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## Appeal Decision

Site visit made on 12 January 2022

**Decision by C Rafferty LLB (Hons), Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 1<sup>st</sup> February 2022**

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**Appeal Ref: APP/T5150/W/21/3278435**

**The Tudors, Harlesden Road, London NW10 3RS**

- 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 as amended for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Akash Orahia against the decision of Brent Council.
  - The application Ref 20/3965 dated 2 December 2020, was refused by notice dated 17 June 2021.
  - The application sought planning permission for the variation of condition of planning application 19/1545, dated 3rd July 2019, for 'the demolition of existing shed and construction of a two bedroom, two storey dwellinghouse consisting of a part-basement ground floor and first floor, with associated landscaping, parking, and refuse/cycle storage', to allow: (1) Amendment to scheme for altered building: narrowed building (by 300mm), removal of lower ground floor access and associated structures, new main access to building at ground level and revised floor layout: Conditions 3 and 4 (accordance with drawings condition); and (2) Amendment to scheme for narrowed site access: Conditions 3 and 4 (accordance with drawings Condition) and Conditions 9 and 10 (driveway provision condition).
  - The conditions in dispute are Nos. 3, 4, 9 and 10 which state that:  
(3) and (4) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents: Received 26/4/19: 6338/28.9.18/01A 6338/15.4.19/03A 6338/15.4.19/04A 6338/15.4.19/05A Document Imaged DocFDN Ref: 19/1545 Page 3 of 12 6338/15.4.19/06A 6338/15.4.19/07A 6338/15.4.19/08A 6338/15.4.19/09A Tree Protection Plan ref MWA TLP001 Aboricultural Assessment (MWA, October 2018) Received 8/5/19: Location plan Received 3/6/19: 6338/15.4.19/01B 6338/15.4.19/02B;  
(9) and (10) Construction of the proposal shall not commence until such time as the driveway to the site has been realigned in accordance with drawing 6338/15.4.19/08A, to accommodate the proposed bin store, and the associated crossover has been widened at the developer's expense, including alterations to on-street parking bays;
  - The reason given for conditions 3 and 4 is: for the avoidance of doubt and in the interests of proper planning. The reason given for conditions 9 and 10 is: to ensure that the site may be adequately serviced with regards to waste collections.
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### Decision

1. The appeal is allowed and planning permission is granted for 'the variation of condition of planning application 19/1545, dated 3rd July 2019, for the demolition of existing shed and construction of a two bedroom, two storey dwellinghouse consisting of a part-basement ground floor and first floor, with associated landscaping, parking, and refuse/cycle storage, to allow: (1) Amendment to scheme for altered building: narrowed building (by 300mm), removal of lower ground floor access and associated structures, new main access to building at ground level and revised floor layout: Conditions 3 and 4

(accordance with drawings condition); and (2) Amendment to scheme for narrowed site access: Conditions 3 and 4 (accordance with drawings Condition) and Conditions 9 and 10 (driveway provision condition)' at The Tudors, Harlesden Road, London NW10 3RS in accordance with the application Ref 20/3965 dated 2 December 2020 subject to the conditions set out in Schedule 1 attached to this decision.

### **Main Issue**

2. The main issue is the effect of the proposed variation of conditions on highway safety.

### **Reasons**

3. The appeal site is situated off Harlesden Road to the rear of No. 1 The Tudors. It is accessed via a gated service road between this dwelling and No. 2. A nearby road sign to the north notes an advisory speed limit of 20 miles per hour, and a roundabout is present to the south. Permit parking spaces are also present on the highway, at either side of the site entrance.
4. Following the erection of a fence at No. 2 The Tudors, the main parties agree that it is no longer possible to provide a driveway in accordance with Drawing 6338/15.4.19/08A. As such, the appellant has provided amended plans demonstrating an alternative driveway access with a reduced width of 2.5 metres and a refuse collection point abutting the footpath on Harlesden Road. The main parties agree that a pair of 140 litre bins with kerbside container would be acceptable for the proposed dwelling and that with these in place at the refuse collection point a width of 2.05 metres would remain for driveway access.
5. This 2.05 metre width would replicate the dimensions of the access road between Nos. 1 and 2 The Tudors when accounting for the side drainpipes. Therefore, while narrow, it would remain possible for cars to pass onto the driveway with the bins in place at their allocated point such that this access road would not be blocked. The appellant has submitted sample vehicle specifications to support this. While the Council has stated that this is not representative of many vehicle types, no substantive evidence has been presented in this regard.
6. Nonetheless, due to the narrow nature of the access, entering and exiting the driveway from Harlesden Road would require additional care and vigilance, including potentially increased manoeuvres. This is particularly the case should the bins have been placed outside the collection point, which may require drivers to leave their vehicle to move the bins. However, in determining whether this would result in unacceptable highway safety risks it is necessary to consider the overall context.
7. Due to the nature of refuse collection, the bins would likely not be permanently present at the allocated collection points. Rather they would for most of the time likely be located away from the access and service road towards the proposed dwelling. In addition, other factors also serve to mitigate and minimise the risk of collision when emerging from or into the site, or when stopping the vehicles at this point if required.
8. Due to the residential nature of the surrounding area, many other vehicular accesses are present on this side of the street, with permit parking spaces also

lining the side of the highway such that vehicles edging onto and from the highway is a regular occurrence. In addition, this section of Harlesden Road has an advised speed limit of 20 miles per hour in one direction, and a nearby roundabout in the other. Road users and pedestrians will therefore already take appropriate care along this stretch of road. Furthermore, while other residents also use the access road, due to its long and straight nature there would be adequate visibility so that vehicle users are aware of their presence and the mutual use of the lane would not be impeded. Accordingly, the proposed access would not result in significant adverse effects on the safe operation of the highway network in this area.

9. I conclude that there would be no harm to highway safety arising from the proposed access and, as such, from the variation of conditions 3, 4, 9 and 10 of the original permission. It would accord with Policy DMP1 of the London Borough of Brent Local Plan Development Management Policies, November 2016, which seeks to ensure highway safety.

### **Conditions**

10. I have had regard to the conditions suggested by both parties. I have imposed a condition relating to the provision of the driveway and crossover to ensure the site will be adequately serviced with regards to waste collection. This wording was suggested by the appellant in their original Planning Statement, such that the Council has had sight of it, and goes to the crux of the main issue in this appeal, on which the Council has provided comments.
11. In addition, and in the interests of certainty and enforcement, I have imposed the standard condition relating to plans. I note that the appellant's suggested condition referred to plans 6361/7.10.20/02C, 6361/7.10.20/04C and 6361/7.10.20/08C but that these had been superseded prior to the Council's determination. I have therefore included reference to 6361/17.2.21/02D, 6361/17.2.21/04D and 6361/18.1.21/08D, on which the Council's decision was based.
12. The guidance in the PPG 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. As no information has been submitted about the status of the other conditions imposed on the original planning permission, all conditions that are considered to remain relevant shall be imposed. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. The PPG also indicates that a grant of planning permission under section 73 should not extend the time period for implementation.

### **Conclusion**

13. For the reasons given, the proposal would accord with the development plan when taken as a whole. There are no material considerations worthy of sufficient weight that indicate the appeal should be determined other than in accordance therewith. I therefore conclude that the appeal should be allowed.

*C Rafferty*

INSPECTOR

## **SCHEDULE 1**

1. The development to which this permission relates must be begun not later than the expiration of three years beginning from 3 July 2019.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:

Site Location Plan; 6361/7.10.20/01C: Existing Site Plan dated October 2020; 6361/17.2.21/02D: Proposed Site Plan dated February 2021; 6361/7.10.20/03C: Existing Ground Floor Plan and Roof Plan dated October 2020; 6361/17.2.21/04D: Proposed Ground Floor Plan dated February 2021; 6361/7.10.20/05C: Proposed First Floor Plan and Roof Plan dated October 2020; 6361/7.10.20/06C: Proposed Floor Plans and Elevations dated October 2020; 6361/7.10.20/07C: Proposed Floor Plans and Elevations dated October 2020; 6361/18.1.21/08D: Proposed Refuse Position to Front Driveway Area Floor Plans dated January 2021; 6361/7.10.20/09C Proposed Material Finishes to Building Elevation and Garden dated October 2020; Tree Protection Plan ref MWA TLP001; Arboricultural Assessment (MWA, October 2018)

3. The refuse and recycling facilities and cycle parking facilities as approved shall be provided in full prior to the first occupation of the development hereby permitted and shall thereafter be permanently retained and maintained.
4. The areas so designated within the site shall be landscaped, to include two suitable replacement trees, and details of all surfacing and planting, in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority before above ground works commence on-site. The landscape works must be completed during the first available planting season following completion of the development hereby approved. Any planting that is part of the approved scheme that within a period of five years after planting is removed, dies or becomes seriously damaged or diseased, shall be replaced in the next planting season and all planting shall be replaced in the same positions with others of a similar size and species, unless the Local Planning Authority first gives written consent to any variation.
5. No further extensions or buildings shall be constructed within the curtilage of the dwellinghouse subject of this application, notwithstanding the provisions of Classes A, B, D & E of Part 1 Schedule 2 of the Town & Country Planning (General Permitted Development) Order 2015, as amended, (or any order revoking and re-enacting that Order with or without modification) unless a planning application is first submitted to and approved by the Local Planning Authority.
6. Notwithstanding the provisions of Schedule 2, Part 3, Class L of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re enacting that Order), the residential units hereby permitted shall not be converted to a C4 small House in Multiple Occupation.

7. Details of materials for all external work, i.e., wall materials, paving materials, roof tiles, window and door frames, to consist of high quality colour PDF including RAL colours and /or product code or details, keyed to elevational drawing, shall be submitted to and approved in writing by the Local Planning Authority before any above-ground work is commenced. The work shall be carried out in accordance with the approved details.
8. Following the demolition of the buildings and prior to the commencement of building works, a site investigation shall be carried out by competent persons to determine the nature and extent of any soil contamination present. The investigation shall be carried out in accordance with the principles of BS 10175:2011. A report shall be submitted to the Local Planning Authority, that includes the results of any research and analysis undertaken as well as an assessment of the risks posed by any identified contamination. It shall include an appraisal of remediation options should any contamination be found that presents an unacceptable risk to any identified receptors. The written report is subject to the approval in writing of the Local Planning Authority.
9. Any soil contamination remediation measures required by the Local Planning Authority shall be carried out in full. A verification report shall be provided to the Local Planning Authority, stating that remediation has been carried out in accordance with the approved remediation scheme and the site is suitable for end use (unless the Planning Authority has previously confirmed that no remediation measures are required).
10. Construction of the proposal shall not commence until such time as the driveway to the site has been provided in accordance with drawing 6361/18.1.21/08D: Proposed Refuse Position to Front Driveway Area Floor Plans dated January 2021, to accommodate the proposed on day-of-collection refuse storage area, and the associated crossover has been set out at the developer's expense.