



Appeal Decision

Site visit made on 25 November 2021

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd December 2021

Appeal Ref: APP/U5360/W/21/3278213

37 Lauriston Road, Hackney, London E9 7EY

- 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 Mrs Sharon Sibthorpe against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2021/0332, dated 3 February 2021, was refused by notice dated 1 April 2021.
 - The application sought planning permission for Erection of single storey side extension to form a residential unit and one car parking space to front yard without complying with a condition attached to planning permission Ref 2018/2386, dated 24 August 2018.
 - The condition in dispute is No 8 which states that: Full details of a green / brown roof, to include a detailed maintenance plan, shall be submitted to and approved by the Local Planning Authority, in writing, before development commences. The development shall not be carried out otherwise than in accordance with the details thus approved and shall be fully implemented before the premises are first occupied
 - The reason given for the condition is: To enhance the character and ecology of the development, to provide undisturbed refuges for wildlife, to promote sustainable urban drainage, and to enhance the performance and efficiency of the proposed building.
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Decision

1. The appeal is allowed and planning permission is granted for erection of single storey side extension to form a residential unit and one car parking space to front yard at 37 Lauriston Road, Hackney, London E9 7EY without compliance with condition number 8 previously imposed on planning permission Ref 2018/2386, dated 24 August 2018 but subject to the conditions set out in the attached schedule.

Background and Main Issue

2. Planning permission was granted for the provision of a residential unit incorporating a flat roof under approval Ref 2018/2386. The plans specified that the series of flat roofs within the proposal would be gravel flat roofs. However, green or brown roofs were effectively specified through the inclusion of condition 8 on approval Ref 2018/2386.
3. The appellant seeks to removal of the condition as they consider it to be inconsistent with the approved plans. The main issue is whether the condition meets the six tests for the use of conditions contained in the Framework¹ and

¹ National Planning Policy Framework 2021 Para. 56.

in Planning Practice Guidance (PPG)². Each test needs to be satisfied for every condition applied.

Reasons

4. The use of living roofs is encouraged through Policy LP46 of the Hackney Local Plan (2020) (HLP) and SPD³ guidance. Their inclusion at the site would inevitably support the aims of Policies LP53 and LP55 which require proposals to reduce flood risk and mitigate the impact of climate change as well as increase biodiversity in line with policy and guidance requirements. The condition can therefore be considered necessary.
5. However, the approved plan clearly specifies gravel roofs and the appellant indicates that it is not feasible to include a green/brown roof, partly due to budget restrictions. The PPG advises that conditions that impact on the proper implementation of the planning permission should not be used. The proposal has been presented and planned for on the basis of a gravel roof.
6. Given that this is the case, the imposition of a condition requiring a green/brown roof would therefore negatively impact on the proper implementation of the planning permission and is therefore unreasonable. The condition would not subsequently fulfil all of the six conditions tests and therefore should be removed.
7. The evidence indicates that site is within the Victoria Park Conservation Area. There is nothing within the evidence to indicate that the proposal would not at a minimum preserve its character and appearance and I agree with this position.

Conditions

8. Planning Practice Guidance 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.
9. Section 73(5) of the Act states that permission must not be granted under this section for the development of land in England to the extent that it has an effect to change a condition subject to which a previous planning permission was granted by extending the time within which a development must be started. I have also therefore adjusted condition 1 accordingly.

Conclusion

10. For the reasons set out above and having taken into account all other relevant matters, the appeal is allowed subject to the attached schedule of conditions.

T J Burnham

INSPECTOR

² Paragraph: 003 Reference ID: 21a-003-20190723.

³ Sustainable Design and Construction SPD 2016 & Residential Extensions and Alterations SPD 2009.

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from 24 August 2018.
- 2) The Development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details. E-001, 002, 101, 102, 201, 202, 203, 301, 302, P-002A, 101D, 102B, 201D, 202B, 203A, 301B, 302B.
- 3) No development shall take place until details and results of a soil contamination survey of the site and details of remedial measures proposed to treat/eradicate any contamination found have been submitted by the applicant and approved by the Local Planning Authority in writing. The development shall not take place otherwise than in accordance with the details so approved.
- 4) Full details, with samples, of the materials to be used on the external surfaces of the buildings, including glazing, shall be submitted to and approved by the Local Planning Authority in writing before the relevant work on site is commenced. The development shall not be carried out otherwise than in accordance with the details thus approved.
- 5) Detailed drawings/full particulars of the proposed development showing the matters set out below must be submitted to and approved by the Local Planning Authority, in writing, before the relevant work commences. The development shall not be carried out otherwise than in accordance with the details thus approved. i) Details of front door ii) Details of windows to scale of 1:20 iii) Details of secure covered cycle storage iv) Details of front and rear boundary treatment.
- 6) Detailed drawings/full particulars of the proposed development showing the matters set out below must be submitted to and approved by the Local Planning Authority, in writing, before the relevant work is commenced. The development shall not be carried out otherwise than in accordance with the details thus approved. i) Details of permeable paving and soft landscaping to front garden.
- 7) Details of dustbin and recycling enclosures showing the design, and external appearance and enclosure, shall be submitted to and approved by the Local Planning Authority, in writing, before the use commences. The development Shall not be carried out otherwise than in accordance with the details thus approved.
- 8) All non-Combined Heat and Power (CHP) space and hot water fossil fuel (or equivalent hydrocarbon based fuel) boilers installed as part of the development hereby approved shall achieve dry NOx emission levels equivalent to or less than 40 mg/kWh.
- 9) No soil stacks, soil vent pipes, flues, ductwork or any other pipework shall be fixed to the (street) elevations of the building other than as shown on the drawings hereby approved.