



Appeal Decision

Site visit made on 11 January 2022

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

Appeal Ref: APP/N5090/W/21/3275043

89 Park Road, New Barnet, EN4 9QX

- 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 Hadley Hall Developments against the decision of the Council of the London Borough of Barnet.
- The application Ref 21/1465/S73, dated 17 March 2021, was refused by notice dated 12 May 2021.
- The application sought planning permission for variation of conditions 1 (Approved plans), 3 (Levels), 4 (Materials), 6 (Landscaping), 9 (Part M4(2)), and 13 (Parking spaces) of planning permission 20/2706/S73, dated 25/05/2016 for variation of condition 1 (Approved Plans), 3 (Levels) and 4 (Materials, Window and Door details) of planning permission 16/3318/FUL dated 25/05/16 for the erection of 3no. two-storey dwelling house with rooms in roof space and 1no two-storey house following demolition of existing buildings with associated refuse storage, parking and landscaping. Variation to include alterations to window and doors including insertion of additional windows; introduction of traditional Georgian soffit detail; removal of exposed lintels; amendments to the internal layouts and levels; alterations to porticos. Addition of a chimney to plot A. Variation to include: Block A: External material changed to brick, Block C: Installation of 2no double doors at ground floor rear, 2no vulvex conservation windows to roof of rear elevation, and symmetry to front and rear facades, Block D: Addition of 2no flat rooflights to the roof, changing of the hardie board colour from grey to dark blue, creation of level parking spaces for blocks A, B, C and D without complying with conditions attached to planning permission Ref 20/6110/S73, dated 3 March 2021.
- The conditions in dispute are Nos 1 and 4 which state that:
'(1) The development hereby permitted shall be carried out in accordance with the following approved plans: A-PP-01 - Block A Proposed Plans Rev B, A-PE-01 - Block A Proposed Elevations Rev, D B-PP-01 - Block B Proposed Plans Rev B, B-PE-01 - Block B Proposed Elevations Rev B, C-PP-01 - Block C Proposed Plans Rev D, C-PE-01 - Block C Proposed Elevations Rev D, D-PP-01 - Block D Proposed Plans Rev D, D-PE-01 - Block D Proposed Elevations Rev B, D-01 - Detail Drawing - Porch Rev B D-02 - Detail Drawing - Soffit Rev B, 1953-04 Rev P - Existing and Proposed Sections, 1953-SK11 Rev P - Proposed Elevations, 1953-SK16 Rev M Window details, P20-143-3E-ZZ-XX-DR-C-2000-P2 - Proposed Levels drawing, PR-P-001 Site and Location Plan Rev F, PR-P-002 Site and Location Plan - Contours - Rev F, PR-P-003 Site Section Rev F External Materials document Rev E - 23.0.2021, Natural Slate Spec sheet (Siga 56M) - received 25.08.2020 and covering Letter H+H 23rd February 2021'.
'(4) The development shall be implemented in accordance with the materials details as shown on the following drawings and documents: External Materials document Rev E dated 23.02.2021, Natural Slate Spec sheet (Siga 56M) - received 25.08.2020, HardiePlank specification sheet (details as approved under 19/5749/CON approved 17.12.19), Bauder XF301 Sedum System data sheet (details as approved under 19/5749/CON approved 17.12.19), StoRend render specification sheet (details as

approved under 19/5749/CON approved 17.12.19), D-01 - Detail Drawing - Porch Rev B, D-02 - Detail Drawing - Soffit Rev B, 1953-SK16 Rev M Window details'.

- The reasons given for the conditions are:

'(1) For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with Policies CS NPPF and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012)'.

'(4) To safeguard the character and visual amenities of the site and wider area and to ensure that the building is constructed in accordance with Policies CS NPPF and CS1 of the Local Plan Core Strategy (adopted September 2012), Policy DM01 of the Development Management Policies DPD (adopted September 2012) and Policies 1.1, 7.4, 7.5 and 7.6 of the London Plan 2016'.

Decision

1. The appeal is allowed and planning permission is approved for the erection of 3 two-storey dwelling houses with rooms in roof space and 1 two storey house following demolition of existing buildings with associated refuse storage, parking and landscaping at 89 Park Road, New Barnet, EN4 9QX, in accordance with application Ref 21/1465/S73 dated 17 March 2021, without compliance with conditions 01 and 04 previously imposed on planning permission 20/6110/S73 dated 3 March 2021, and subject to the conditions in the attached schedule.

Background and Procedural Matters

2. Planning permission was approved in July 2017¹ for the erection of 3 two-storey dwelling houses with rooms in roof space and 1 two storey house following demolition of existing buildings with associated refuse storage, parking and landscaping on the site. An application was subsequently made under s73 of the Town and Country Planning Act 1990 (as amended) to vary a number of conditions in respect of that planning permission. That planning permission was approved in March 2021².
3. The subject appeal relates to the aforementioned planning permission and seeks to vary condition Nos 1 (i.e. drawings) and 4 (i.e. Materials) as detailed in the banner heading above. In respect of these conditions, the proposal is to delete references to drawing number '1953-SK16 Rev M window details' (i.e. wooden construction) and replace this drawing number with drawing numbers '1953-SK16 Rev N window details' and '1953-SK17-Rev A window details' (i.e. aluminium construction and a minor change of design) in respect of Block D.
4. In my decision above, I have used the description of development from the original July 2017 planning permission. This more succinctly describes the proposed development when compared to the description of development in the March 2021 planning permission. It remains accurate and precise in terms of this appeal proposal and the main parties have confirmed that they share this view.

Main Issue

5. In the context of the above, the main issue is the effect of proposed alterations to the windows to Block D arising from the proposed variations to condition Nos

¹ Planning permission Ref 16/3318/FUL

² Planning permission Ref 20/6110/S73

01 and 04 of planning permission 20/6110/S73 in respect of design and the effect on the character and appearance of the area.

Reasons

6. The appeal proposes a change to the window material for Plot D, as shown located on the submitted site and location plan, from wood to aluminium. This is an approved detached dwelling positioned on land to the rear of No 89 Park Road. The site is not in a conservation area.
7. The Council says that the timber windows were designed to replicate the timber outbuildings on site and differentiate the appearance of each building. In this respect, they raise an objection to the use of aluminium frames. The proposed window style and detailing would be very similar to that already approved, although owing to the use of aluminium it would have slightly thinner mullions. I consider that the latter change would actually represent a marginal design improvement.
8. The appellant has commented that whether the windows were finished in wood or aluminium, they would be finished in an anthracite grey colour. In this context, I do not consider that there would be marked visual difference in the appearance of the windows, whether they were aluminium or wood.
9. While it would seem that the Council favours the use of wood, taking into account the historic use of the site, I am not persuaded that there is an overall good design reason for insisting on the use of this material. In this case, I share the appellant's general view that aluminium window frames can, in certain situations, have a longer lifespan than wood and are unlikely to be prone to the same amount of expansion and contraction. Put another way, the aluminium frames are likely to need less maintenance and it is possible that they may last longer. These are clearly matters of subjective judgment but, in this case, I do not consider that it would be reasonable to withhold planning permission because of the Council's view that aluminium frames require, in relative terms, more energy as part of their manufacture. Such a claim has not been reasonably substantiated relative to the energy used to create wooden frames.
10. It would appear that the Council is concerned about materials being homogenised on the site. I do not find that this proposal would have such an effect as the evidence is that there are other properties on the site that are traditionally detailed and have timber sash windows and timber French doors throughout. Furthermore, the wider site includes more traditional buildings and artist studios where the use of wood still predominates. Therefore, the proposal would not see any significant loss of wood as a material across the wider site.
11. The dwelling on Plot D is a much more contemporary design when compared to the other dwellings on the site. The use of aluminium windows would be in-keeping with this property. The proposal would have the effect of creating differentiation between the more contemporary designed property and the more traditionally designed three dwellings on the remainder of the site.
12. I do not therefore share the view of the Council that the proposal would '*materially diminish the approved scheme*' for the site. In reaching this view, I am also cognisant of the fact that the Council has approved dwellings close to the entrance to the site with aluminium frames. Indeed, the Council does not

dispute the appellant's comment that '*on another separate part of the site, where we have recently had permission granted for 2x studio buildings that are literally replacing the 'timber outbuildings' that were removed whilst also sitting immediately adjacent to an existing retained timber studio building, we have had metal framed windows approved (Application Number: 20/3513/CON*'.

13. The evidence indicates that the Council favours the use of wooden window frames for Plot D as a means of seeking to reflect the original on-site timber outbuildings on the site. The Council fails to provide any reasonable justification as to why it is '*critical*' that the material of the windows for Plot D is wood. In any event, and as detailed above, I do not consider that the passer-by would see a marked difference between the use of wood or aluminium given that the evidence is that the approved wooden window frames could be painted in an anthracite grey colour.
14. For the above reasons, I therefore conclude that the proposed alterations to the windows of the property known as 'Block D' are acceptable in design terms and hence no material harm would be caused to the character and appearance of the area. Therefore, there would be no conflict with the design, character and appearance requirements of Policy CS5 of Barnet's Local Plan Core Strategy DPD 2021, Policies DM01 and DM06 of Barnet's Local Plan Development Management policies DPD 2012, Policy D6 of the London Plan 2021 or Chapter 12 of the National Planning Policy Framework 2021. In reaching this view, I do not find that the proposal would cause any harm to the setting of listed buildings on or surrounding the site. This is a matter of neutral consequence in respect of determining this appeal.

Conditions

15. It should be noted that as I am allowing the appeal, a new permission is created and the original permission remains extant and unaltered along with the conditions attached to it.
16. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The conditions set out in the accompanying schedule are based on those suggested by the Council and agreed by the appellant. As I have no information before me about the status of the other conditions imposed on planning permission Ref 20/6110/S73, 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.
17. All of the conditions in the attached schedule therefore mirror those imposed in respect of planning permission Ref 20/6110/S73, apart from condition Nos 1 and 3 which are amended to reflect the drawings relating to Plot D and in respect of the permitted aluminium windows. As the evidence is that development has commenced on the site, it has not been necessary to impose a commencement of development condition. The main parties share this view.

Conclusion

18. For the reasons outlined above, I conclude that the appeal should be allowed.

D Hartley

INSPECTOR

Schedule of Conditions

1)The development hereby permitted shall be carried out in accordance with the following approved plans:

A-PP-01 - Block A Proposed Plans Rev B
A-PE-01 - Block A Proposed Elevations Rev D
B-PP-01 - Block B Proposed Plans Rev B
B-PE-01 - Block B Proposed Elevations Rev B
C-PP-01 - Block C Proposed Plans Rev D
C-PE-01 - Block C Proposed Elevations Rev D
D-PP-01 - Block D Proposed Plans Rev D
D-PE-01 - Block D Proposed Elevations Rev B
D-01 - Detail Drawing - Porch Rev B
D-02 - Detail Drawing - Soffit Rev B
1953-04 Rev P- Existing and Proposed Sections
1953-SK11 Rev P - Proposed Elevations
1953-SK16 Rev N Window details
1953-SK17 Rev A Window details
P20-143-3E-ZZ-XX-DR-C-2000-P2 - Proposed Levels drawing
PR-P-001 Site and Location Plan Rev F
PR-P-002 Site and Location Plan - Contours - Rev F
PR-P-003 Site Section Rev F
External Materials document Rev E - 23.0.2021
Natural Slate Spec sheet (Siga 56M) - received 25.08.2020.
Covering Letter H+H 23rd February 2021.

2)The development shall be implemented in accordance with details of the levels of the building(s), road(s) and footpath(s) in relation to the adjoining land and highway(s) and any other changes proposed in the levels of the site as shown on the following drawings:

P20-143-3E-ZZ-XX-DR-C-2000-P2 - Proposed Levels drawing
PR-P-001 Site and Location Plan Rev F
PR-P-002 Site and Location Plan - Contours - Rev F
PR-P-003 Site Section Rev F

3)The development shall be implemented in accordance with the materials details as shown on the following drawings and documents:

External Materials document Rev E dated 23.02.2021
Natural Slate Spec sheet (Siga 56M) - received 25.08.2020
HardiePlank specification sheet (details as approved under 19/5749/CON approved 17.12.19)
Bauder XF301 Sedum System data sheet (details as approved under 19/5749/CON approved 17.12.19)
StoRend render specification sheet (details as approved under 19/5749/CON approved 17.12.19)
D-01 - Detail Drawing - Porch Rev B
D-02 - Detail Drawing - Soffit Rev B
1953-SK16 Rev N Window details
1953-SK17 Rev A Window details

4)The development shall be implemented in accordance with the 'Demolition and Construction Management and Logistics Plan' details approved under discharge of condition application reference 19/2705/CON approved 25.6.19.

5)A scheme of hard and soft landscaping, including details of existing trees to be retained and size, species, planting heights, densities and positions of any soft landscaping shall be implemented in accordance with the details approved under application 19/5749/CON approved 17.12.19.

b) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use.

c) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

6)No construction work resulting from the planning permission shall be carried out on the premises at any time on Sundays, Bank or Public Holidays, before 8.00 am or after 1.00 pm on Saturdays, or before 8.00 am or after 6.00pm pm on other days.

7)The development shall be implemented in accordance with the boundary treatment details approved under application 19/5749/CON approved 17.12.19 before first occupation and retained as such thereafter.

8)Notwithstanding the details shown in the drawings submitted and otherwise hereby approved, prior to the first occupation of the new dwellinghouse(s) (Use Class C3) permitted under this consent Blocks B and C shall have been constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future). In addition, Notwithstanding the details shown in the drawings submitted and otherwise hereby approved, prior to the first occupation of the new dwellinghouse(s) (Use Class C3) permitted under this consent Blocks A and D shall all have been constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010, except in relation to all external access and approach requirements including car parking requirements, where because of the natural gradient of the site they shall be excluded from meeting the requirements set out in the Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future).The development shall be maintained as such in perpetuity thereafter.

9)Prior to the first occupation of the development hereby approved it shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 6% in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations. The development shall be maintained as such in perpetuity thereafter.

10) Prior to the first occupation of the new dwellinghouse(s) (Use Class C3) hereby approved they shall all have been constructed to have 100% of the water supplied to them by the mains water infrastructure provided through a water meter or water meters and each new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day with a fittings based approach should be used to determine the water consumption of the proposed development. The development shall be maintained as such in perpetuity thereafter.

11) The estate road(s) to be constructed as part of this development shall be implemented in accordance with the details approved under application 19/5749/CON approved 17.12.19 before the site is first occupied or the use first commences and retained as such thereafter.

12) Before the development hereby permitted is first occupied turning space and parking spaces shall be provided and marked out within the site in accordance approved drawing PR-P-001 Rev F and that area shall not thereafter be used for any purpose other than the parking and turning of vehicles.

13) The development shall be implemented and the refuse and recycling facilities provided in full accordance with the information approved under application 19/5749/CON approved 17.12.19 before the development is first occupied and the development shall be managed in accordance with the information approved under this condition in perpetuity once occupation of the site has commenced.

14) No site works (including any temporary enabling works, site clearance and demolition) or development shall take place other than in accordance with the tree protection details approved under application 19/5749/CON approved 17.12.19 and until the temporary tree protection shown on the tree protection plan approved under this condition has been erected around existing trees on site. This protection shall remain in position until after the development works are completed and no material or soil shall be stored within these fenced areas at any time. The development shall be implemented in accordance with the protection plan and method statement as approved under this condition.

15) Before the building hereby permitted is first occupied the proposed window(s) in the side elevations facing towards each new unit shall be glazed with obscure glass only and shall be permanently retained as such thereafter and shall be permanently fixed shut with only a fanlight opening.

16) The roof of the house at plot D hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting out area.

17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development otherwise permitted by any of Classes A, B, C, D, E and F of Part 1 of Schedule 2 of that Order shall be carried out within the area of the new houses hereby approved.

18)The development shall be implemented in accordance with the extraction and ventilation equipment details approved under application 19/2705/CON, approved 25.06.19, before first occupation and retained as such thereafter.

19)The development shall be implemented in accordance with the excavations for services details approved under application 19/5749/CON approved 17.12.19. Reason: To safeguard the health of existing tree(s) which represent an important amenity feature in accordance with CS5 and CS7 of the Local Plan Core Strategy (adopted September 2012), Policy DM01 of the Development Management Policies DPD (adopted September 2012) and Policy 7.21 of the London Plan 2016).

20)Notwithstanding the provisions of any development order made under Section 59 of the Town and Country Planning Act 1990 (or any Order revoking and re-enacting that Order) no windows or doors, other than those expressly authorised by this permission, shall be placed at any time in the rear elevation of plot D facing Hamilton Road.