



Appeal Decision

Site visit made on 22 June 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2021

Appeal Ref: APP/T5150/W/20/3264503 112 Herbert Gardens, London NW10 3BP

- 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 a condition of a planning permission.
 - The appeal is made by Mr Premji Varsani against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/2878, dated 15 September 2020, sought approval of details pursuant to condition No 2(i) attached to a planning permission ref 19/2870 granted by Appeal Ref: APP/T5150/W/20/3248161 on 19 August 2020.
 - The application was refused by notice dated 10 November 2020.
 - The development proposed is conversion of a single dwelling at 112 Herbert Gardens into two flats, all in accordance with allowed drawings as per Appeal Ref: APP/T5150/W/20/3248161.
 - The details for which approval is sought are:
 - Details of vehicular access including relocation and widening of existing crossover for vehicular access; new brick pier and brick wall at the front access; and new brick boundary wall with brick pier to match existing.
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Decision

1. The appeal is allowed and the details submitted pursuant to condition No 2(i) attached to planning permission Ref 19/2870, granted by Appeal Ref: APP/T5150/W/20/3248161 on 19 August 2020, as per the details shown on Drawing Nos: 160205-00-P0 and 160205-06-P0, are approved in accordance with the application Ref 20/2878 dated 15 September 2020.

Procedural Matters

2. The London Plan 2021 (the 'LP 2021') was published by the Mayor of London on 2 March 2021. The LP 2021 comprises the spatial development strategy for London and forms part of the development plan. The LP 2021 supersedes the London Plan of 2016. It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis. The main parties have had an opportunity to address this matter as part of the appeal process.
3. The Council explain that the number of car parking spaces provided as part of the approved development would exceed the maximum car parking standards set out within the LP 2021. Whilst this may be the case, the planning permission relevant to this appeal was granted before the LP 2021 became part of the development plan. Therefore, the maximum car parking standards set out within the LP 2021 are not relevant to this appeal.

Application for costs

4. An application for costs was made by Mr Premji Varsani against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Background and Main Issue

5. Condition (2) of planning permission Ref 19/2870 requires that:

Unless within 2 months of the date of this decision, and notwithstanding the details shown on the approved plans listed at condition 1, schemes for:

- i. vehicular access to the site from Herbert Gardens to serve the parking indicated on plan no 16205-05-P2; and*
- ii. secure storage forward of the building on the site for 2 bicycles per flat*

are submitted in writing to the Local Planning Authority for approval, and unless the relevant approved scheme is implemented within 4 months of the Local Planning Authority's approval, the use and occupation of the site as 2 flats shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as schemes are approved and implemented.

If either or both of the schemes in accordance with this condition are not approved within 6 months of the date of this decision, the use and occupation of the site as 2 flats shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as schemes approved by the Local Planning Authority are implemented.

Upon implementation of each of the approved schemes specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

6. The reasons for the imposition of the condition are set out at paragraph 20 of the Inspector's decision, where she states:

"Given my findings on the main issues, a condition to ensure that details of vehicular access to the site and cycle storage are submitted, approved and implemented is also necessary in the interests of highway and pedestrian safety, and to encourage cycling. There is a strict timetable for compliance because it is not possible in this case to use a negatively-worded condition to secure the approval and implementation of these details before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met. The appellant was consulted on the wording of this condition."

7. The Council explain that the appellant submitted two applications to the Council seeking their approval of details required by condition No (2) of planning permission Ref 19/2870. The respective applications concerned the details required by condition No (2)(i) (details of vehicular access) and condition No (2)(ii) (details of secure cycle storage).

8. The Council approved the details submitted pursuant to condition No (2)(ii). However, the Council refused approval of the details submitted pursuant to the requirements of condition No (2)(i). The Council's refusal of the submitted details forms the basis of this appeal.
9. The reason for refusal on the Council's decision notice states:
"The information submitted pursuant to condition 2i (Details of vehicular access) to the proposed front garden layout would appear overly prominent and contribute to the detriment of the character and appearance of the surrounding streetscene and not be acceptable in terms of highway and pedestrian safety. Due to the proposed crossover width, its positioning in the centre of the site, lack of boundary treatment and the amount of soft landscaping proposed. The proposal is therefore contrary to policies SPD2, DMP1 and DMP12 of Brent's Development Management Policies. As such, the condition cannot be discharged on this basis."
10. Based on the evidence before me and the Council's reason for refusal, the main issue is whether or not the proposed access arrangements would be acceptable with regards to highway and pedestrian safety and the character and appearance of the area.

Reasons

11. To the front of the appeal property there is a large area of existing hardstanding. The approved plans¹ show that the hardstanding would be used to provide two off-street parking spaces, which would be allocated one per flat. In addition, the approved plans show that part of the hardstanding would be replaced with soft landscaping, which would equate to about 25% of the frontage area.
12. The approved plans do not show alterations to the existing crossover. To this regard, the previous Inspector noted at paragraph 13 of her decision:
"The submitted plans do not show alterations to the crossover, but given that the parking would serve separate dwellings, this would seem necessary to avoid vehicles mounting the kerb or crossing the footway. However, I consider that the submission of a detailed scheme for this provision could be the subject of a condition should the appeal be allowed."
13. In assessing the acceptability of widening the existing crossover, the Inspector noted at paragraph 14 of her decision the following:
"The site is within a controlled parking zone, with parking to the front of the site restricted between 0800 and 1830 Mondays to Saturdays. The Council also advise that Herbert Gardens is not heavily parked at night. In this context, I see no reason that widening of the access to the site would be detrimental to the availability of on-street parking. Given also the depth of the site frontage and its position on Herbert Gardens which is subject to traffic calming measures, I am also satisfied that pedestrian safety would be safeguarded and widening of the crossover would be unlikely to have a negative impact on highway safety or other forms of movement. I further saw that many sites nearby, including 114 Herbert Gardens, similarly have fairly wide crossovers."

¹ Drawing no: 16205-05-P2

14. The details submitted pursuant to condition No (2)(ii) show that the existing crossover would be widened to 4.2m. The crossover would be located in a central position in relation to the front garden of the appeal property.
15. The Local Highway Authority (the 'LHA') were consulted as part of the determination of the application and they advised the Council that the proposed layout would not accord with Brent's Domestic Vehicle Footway Crossover Policy (the 'BDVFC') due to the width of the required crossover (i.e. the width of the crossover would exceed 50% of the appeal property's total frontage); its position in the centre of the site (the BDVFC explains that crossovers should generally be placed to the side of the site frontage, not in the centre); and the limited extent of soft landscaping proposed (the BDVFC advises that 50% of the front area should be soft landscaped, with a minimum requirement of 30% for properties with narrower, shorter front gardens).
16. On my site visit, I observed that Herbert Gardens was a long straight road which was lightly trafficked and vehicles speeds were typically low due to traffic calming measures. Moreover, parking is restricted to the front of the site between 0800 and 1830 Mondays to Saturdays and opportunities to park on-street near to the appeal property outside these times were limited due to the position and width of existing dropped kerbs. For these reasons, and, having regard to the depth of the proposed parking spaces, I am satisfied that drivers would have good visibility of on-coming traffic and pedestrians when entering and egressing to/from the off-street parking area via the proposed crossover to the front of the appeal property.
17. Consequently, despite the conflict identified by the LHA in relation to the requirements of the BDVFC, in respect of the appeal proposal, based on the evidence before me, which includes my site observations, I conclude that widening the existing crossover in the manner shown on the submitted plans would not be detrimental to highway and pedestrian safety.
18. In terms of the effect of the development upon the character and appearance of the area, whilst the limited amount of proposed soft landscaping and front boundary treatment would not be ideal, it would nevertheless represent a significant improvement when compared to the existing frontage which is devoid of any soft landscaping. Moreover, on my site visit, I observed that wide crossovers were common within the immediate locality. Therefore, I am satisfied that the proposal would have an acceptable effect upon the character and appearance of the area.
19. For the reasons outlined above, I conclude that the proposed access arrangements would be acceptable with regards to highway and pedestrian safety and the character and appearance of the area. Accordingly, I find that the proposal would not conflict with Policies DMP1 and DMP12 of the London Borough of Brent Local Plan: Development Management Policies, which, amongst other things, require new development to complement the locality and avoid negative impacts on existing parking, highways, other forms of movement or the environment.
20. I am cognisant that the development would not accord with guidance contained within the Brent Residential Alterations and Extensions Supplementary Planning Document No 2 (the 'SPD'), which explains that a '50/50 balance' of soft and hard landscaping should be provided when off-street parking is created within front gardens. However, the standards set out within the SPD are only

guidance and are an indicator of what is likely to be acceptable. In this instance, I have assessed the proposal on its own individual planning merits and found it to be acceptable. As such, a failure to adhere to standards in the SPD is not sufficient in itself to dismiss the appeal.

Conclusion

21. For the reasons given above, I conclude that the appeal should succeed.

Christopher Miell

INSPECTOR