



Appeal Decision

Site Visit made on 13 July 2021 by S Witherley

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2021

Appeal Ref: APP/E5330/W/20/3260960

Land Rear of 34 Foyle Road, Blackheath, London SE3 7QZ

- 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 Mr Edward Bowen on behalf of Foyle Road Developments Ltd against the decision of Royal Borough of Greenwich.
 - The application Ref 20/2021/MA, dated 11 July 2020, was refused by notice dated 23 September 2020.
 - The application sought planning permission for Demolition of the existing garages and construction of 2x2-storey houses over basement, without complying with a condition attached to planning permission Ref 16/0029/F, dated 5 January 2016.
 - The condition in dispute is No. 19 which states that: Prior to any works commencing on site, details of new boundary walls along the entire length of the access road (including Armco barriers) shall be submitted to and approved by the Local Planning Authority. The approved details shall be completed before any works associated with the implementation of the development are undertaken.
 - The reason given for the condition is: To mitigate against any potential damage to neighbouring properties, to protect the amenity of neighbours and ensure compliance with Policy DH1 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014).
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Decision

1. The appeal is allowed and planning permission is granted for the Demolition of the existing garages and construction of 2x2-storey houses over basement at Land Rear of 34 Foyle Road, Blackheath, London, SE3 7QZ in accordance with application Ref 20/2021/MA, dated 11 July 2020, without compliance with the condition No. 19 previously imposed on the planning permission Ref 16/0029/F granted on 05 September 2016, by the Council of the Royal Borough of Greenwich, and subject to the schedule of conditions attached.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. A new London Plan 2021 (LP) was published in March 2021 and this post-dates the Council's refusal notice. I afforded the main parties an opportunity to comment upon the implications of this change for the purposes of determining this appeal. I have had regard to those comments received.

4. The Government has also published on 20 July 2021 a revised version of the National Planning Policy Framework. Whilst I have had regard to the revised national policy as a material consideration in my decision-making, planning decisions must still be made in accordance with the development plan unless material considerations indicate otherwise. Both parties were given the opportunity to comment on the revisions and I have had regard to those comments received.
5. An application for costs was made by Mr Edward Bowen on behalf of Foyle Road Development Ltd against the decision of the Royal Borough of Greenwich. This application is attached as a separate decision.

Background and Main Issue

6. Planning permission was granted in September 2016 for the demolition of the existing garages and construction of two new dwellings. Attached to that permission were a number of conditions, including condition (19) which requires that the appellant submit details prior to any works commencing on site, of new boundary walls along the entire length of the access road, including Armco barriers. These details were to be approved by the Local Planning Authority and the approved details were to be completed before any associated works commenced on the development.
7. Paragraph 56 of the National Planning Policy Framework (the Framework) states that 'Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other aspects'.
8. The appellant contends that the restriction imposed by condition (19) is unreasonable, unnecessary, imprecise and irrelevant and, does not meet the 6 tests. Consequently, he requests that the condition is deleted.
9. Against that background, the main issue is whether condition (19) is necessary and reasonable, particularly having regard to the effect that removing it would have on the living conditions of the neighbouring occupiers.

Reasons for the Recommendation

10. Condition No. (19) was attached *to mitigate against any potential damage to neighbouring properties, to protect the amenity of neighbours and ensure compliance with Policy DH1 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014)*.
11. The officer's report states the Council concede that the risk of damage to neighbouring properties from users of the lane would be considered as a civil matter. However, they note that in order for the development to be considered acceptable, the potential for adverse impacts on the amenity enjoyed by neighbouring properties remains applicable.
12. There is no legal definition of amenity, however, in planning terms it is often referred to as the quality or character of an area and the elements that contribute to the overall enjoyment of an area.
13. The Council note that the condition is necessary to comply with Policy DH1 *Design* of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies

- (CS) (2014). This Policy requires new development to contribute positively to and the improvement of the built and natural environment.
14. The lane provides access to two properties which were subject to the original 2016 planning permission, these dwellings replaced a number of existing garages. The lane also provides access to a number of garages located in rear gardens of neighbouring properties.
 15. During my site visit, I observed traffic signs at the entrance of the lane and Armco railings in situ. Given the location of the lane, between two residential properties, its access, length, width, users of the lane, particularly those who are familiar with it, whether they are on foot or in a vehicle, would be aware of the need to take care when entering and exiting the site.
 16. Nonetheless, the Council raised no comments in regard to highway or pedestrian safety and have conceded that any damage caused to neighbouring properties, as a result of users of the lane, is a civil matter as opposed to a planning consideration. As noted, the Council did not raise any highway safety objection. I am satisfied that vehicles would travel at low speed, given the nature of the access road. Anecdotal reports have been provided of collisions with property but the access existed prior to the development, serving a number of garages. I have not been provided with any substantive evidence of vehicle collisions or significant damage to property. There is little evidence that the proposal will result in substantial increases in traffic and once development is complete the majority of vehicles using the access would be domestic cars or delivery vans. Although narrow, the lane is reasonably straight, and I see no reason why drivers would veer off course or collide with adjacent property or fencing. Any collisions resulting from irresponsible driving would be a civil matter, as noted by the Council.
 17. The Council has stated that neighbouring amenity would be affected by the removal of the Armco barrier and therefore condition (19) is still very much relevant. Having said that, they have not provided any analysis or justification regarding the nature, type and or severity of the issues that would impact on the quality or character of neighbouring amenity. The Council's position is vague in that respect.
 18. Given the broad definition of amenity and lack of any substantive evidence or justification in regard to the type of amenity that would be affected, it is difficult to ascertain precisely what the Council's concerns are. I have considered that this could encompass matters arising from users of the lane, whether on foot or in vehicles, and the impact that this would have on the enjoyment of neighbouring occupiers. For example, the types of issues that might impact on the neighbouring amenity would encompass noise from passers by from talking, engine noise from vehicles whilst using the lane, fumes from vehicles, and light pollution from vehicles using the lane when it is dark.
 19. However, as none of these matters have been specifically raised by the Council, it is not for me to introduce them. Nevertheless, the use and access of the lane would be considerably less than the previously use as a garage court, which would have resulted in similar effects to those I have identified. Consequently, I do not find that they appeal proposal would result in any additional harm to the living conditions of the occupiers of the neighbouring dwellings. Moreover, those effects will exist regardless of whether the Armco

barrier remains in place and the Council has failed to demonstrate how its retention would have any notable effect on the amenity of neighbouring residents.

20. As such and having had regard to the requirements of Policy DH1 which relates to design, I consider that removing condition (19) would not have any negative impacts on the neighbouring amenity or the enjoyment of that amenity by way of creating or causing unnecessary amenity issues. In addition, I agree with the appellant that the design and heavily engineered appearance of the barrier is at odds with the surrounding residential environment and the character and appearance of the Conservation Area. Therefore, its removal would not result in any harm in terms of design and it would not conflict with the requirements of Policy DH1.
21. Having regard to all of the above, I conclude that the disputed condition No. (19) is not reasonable or necessary to protect the amenity of neighbouring properties. In the absence of the disputed condition, the development would not conflict with Policy DH1 of the CS, which is consistent with the Framework in so far as it seeks a good standard of design and amenity for all existing and future residents of land and buildings.

Other Matters

22. A number of objections were received by third parties. The majority of these raised concerns relating to highway and public safety along with the perception of public safety. The Council have not raised any issues in this regard and have conceded as noted above that any damage or perceived damage to neighbouring property is not a matter that can be considered as part of this process. For the reasons set out above, I am satisfied that the barrier is not necessary in that regard.
23. The site sits within the Westcombe Park Conservation Area (CA). In accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
24. The significance of the CA is derived from the distinct range of historic buildings, architectural detailing and the areas layout. Having considered the proposal, the removal of condition (19) would preserve and enhance the character and appearance of the CA as a removal of the unsympathetic engineered barrier.

Conditions

25. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
26. Both parties have confirmed that conditions 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18 and 19 have been discharged. The appellant states that the development has been completed in accordance with those conditions and the

Council has not provided anything to the contrary. Consequently, it is no longer necessary to attach those 'pre-commencement' conditions. As Condition No. 19 also sought details for the new boundary walls and the details have subsequently been discharged by the Council and implemented, Condition No. 19 is not required.

27. The Council has suggested that condition 16 has not been discharged and the appellant has not provided confirmation to the contrary. That pre-commencement condition required the submission of a scheme to prevent residents of the new dwellings securing an on-street parking permit. Given that development has now commenced the Council propose that this condition is attached to any new planning permission and that within 1 month after the appeal decision is issued the appellant is to submit a written agreement to the Local Planning Authority stating that all future residential occupiers of the approved development cannot apply for or obtain an on-street parking permit.
28. Having regard to the PPG it is clear that conditions which require applicants to enter into an agreement is unlikely to pass the test of enforceability or for it to be appropriate in the majority of cases. However, I am mindful that the appellant has not sought to remove that condition and no evidence has been presented to me regarding the local circumstances that led to the condition being imposed. In the absence of such evidence and given the specific nature of the appeal relating to condition 19 I therefore recommend that a similar condition is imposed. The one-month period suggested by the Council appears unduly short and I recommend a more reasonable period of three months to submit a scheme for agreement and have varied the wording in the interests of precision and clarity.

Conclusion

29. Paragraph 56 of the Framework is clear that conditions should only be imposed where they meet the relevant tests. For the reasons given above I conclude that the disputed condition is not necessary to make the development acceptable in planning terms and is not reasonable in planning terms. Therefore, I recommend that the appeal should succeed, and a new planning permission should be granted, without the disputed condition, but subject to the other conditions in the attached schedule.

S Witherley

APPEAL PLANNING OFFICER

Inspector's Decision

30. I have considered all the submitted evidence and the Appeal Planning Officer's report and, on that basis, agree with the recommendation and conclude that the appeal should succeed as set out above.

Chris Preston

INSPECTOR

Schedule of Conditions

1. Within 3 months of the appeal decision the applicant shall submit a written agreement to the Local Planning Authority to ensure that all future residential occupiers of the approved development cannot apply for, or obtain an on-street residents parking permit to park a vehicle on the surrounding public highway. The written agreement shall include a timetable for the implementation of the agreed scheme. Once approved by the Local Planning Authority, the written agreement shall be implemented in accordance with the approved details and maintained thereafter.
2. The development hereby permitted shall comply with Regulation 36(2)(b) of the Building Regulations 2010 (as amended by the Building Regulations &c. (Amendment) Regulations 2015/767) and as set out in section G2 of the Building Regulations Approved Document (110 litres per person per day).