



Appeal Decision

Site visit made on 23 February 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th April 2021

Appeal Ref: APP/R5510/W/20/3263739

Metro House, 203 Pinner Road, Northwood HA6 1BX

- 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 Robbie Greenaway (Clearview House Ltd) against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 16323/APP/2020/1510, dated 12 May 2020, was refused by notice dated 22 July 2020.
 - The application sought planning permission for the erection of a four-storey building to include offices (Class B1) on the ground floor and residential self-contained flats (Class C3) above with parking and bin store without complying with a condition stated on the decision letter Ref 16323/APP/2020/767, dated 3 April 2020, which amends planning permission Ref 16323/APP/2015/4701, dated 6 April 2016.
 - The condition in dispute is No 1 which states that: the application hereby approved shall be for the creation of 4 x 1 bed and 5 x 2 bed self contained units, in accordance with the approved plans 15/3351/1 Rev. A, 15/3351/2 Rev. A and 15/3351/3 Rev. A.
 - The reason given for the condition is: to ensure the development complies with the provisions of the Hillingdon Local Plan: Part Two Development Management Policies (January 2020) and the London Plan (2016).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a four-storey building to include offices (Class B1) on the ground floor and residential self-contained flats (Class C3) above with parking and bin store at Metro House, 203 Pinner Road, Northwood HA6 1BX in accordance with the application Ref 16323/APP/2020/1510 made on 12 May 2020 without complying with condition No 1 stated on the decision letter Ref 16323/APP/2020/767, dated 3 April 2020, which amends planning permission Ref 16323/APP/2015/4701 granted on 6 April 2016 by the Council of the London Borough of Hillingdon, but otherwise subject to the conditions set out in the attached schedule.

Background and Procedural Matters

2. Planning permission was granted subject to conditions for a building including offices and self-contained flats under reference 16323/APP/2015/4701 (the original scheme). The description of the development specified the number of bedrooms for the flats. Subsequently, an application made under section 96A of the Town and Country Planning Act 1990 was approved under reference 16323/APP/2020/767, which removed the number of bedrooms from the description of the development (the s96A application).

3. The decision letter for the s96A application includes one condition, which is set out in the heading above. The letter does not repeat the conditions imposed on the decision letter for the original scheme but makes clear that those conditions still apply. Moreover, the Planning Practice Guide (PPG) confirms that a decision letter under section 96A is not a reissue of the original planning permission, which still stands, and that the letters should be read together¹. The application subject to this appeal seeks to vary condition No 1 specified on the decision letter for the s96A application.
4. The development has not been built out in accordance with the approved drawings. In part, the application subject to this appeal seeks to retain the development constructed on site. However, it also includes proposed alterations to the third floor of the building that would result in the creation of a single 4-bed flat.
5. The Council considers that the proposed 4-bed flat's layout would be in 2 distinct halves that could be independently occupied and would be tantamount to 2 separate units. It is put forward that the development would comprise 10 flats in total and thus exceed the scope of the application subject to this appeal, as it would fundamentally alter the original scheme and conflict with the description of the development. It is also contended that the creation of 10 flats constitutes major development and matters such as the provision of affordable housing and planning obligations must be considered. The Council has not argued that the development would fundamentally alter the original scheme or that the drawings are unacceptable in any other respects.
6. In an attempt to overcome the reason for refusal, the appellant provided an alternate proposed third floor plan² with the appeal. The drawing includes a schedule of works that intend to prevent the flat being subdivided. It shows minor changes to the third floor's interior when compared with the drawing on which the Council based its decision. The Council has had an opportunity to comment on the implications of the alternate drawing. I do not consider that the changes prejudice the interests of any interested parties. I have therefore taken the alternate plan into account in making a decision.
7. A site plan³ has also been provided with the appeal, which was not submitted with the application. The Council has not made any comments on the drawing and it appears to reflect the development constructed on site. I have no evidence that the drawing does not reflect the development that was previously approved. I have also taken this drawing into account as I do not consider that doing so will prejudice any party.
8. The new London Plan was published on 2 March 2021. However, the PPG sets out that in deciding an application under section 73 only the disputed conditions should be considered and that the application should not be completely reconsidered⁴. Having regard to the parties' submissions and the scope of the main issue set out below, it has not been necessary to seek the views of the parties on the publication on the London Plan.

¹ Reference ID: 17a-011-20140306

² Drawing reference: 11

³ Drawing reference: 100

⁴ Reference ID: 21a-031-20180615

Main Issue

9. The main issue is whether the development fundamentally alters the original scheme, with particular regard to the proposed layout of the third floor of the appeal building.

Reasons

10. The decision letter for the s96A application clearly sets out that the description of the original scheme has been amended. The amended description, which is stated in an informative, does not refer to the number or size of the flats. I am satisfied that the proposed creation of a 4-bed flat on the third floor would not conflict with the description of the development as amended.
11. The 4-bed flat would feature a hallway accessed via a stairwell and lift that serve communal areas on the lower floors. Beyond the hallway to either side of the stairwell and lift would be 2 areas that would have facilities that could be adapted to enable independent occupation. Nevertheless, a single flat is proposed and if separate units are created then enforcement action could be taken. Physical works would be required to subdivide the flat and compelling reasons have not been advanced which suggests that there would be no prospect of any unauthorised subdivision being identified. I am therefore satisfied that the development would continue to comprise 9 flats.
12. I conclude that the development would not conflict with the description of the development as amended and would not result in the creation of additional flats. Moreover, the development would not fundamentally alter the original scheme.

Conditions

13. The PPG makes clear that decision letters for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect⁵. The Council did not suggest conditions for this appeal. I therefore sought the views of the Council and the appellant as to potential draft conditions. I shall impose those that are relevant, with modifications as necessary in order to reflect the status of the original conditions as disclosed by the parties and to satisfy the tests for conditions set out at paragraph 55 of the National Planning Policy Framework
14. An approved plans condition is necessary in the interests of certainty. A condition to ensure that the building's windows facing the properties in Watkins Close are obscure glazed and partially non-opening in perpetuity is necessary to prevent overlooking.
15. The original scheme is subject to a condition that requires the provision and maintenance of a sustainable water management scheme. The parties have confirmed that its requirements have not been satisfied. The condition continues to be relevant in the interests of managing flood risk. As the building has been constructed and flats have been occupied, I will require the scheme to be approved prior to the occupation of the proposed third floor flat.
16. It has been revealed that details of landscape and parking allocation schemes have been approved under application reference 16323/APP/2018/1358.

⁵ Reference ID:17a-015-20140306

However, it has not been confirmed whether those schemes have been carried out as approved. I cannot therefore be certain that the conditions have been complied with and they continue to be relevant to protect visual amenity and living conditions and ensure that adequate parking is available. I will thus require the development be carried out and maintained, and the parking spaces to be retained, in accordance with the approved details. In the event that the original conditions have in fact been discharged fully, that is a matter which can be addressed by the parties.

17. The Council did not raise concerns regarding the appearance of the building when it determined the application and the proposed works at third floor level are largely internal. A materials condition is thus unnecessary. Conditions to control the construction process and protect and replace retained trees up until the occupation of the building were imposed to ensure that trees and other vegetation are protected and contribute to the amenity of the area. However, these are unnecessary as the building has been constructed and occupied. A condition to limit noise from plant and machinery to protect living conditions is also unnecessary because it has been confirmed that no external plant or machinery has been or will be installed as part of the development.

Conclusion

18. For the above reasons the appeal is allowed.

Mark Philpott

INSPECTOR

Schedule of Conditions

- 1) The development shall be carried out in accordance with the following approved drawings: 11; 200; 201; 202; 300; 301
- 2) The windows facing Watkins Close shall be glazed with permanently obscured glass and non-opening below a height of 1.8 metres taken from internal finished floor level for so long as the development remains in existence.
- 3) Notwithstanding condition No 1 and prior to the first occupation of the apartment at Plot 9 as shown on drawing No 11, the development shall be carried out in accordance with the landscaping scheme approved under application reference 16323/APP/2018/1358. Thereafter the development shall be maintained in accordance with the approved details.
- 4) Notwithstanding condition No 1 and prior to the first occupation of the apartment at Plot 9 as shown on drawing No 11, parking spaces shall be provided within the site in accordance with the details approved under application reference 16323/APP/2018/1358. Thereafter the parking spaces shall remain allocated for the use of the occupiers of the development in perpetuity in accordance with the approved details.
- 5) Notwithstanding condition No 1 and prior to the first occupation of the apartment at Plot 9 as shown on drawing No 11, a scheme for the provision of sustainable water management shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall clearly demonstrate that sustainable drainage systems (SUDS) have been incorporated into the designs of the development in accordance with the hierarchy set out in accordance with Policy SI 13 of the London Plan and will:
 - provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - include a timetable for its implementation; and
 - provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The scheme shall also demonstrate the use of methods to minimise the use of potable water through water collection, reuse and recycling and will:

- provide details of water collection facilities to capture excess rainwater; and
- provide details of how rain and grey water will be recycled and reused in the development.

Thereafter the scheme shall be implemented and maintained in accordance with the approved details for as long as the development remains in existence.