



Appeal Decision

Site visit made on 13 May 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 June 2022

Appeal Ref: APP/Q5300/W/21/3284400

72 Kingsfield Drive, Enfield EN3 6UB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Haydar Ozcan against the decision of the Council of the London Borough of Enfield.
 - The application Ref 21/02421/CND, dated 19 June 2021, sought approval of details pursuant to conditions Nos 4, 5, 6, 7, 8, 9, 10, 11 and 13 of planning permission Ref 19/02045/FUL, granted on 31 July 2019.
 - The application was refused by notice dated 4 October 2021.
 - The development proposed is the sub-division of site and erection of an end-of-terraced 2-storey, 2-bed dwelling house with associated parking, access arrangements and landscaping.
 - The details for which approval is sought are:
 - Condition No 4: Shrubs, grass and treatment of hard surfaced amenity areas
 - Condition No 5: Means of enclosure
 - Condition No 6: Reinstatement of rear crossover
 - Condition No 7: Cycle storage
 - Condition No 8: Refuse storage facilities
 - Condition No 9: Sustainable drainage strategy
 - Condition No 10: Internal consumption of potable water
 - Condition No 11: Construction management plan
 - Condition No 13: Location and appearance of solar panels
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Decision

1. The appeal is allowed and details submitted pursuant to Conditions Nos 4, 5, 6, 7, 8, 9, 10, 11 and 13 attached to planning permission 19/02045/FUL, granted on 31 July 2019, in accordance with the application Ref 21/02421/CND, dated 19 June 2021, and the plans submitted with it, are approved.

Procedural Matter

2. There is a discrepancy between the conditions listed on the application form as being submitted for approval (Nos 4, 6, 9, 11 and 13) and those considered by the Council (Nos 4, 5, 6, 7, 8, 9, 10, 11 and 13). However, applications for approval of details are not subject to public consultation. Therefore, I am satisfied that no party would be prejudiced by my considering the wider list of conditions as the Council did.

Background

3. The appeal site is an end-of-terrace dwelling within a residential area. Permission was granted in 2019 for the erection of a new dwelling to the side of the original dwelling. At my site visit, I saw that the new dwelling was at an advanced stage of construction, with work having reached roof level.

4. Of the conditions submitted for approval, Conditions Nos 9 and 11 required details to be approved prior to the commencement of development. However, there is no indication from the Council that it considers these conditions are *conditions precedent* that go to the heart of the permission and that, consequently, the permission has not been lawfully implemented. Ultimately, whether they are conditions precedent or not, or whether there has been a lawful commencement of development on the site, are matters that lie outside my remit in the determination of this appeal and so do not form part of my considerations, which are limited to whether the information submitted to discharge the conditions is satisfactory.
5. The appellant indicates that an number of the disputed conditions have already been subject to applications for approval, and found to be satisfactory by the Council. Under application Ref 20/01716/CND, the officer report indicates that the Council was satisfied with the details submitted for Conditions Nos 4, 7, 8 and 10. However, the report concluded with a recommendation to refuse the application in its entirety. I am not provided with the formal decision notice for this application, but from the report it appears that none of the details of conditions were formally approved.
6. Similarly, the Council's delegated report for the present case indicates that it was satisfied with the details submitted in respect of Conditions Nos 4, 5, 6, 11 and 13. However, whilst the Council only expressly refused the details of Conditions Nos 7, 8, 9 and 10, it did not formally approve the details of the other conditions. Consequently, these still fall to be considered for approval and I assess them within my reasoning below.

Main Issues

7. The main issue for each condition is whether the details submitted are acceptable and sufficient to discharge the condition, having regard to its reason for being imposed. Most of the reasons set out on the Council's decision notice do not refer to specific development plan policies, but I have been provided with a number of policies of the Council's Development Management Document (November 2014) (the DMD) to which I refer as appropriate.

Reasons

Condition No 4 - Shrubs, grass and treatment of hard surfaced amenity areas

8. The appellant has submitted drawings (SE/72KD/PC4 Rev C and SE/72KD/PC4.1) which show new tree planting on the new rear garden boundary between the existing dwelling at No 72 and the new dwelling (72A) that is specifically sought by the condition. The plans also show the rear garden laid to grass, concrete paving slabs forming a rear patio and side passage, and the retention of a small area of grass to the front corner of the site. The rear garden would be enclosed from public view, but would be laid to match the existing dwelling. The front area of grass would retain some visual interest on the street corner. The Council was satisfied with these details and I have no firm reasons to reach a different view. No conflict therefore arises with Policy DMD79 which seeks to avoid negative impact on ecological assets, nor Policy DMD8 which requires that developments provide high quality amenity space. These details are therefore acceptable to discharge the condition.

Condition No 5 - Means of enclosure

9. Drawing SE/72KD/PC5.1 Rev A shows a 950mm high brick boundary wall on the curved front corner of the site which lowers to 600mm to the front where a pedestrian gate would be provided, with the existing open driveway to No 72 retained next to this. The brick wall would match the materials to the front of the dwellings, and so would be appropriate in appearance. The height would also reflect the prevailing height of front boundary treatments within the street.
10. Drawing SE/72KD/PC4.1 also shows the proposed rear fence which would include gaps at the bottom to allow small animals to pass through, as required by the condition. Again, I concur with the Council's view that these details are acceptable to discharge the condition, as they would preserve the character and appearance of the area in accordance with the aims of Policies DMD6, DMD7, DMD8 and DMD37.

Condition No 6 - Reinstatement of rear crossover

11. The condition requires the appellant to confirm the undertaking of reinstatement works in respect of a crossover for a former rear access onto Broadoak Avenue. Drawing SE/72KD/PC6 Rev A shows the location of the works and two photographs show the reinstated footway. I also note email correspondence from the Council's Assistant Highway Engineer confirming the date of works as 13 May 2021. I am satisfied that these details are sufficient to discharge the condition.

Condition No 7 – Cycle Storage

12. The Council's concern is that a proposed entrance gate to the side of the dwelling, which would need to be entered through to access the proposed cycle storage, would not meet the minimum 1.2 metres width for an accessible opening as set out in the London Cycling Design Standards. Oddly, the details submitted in respect of this condition were indicated to be satisfactory under the earlier application 20/01716/CND. It is unclear whether the details have changed between the applications, but the use of the same drawing without a revision number suggests not.
13. Drawing SE/72KD/PC4 Rev C shows two covered and lockable storage units, each for two cycles, within the side passage of the proposed dwelling. The details of the units are further shown on drawing SE/72KD/PC7. The site plan indicates the gate and fencing to the front of the side passage have been removed from the proposal to enable access by both dwellings to this space. As such, the potential impediment of a narrow gate is no longer a factor. I have no other evidence which suggests the cycle storage would be inadequate. Therefore, I am satisfied that the details are sufficient to discharge the condition.

Condition No 8 – Refuse Storage Facilities

14. Refuse storage for both dwellings is shown on Drawing SE/72/KD/PC4 Rev C within the side passage in front of the cycle storage, and further detailed on Drawing SE/72KD/PC8. The Council acknowledges the removal of the gate and fencing to this area, but seeks further information as to the nature of the proposed joint access/ownership of the area. This is another condition where the details were previously found acceptable by the Council; however as above,

there is limited information as to whether the previous proposal differed in terms of the location of the bin storage.

15. Nonetheless, based on the plans before me, the side passage would be a communal area accessible by both dwellings. The new dwelling would have private access to its rear garden at the back of this space. Formal terms of land ownership or rights of access are separate matters falling outside of the planning system. Should there be any issue in this respect resulting in bin storage occurring elsewhere on the site, it would be open to the Council to investigate any potential breach of condition. Therefore, I see no impediment to discharging the condition, given the location of the bin storage to the side of the dwelling is discreet and practical, and so would accord with Policy DMD8 in terms of providing adequate refuse storage which does not, by reason of design or form, adversely affect the quality of the street scene.

Condition No 9 - Sustainable drainage strategy

16. The Council points to the submitted details being unclear as to the overall level of storage provided by the proposed sustainable drainage strategy or how surface water run-off would discharge to the rain garden. The Council also questions whether the submitted details apply to both properties.
17. The appellant's Sustainable Drainage Strategy Report (SDSR) (Revision B, January 2021) indicates that the overall area of hardscape within the appeal site, which includes the existing dwelling, would be reduced by 13 sqm as a result of the proposal, as a previous side extension and areas of impermeable hard paving would be removed. The SDSR therefore states that no additional surface water runoff will enter the existing sewer system, and measures such as soakaways are not therefore required. A rain garden, featuring a layer of large stone/rubble bedding, is nevertheless proposed to soakaway rainwater from the front drainpipes. It is indicated that this would discharge onto permeable paving and into the rain garden, which would be set 150mm lower than the paving so as to collect the rainwater (Drawing SE/72KD/PC9.2).
18. Although the submitted details do not explicitly address each of the criteria set out under the condition, they indicate that the proposed development would not lead to an increase in surface water run-off within or outside the site, but would in any event include additional measures to control the discharge of surface water within the site, leading to an overall betterment in terms of surface water drainage. The Council has provided no further commentary beyond that summarised above, and I note email correspondence from the Council's planning officer in January 2021 which appears to confirm that SUDS details were satisfactory to officers at that stage. The Council's subsequent position is unexplained and I have nothing substantive to contradict the appellant's evidence. I therefore find that the details would accord with criteria c), d) and e) of Policy DMD59 and the overall aims of Policy DM61 to manage surface water as close to its source as possible. The submitted details are acceptable to discharge Condition No 9.

Condition No 10 - Internal consumption of potable water

19. The appellant has submitted details which indicate the maximum consumption of potable water per person per day would be 103.7 litres, below the maximum of 105 litres as stipulated by the condition. The Council's officer report, somewhat strangely, states that no details have been submitted. I also note

that the details submitted to address this condition under application Ref 20/01716/CND were considered acceptable. This aside, I have no evidence from the Council to contradict the appellant's details. Therefore, I am satisfied that these details accord with the aims of Policy DMD49 to achieve the highest sustainable design and construction standards, and are acceptable to discharge the condition.

Condition No 11 - Construction management plan

20. The Council indicates that the submitted details are satisfactory. The Construction Management Plan sets out details of measures to be undertaken in respect of each of the criteria of the condition, including confirmation that the contractor is a member of the Considerate Constructors Scheme. I note the Council's Transportation Team was satisfied with the details submitted. Therefore, I find the details acceptable in respect of this condition.

Condition No 13 - Location and appearance of solar panels

21. The Council indicates that the submitted details are satisfactory. These include a drawing (SE/72KD/PC13) showing the location of the proposed solar panels, and an Energy Statement setting out that the building will achieve an energy efficiency rating of A and an environmental impact rating of at least C, with CO2 emissions reduced by 35% overall. This would be consistent with the overall aims of Policies DMD49 and DMD51 in respect of sustainable design and construction methods, and to minimise energy-related CO2 emissions. Therefore, I find the details acceptable to discharge the condition.

Conclusion

22. On the evidence before me, I find the details submitted are satisfactory in respect of each condition for which approval is sought. Therefore, the appeal is allowed.

K Savage

INSPECTOR