street parking, which is not in contention. The Council's refusal to vary or remove condition 3 does not therefore represent a change in its position in this regard. Failure to reinstate the crossover back to footway and provide on-street parking bays is likely to deter people from parking along this section of road due to the penalties for doing so.
15. Whilst the appeal site is located within an area with controlled parking and good access to public transport, as set out above, on-street parking demand was substantial during my visit. The appellant points out that the road is not heavily parked at night and therefore there was no need to apply for a car-free agreement. However, the Council advise that it is close to being so, with a 75% occupancy compared to a threshold of 80%. The provision of new on street car parking bays would help mitigate the additional pressure caused by the development and is therefore necessary and relevant to the development concerned.

16. An uneven footway can impede movement for disabled users and parents with young children. The appellant suggests that it is difficult to see what difference exists between an actively used crossover and a redundant one, since both would represent the same hazard. However, the disbenefits of an uneven footway would no longer be outweighed by the benefit of two parking spaces, as the garages have been removed to facilitate the development of the approved dwelling. As such, I consider it is reasonable to require the reinstatement of the footway so that it is no longer uneven.
17. The appellant has drawn my attention to Circular 11/95 which, with the exception of Appendix A, has been cancelled and is replaced by the Planning Practice Guidance (PPG). The PPG advises conditions worded in a negative form (a Grampian condition) may be used prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken¹. Such conditions can be enforceable and precise. Although the condition requires works to be carried out on land which is not within the appellant's ownership, there is a good prospect that the appellant could secure consent for the works from the highways' authority.
18. The appellant suggests that the Community Infrastructure Levy (CIL) tariff will make a contribution towards the impact of the development. However, the purpose of CIL is not to make individual planning applications acceptable in planning terms, but rather to operate alongside planning obligations in the delivery of necessary infrastructure. The fact that the development is also subject to CIL does not therefore remove the need to ensure that the development is acceptable in planning terms.
19. The Council's Highways and Infrastructure Domestic Vehicle Footway Crossover Policy (VFCP), dated Feb 2018, states that "the footway will be reinstated at the applicant's expense if a new access is to be created". Whilst no new access is being created, the need for the works arise because of the approved development. The appellant asserts that the highway works will not benefit the developer in any way. However, the benefit to the developer is the grant of planning permission and the highway works are required to make the development acceptable in planning terms. Without them, it would have been necessary to refuse planning permission.
20. I have been provided with no substantive evidence that the cost of the works would be disproportionate, taking into account the additional on-street parking demand that would be generated by the development. The VFCP sets out the administration charge for the processing of crossover applications of £70. It would therefore have been possible for the appellant to determine the actual cost of the works prior to this appeal. She has not done so, referring to 'unspecified costs' in response to the appeal. Given the scale of the works, I consider it very unlikely that the cost to the developer would be unreasonably high and, in the absence of evidence to the contrary, I conclude that the condition is reasonable in this respect.
21. Paragraph 109 of the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The condition is needed to ensure the development

¹ Paragraph: 009 Reference ID: 21a-009-2014036

would not have an unacceptable impact on highway safety and ensure compliance with Policies DMP1 and DMP12 of the DMP and is fairly and reasonably relevant to the development permitted. It does not place an unjustified and disproportionate burden on the appellant and is enforceable, precise and reasonable in all other respects.

22. Thus, for the reasons give above, I find that condition 3 is necessary in the interests of highway and pedestrian safety, in accordance with policies DMP1 and DMP12 of the DMP and the Framework, the requirements of which are set out above.

Appeal B Ref: APP/T5150/W/20/3251285

Main Issue

23. The main issue of Appeal B is whether or not the proposed amendments to the approved development can be dealt with through an application under section 73 of the Act.

Reasons

24. Planning permission was granted on 17 October 2019 for the demolition of an existing garage and construction of a single storey dwellinghouse with converted loft space, 1 rear rooflight, waste storage and boundary wall. The appellant states that the Council changed the description of the development from "Demolition of existing garage and construction of a dwelling house in its place" to the aforementioned wording without agreement.
25. The appellant raises concern regarding the description on a number of grounds. Firstly, it describes the development as a single storey dwellinghouse. The approved layout includes a sleeping area in the loft space. Secondly, it is disputed that the loft space would be 'converted' since it would be a newly constructed building and so no conversion would take place and thirdly, the description does not detail other openings within the building.
26. Whilst I note the concerns raised by the appellant, the original permission is not the subject of this appeal since the decision being appealed is the Council's decision to refuse the application to vary condition 2. I am not aware that the permission has been challenged and subsequently set aside by a court and so the 2019 permission granted is that which the appellant is entitled to rely upon as a lawful grant of permission.
27. Section 73 (S73) of the Act allows for applications for the development of land without complying with the conditions imposed on an existing planning permission. S73(2) makes it clear that the only question that may be considered is that of the conditions subject to which planning permission should be granted. The PPG explains that S73 cannot be used to change the description of the development, but is intended to enable an applicant to seek a minor material amendment, where there is a relevant condition that can be varied. There is no statutory definition of a 'minor material amendment' but the PPG advises 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.
28. The Council makes reference to recent case law on the matter in its decision notice, *Finney v Welsh Ministers & Carmarthenshire CC & Energiekontor (UK)*

Ltd [2019] EWCA 1868. In this case, the Court of appeal held that an application under S73 may not be used to obtain planning permission that would require a variation to the terms of the “operative” part of the permission, i.e. the description of the development for which planning permission had been granted.

29. The proposed change would involve the construction of a rear dormer, not a rear rooflight as specified in the permission, and the insertion of a rooflight in the front elevation. If condition 2 were to be varied, as proposed, there would be a clear conflict between the terms of the Condition and the description of the development. Whilst the proposed changes arose because of the requirements of fire regulations, it is clear from the PPG and case law on the matter that the proposed amendments to the approved development cannot be dealt with through an application under S73 of the Act. Accordingly, an application for full planning permission under section 70 of the Act would need to be made.
30. Given my finding in this regard, it is not necessary for me to consider the merits of other issues raised in this case.

Conclusion

31. For the reasons given above, and having regard to all other matters raised, I conclude that the appeals should be dismissed.

M Savage

INSPECTOR