



Appeal Decision

Site visit made on 1 December 2020

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th December 2020

Appeal Ref: APP/G5750/W/20/3255948

Standard Industrial Estate, Units 6 To 6a, Factory Road, North Woolwich, London E16 2EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by conditions of a planning permission.
 - The appeal is made by Mr John Rice of LCM Scrap Company Ltd against the decision of the Council of the London Borough of Newham.
 - The application is dated 4 December 2019.
 - The application Ref 20/00086/AOD, dated 4 December 2019, sought approval of details pursuant to condition Nos 3, 4 and 6 of planning permission Ref 19/01132/FUL granted on 18 July 2019.
 - The application was refused by notice dated 24 April 2020.
 - The development proposed is Change of use of areas A & B to recycling facility to be used in conjunction with the wider scrap metal merchants yard. Erection of boundary fencing, gates and signage.
 - The details for which approval is sought are described as: Nos 3 (Materials), 4 (Materials (amend)) and 6 (Landscaping).
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Decision

1. The appeal is dismissed, and approval of details is refused, namely details submitted pursuant to condition Nos 3, 4 and 6 of planning permission ref 19/01132/FUL, dated 18 July 2019.

Procedural Matters

2. The 'Conditions and Reasons' section of the officer report states, 'The development shall be implemented in accordance with the Details Submitted and APPROVED listed above only'. However, the Officer Recommendation section and overall recommendation is not to approve the details in respect of conditions 3, 4 and 6. This is confirmed by the decision notice. It is clear that the details were not approved, and I have dealt with the appeal on this basis.
3. The appeal scheme makes a request for amended wording to condition 11 for the timescales required for the implementation of signage. The submission also requests condition 4 in respect of fencing, is deleted. An application to discharge planning conditions cannot delete or amend a condition attached to a planning permission. Depending on the nature of the change, this might only be achieved through either an application under section 73 or 73A of the Town & County Planning Act 1990, or a full planning application.

4. No policies are directly referred to in the reasons for conditions 3, 4 and 6 in permission Ref 19/01132/FUL. Instead the decision notice lists the policies of relevance to the conditions at the end of the notice. The decision notice relating to the appeal proposal states it is not approved for the reasons outlined in the accompanying report. The report lists policies considered of particular relevance to the decision and its appeal statement the Council has referred to the effects of the scheme in the context of additional policies. The appellant has had the opportunity to comment upon those policies through the appeal process, so I have had regard to them in the consideration of this appeal. The appellant would not be prejudiced by this approach.
5. The appellant's Final Comments submission states that samples of materials are available at the site or could have been provided to the Council. The materials should be submitted as part of the application or appeal. I did not view the materials at my visit, and the Council would have been prejudiced as they did not have the samples either before them or in good time. Therefore, I have not had regard to the samples in reaching my decision.

Main Issue

6. The main issue is whether the information submitted in application Ref 20/00086/AOD in relation to conditions 3, 4 and 6 is adequate, accurate, consistent with the terms of the original application and would secure a policy compliant proposal.

Reasons

Conditions 3 and 4 (Materials)

7. Condition 3 of permission Ref 19/01132/FUL requires that:

The Recycling Facility (located within areas A and B of image 2 within the Design and Access Statement ref: CD/J428W2/DAS rev b) hereby permitted shall cease within three months of the date of failure to meet any one of the following requirements set out in (a and b):

- a. *Within 6 months of the date of this permission samples of the materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority; or*
- b. *Within 6 months of the Local Authority approving the material samples in writing, the applicant shall complete all work relating to the installation of the fencing, the new kerb and cladding of the existing sleeper walls (in the agreed material).*

8. Condition 4 of permission Ref 19/01132/FUL requires that:

Notwithstanding the plans hereby approved The construction of the external surfaces of the development with particular reference to the boundary treatment hereby permitted shall be completed in the following:

- *3m high blue weldmesh comprising 200 x 50mm mesh of twin 6.00mm or 8.00mm horizontal wires (to suit manufacturers recommendations) and single 6.00mm vertical wires with plain flat panels and no stiffening folds on any edge and*

- *will have a galvanised or painted mild steel.*
9. The reason for both conditions is: *To ensure that the finished appearance of the development will respect the character and visual amenities of the local area.*
 10. The scheme proposes the use of a galvanised vertical bar palisade type fencing which the appeal statement suggests would be blue, in front of cladding. It provides some broad details, a small image showing cladding that the material would be similar to, and an image of the fencing which is not detailed enough to give a full understanding of its finished appearance. The submitted scheme does not include the samples required. Therefore, the submission is not adequate or accurate and does not meet the requirements of condition 3.
 11. The Council's appeal statement makes reference to the absence of a sample of a noise attenuating backing to the cladding. The policy advice in paragraph 183 of the National Planning Policy Framework (2019) (the Framework) is to avoid the duplication of the planning and pollution control regimes. Noise matters are also considered under the Environmental Permitting regime and there may be relevant conditions attached to a permit. However, the backing was proposed in the appellant's Design & Access Statement (Rev B) which is listed in condition 2 of permission Ref 19/01132/FUL as a document that all works shall be completed and retained in accordance with. Therefore, by not providing the backing to the cladding, based upon the evidence before me the submission is not consistent with the terms of condition 2 of Ref 19/01132/FUL, which cannot be amended through this submission to discharge conditions.
 12. In respect of the extent of the boundary treatments and external materials, the submission refers to drawing no. J428/W2/03, which only provides a proposed cross section. Previously approved drawing no. J428/02/02 rev B is not entirely clear as to the alignment of the fencing as there is a thicker black line which ends part way along the frontage. Drawing no. J428/W2/04 is suggestive of the extent of the materials on the frontage. However, it is not clear how far back the fencing would be set particularly where it turns perpendicular to the frontage around Gate A. Therefore, even if I had taken the application plans into account, the exact position and extent is not clearly defined. Consequently, the submitted scheme is not adequate or accurate.
 13. The location and length of the frontage is such that boundary treatments would be highly prominent and visible. Notwithstanding the existing appearance of the land, given the lack of full and precise details, the submission does not meet the requirements of condition 3, and I cannot be sure the finished appearance of the development would secure a policy compliant proposal. As condition 3 of Ref 19/01132/FUL requires the use to cease within specified timescales in the event of a failure to meet the requirements of the condition, the existence of the permission itself does not justify approval of the submitted scheme.
 14. Condition 4 sets out a specification that boundary treatments must meet in order to be compliant with that condition. This specification was required having regard to the Royal Docks – LDA Site Public Realm Materials and Elements Palette Second Issue Draft (February 2011). The palisade type fencing set out in the scheme is outside the specification listed in condition 4 and would be of a materially different appearance to that upon which the Council approved application Ref 19/01132/FUL. Irrespective of the visual,

cost and security merits of the proposed fencing, the scheme would conflict with condition 4 of permission Ref 19/01132/FUL, which cannot be amended or deleted through a submission to discharge conditions.

15. For the reasons set out above the submission is not adequate, accurate, not consistent with the terms of the original permission and would not meet the requirements of conditions 3 and 4 of Ref 19/01132/FUL. Therefore, the scheme would not be likely to secure a policy compliant proposal and would fail to meet the expectations of Policies INF2, S1, SC5, SP1, SP2, SP3, SP7 and SP8 of the Newham Local Plan (2018) (the Local Plan), Policies 5.3, 7.4, 7.5, 7.6 and 7.15 of the London Plan (2016) (the LP) and Policies T2, E5, D8 and D14 of the Draft London Plan (Intend to Publish version, December 2019) (the DLP). Taken together amongst other things, these require proposals ensure high quality development and urban design with a well-designed public realm, good quality landscape treatment, surface materials that has regard to local character, seek to avoid problems associated with bad neighbour uses, and minimise the environmental impacts of development, including noise.
16. The Council has made a general reference to the Joint Waste Development Plan for the East London Waste Authority Boroughs (2012) (the JWDP). While Policy W5 relates to general considerations for waste proposals, the policy is primarily aimed at applications for planning permission, so having regard to the nature of this application, it is of limited relevance. Policy D1 of the DLP sets out requirements for the preparation of local plans and D4 relates primarily to the design process. Policy INF1 of the Local Plan sets out a strategic transport strategy and principles. Therefore, these are of limited relevance to these conditions.

Condition 6 (Landscaping)

17. Condition 6 requires: *Within 6 months of the date of this decision a scheme of landscaping, detailing hard and soft landscape works, details of any lighting, landscape features or artworks, shall be submitted to, and approved in writing by, the Local Planning Authority. The landscaping scheme as approved shall be carried out in the first planting season following the approval of the scheme of landscaping. Any trees, shrubs or plants that die within a period of five years from the completion of the development or are removed and/or become seriously damaged or diseased in that period, shall be replaced (and if necessary continue to be replaced) in the first available planting season with others of similar size and species, unless the Local Planning Authority gives prior written permission for any variation.*
18. The reason for the condition was: *To ensure a high quality landscape treatment of the site is achieved which will enhance the character, appearance and biodiversity of the site and local area.*
19. The scheme states the details for the landscaping are the same as the application drawings. The scheme refers to drawing Ref J428/W2/03 only. As this is a cross section it does not sufficiently detail or commit to an extent of planting, so the scheme is not sufficiently precise. Previously approved drawing no. J428/02/02 rev B only shows an un-named green strip and is not specifically referenced in the submission. Drawing no J428/W2/04 is an elevation plan showing planting across the frontage of the site. However, this is not directly referenced in the submission to the Council and does not explain

whether the planting is to take place in the green strip on drawing no. J428/02/02 rev B either side of gate A.

20. The scheme does not include any specifications in respect of the size of the ground cover planting, or how feeding, mulching or weeding would be managed, to ensure the survival and success of the planting. Therefore, I cannot be sure that the proposals would result in successful planting scheme where the plants would grow to provide a suitable screen to the fencing, suggested as a justification by the appellant for permitting the fencing.
21. For the reasons set out above the submission is not adequate, is not accurate and would not fully meet the requirements of condition 6 of Ref 19/01132/FUL. Therefore, the scheme would not be likely to secure a policy compliant proposal and would fail to meet the expectations of Policies INF1, INF2, S1, SC4, SP1, SP3 and SP7 of the Local Plan, Policies 5.10, 6.10, 7.4, 7.5 and 7.19 of the LP, Policies G6, E5 and D8 of the DLP. In combination and amongst other things, these require that proposals ensure development is of a high quality of urban design and the public realm is well-designed with good quality landscape treatment and planting, maximises the integration of green infrastructure, and makes a positive contribution to the enhancement of biodiversity.
22. Policy 7.6 of the LP specifically relates to the architecture of buildings and structures. Policy D1 of the DLP sets out requirements for the preparation of local plans and D4 relates primarily to the design process. Therefore, these are of limited relevance to this condition.

Other Matters

23. The appellant has made reference to the Council's handling of the application. However, in determining the appeal, I have had regard to the planning merits of the case only. Any concerns over the Council's handling of the application, are matters that should be pursued with the Council.

Conclusion

24. For the reasons given above, I conclude that the information submitted does not meet the requirements of condition Nos 3, 4 and 6. Therefore, the appeal is dismissed.

Dan Szymanski

INSPECTOR