



Appeal Decision

Site visit made on 19 November 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 DECEMBER 2021

Appeal Ref: APP/N5090/W/21/3272276

Adastra House, 401-405 Nether Street, London N3 1QG

- 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 Mizen Properties Ltd against the decision of London Borough of Barnet.
- The application Ref 20/3991/S73, dated 28 August 2020, was refused by notice dated 25 November 2020.
- The application sought planning permission for demolition of existing building and construction of a six-storey detached building with a roof terrace plus basement parking for 19 cars to provide 140 sqm of class B1 office floorspace on the ground floor and 34no. self-contained residential flats on the upper floors, associated amenity space, refuse storage, cycle parking landscaping works. without complying with conditions attached to planning permission Ref 15/05632/FUL, dated 8 September 2015.
- The conditions in dispute are Nos 10, 11 and 12 which state that: 10) Before the development hereby permitted is occupied a Car Parking Management Plan detailing the allocation of car parking spaces, all on site parking controls and charges and enforcement measures to be put in place to deal with any unauthorised parking shall be submitted to and approved in writing by the Local Planning Authority. The development shall be managed in accordance with the approved Car Parking Management Plan from the first occupation of the building and in perpetuity thereafter; 11) "Before the development hereby permitted is occupied full details of the two car lifts and remote controlled roll up shutter with video entry linked to a concierge to be installed as part of the scheme (as identified on plan numbers 158_GA_00 Revision A and 158_GA_B1) shall be submitted to the Local Planning Authority and approved in writing. The information submitted in respect of this condition shall include, but not be limited to, comprehensive details of the specification, operation, and management of the identified equipment. The development shall be implemented in full accordance with the details as approved before it is occupied and be maintained and managed as such permanently thereafter; 12) Before the development hereby permitted is occupied a Maintenance Plan for the two car lifts and remote controlled roll up shutter with video entry linked to a concierge to be installed in the scheme (as identified on plan numbers 158_GA_00 Revision A and 158_GA_B1) shall be submitted to the Local Planning Authority and approved in writing. The Maintenance Plan submitted shall include comprehensive details of how the car lifts and roller shutter will be maintained in good working order so as not to prejudice highway safety and the flow of traffic in the area surrounding the site. The two car lifts and remote controlled roll up shutter with video entry linked to a concierge in the scheme shall be maintained in full accordance with the approved details in perpetuity.
- The reasons given for the condition are: 10) To ensure that parking is provided and managed at the development in the interests of highway safety and the free flow of traffic in the area and in accordance with policies CS9 and DM17 of the Barnet Local Plan; 11) To ensure the development does not compromise pedestrian and highway safety and the flow of traffic in accordance with Policies CS9 and DM17 of the Barnet Local Plan; 12) To ensure the development does not compromise pedestrian and

highway safety and the flow of traffic in accordance with Policies CS9 and DM17 of the Barnet Local Plan.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mizen Properties Ltd against the London Borough of Barnet. This application is the subject of a separate Decision

Preliminary Matters

3. Section 73 of the Town and Country Planning Act 1990 (s73) allows for a grant of planning permission for the development of land without compliance with conditions subject to which a previous permission was granted.
4. The Courts have held that an application under s73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission i.e., the description of the development for which planning permission had originally been granted.
5. In an appeal of this nature the description of development in an existing planning permission cannot be amended at all. Only the conditions can be varied. If amending a condition would result in a conflict between it and the description of development, then that particular amendment is beyond the powers under s73 and cannot be made (a fresh planning application would be required).
6. In this case, the appellant outlined that they wished to amend the car lift provisions by substituting plan no. 158_GA_00 Revision A and plan no. 158_GA_B1 of planning permission 15/05632/FUL with plan no 900-A-141 rev c plan no. 900-A-140 rev C.
7. In addition to showing two car lifts, the plans of the original planning permission referred to above, showed 140.5sqm of office space, as per the description of development (albeit rounded down to the nearest m² in the description of development). The amended plans, which are before me in the appeal and which the appellant sought approval, show two office spaces of 214sqm and 112sqm resulting in a total of 326sqm. Such a considerable increase in the amount of office floorspace, would fundamentally alter the original planning proposal for which permission had been granted. It would thus not be within the powers of s73.
8. The appellant has drawn my attention to the long planning history in relation to the site. This appears to show that the increased office floorspace has been granted planning permission in other subsequent applications since the original permission. Be that as it may, the fact that other consents may exist for a greater amount of office floorspace does not override or give any additional powers to the confines and restrictions of what is permissible under s73. It does not alter my finding that were I to allow the appeal, and thereby approve the submitted plans, there would be a clear conflict with the description of the development in the original planning permission.

Conclusion

9. The appeal is therefore beyond the powers of s73, and I am therefore unable to determine the appeal under this route. On this basis, the appeal is dismissed.

A M Nilsson

INSPECTOR