



Appeal Decision

Site visit made on 22 June 2022

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 11 August 2022

Appeal Ref: APP/U5930/W/22/3290627

113 Wood Street, Walthamstow, London, E17 3LL

- 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 Mrs Toor against the decision of Waltham Forest London Borough Council.
 - The application Ref 212902, dated 7 September 2021, sought approval of details pursuant to condition No 10 of a planning permission Ref 192159, granted on 16 June 2020.
 - The application was refused by notice dated 1 November 2021.
 - The development proposed is described as 'Change of use from retail (A1 use class) to mixed use retail and residential 1 x 1 bedroom self-contained flat (A1/C3 use class); installation of new shopfront including creation of secondary residential entrance. Alterations to ground floor rear fenestration. Associated work to include cycle and refuse storage at rear garden'.
 - The details for which approval is sought are: Energy Statement by EDP Environmental, Energy Statement Developer Confirmation Report by Smith & Newton Architects Ltd, MCS Certificates for PV Installation and Regulations Compliance Report & Predicted EPC by EDP Environmental.
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Decision

1. The appeal is allowed and the application Ref 212902 details submitted pursuant to condition No 10 attached to planning permission Ref 192159 granted on 16 June 2020 in accordance with the application dated 7 September 2021 are approved.

Procedural Matters

2. While I noted during my site visit that both the retail unit and residential flat appeared to now be occupied, I have determined this appeal on the details provided.
3. The information listed in the header under details for which approval is sought have been taken from the application form. The detailed list of submissions with the appeal comprises of Energy Statement First Issue 113 Wood Street 4233-EDP-XX-XX-RP-EN-4000 (which includes copies of the Predicted EPC (dated 18 September 2020) and Regulations Compliance Report (dated 10 December 2020)) by EDP Environmental (dated 15 December 2021), Energy Statement Developer Confirmation Report Revision 00 0429-03-9850 by Smith & Newton Architects Ltd (dated 3 August 2021), Microgeneration Certification Scheme (MCS) Certificates MCS-01317384-U (dated 3 September 2021) and MCS-01319611-T (dated 26 August 2021) for the solar photovoltaics (PV) installation, Building Control Services Certificate of Completion for 113 Wood

Street 0784/20/FP (dated 24 February 2021) and 113b Wood Street EPC (revision review, dated 23 November 2021).

4. It is noted that the provided copy of the Regulations Compliance Report detailed as dated 18 September 2020 in the decision notice is dated 10 December 2020. Furthermore, MCS-01319611-T (dated 26 August 2021) has been provided but this is not referred to on the decision notice and the Building Control Services Certificate of Completion 0784/20/FP (dated 24 February 2021) and 113b Wood Street EPC (revision review, dated 23 November 2021) were issued after the decision notice date. Whilst I note these points, all parties have had an opportunity to comment on them at appeal and I therefore consider that there would be no prejudice to the parties. I have determined this appeal on the basis of the information provided.

Main Issue

5. The main issue is whether the submitted information pursuant to condition 10 would be sufficient and acceptable for the condition to be discharged.

Reasons

6. Condition 10 was imposed, in accordance with Waltham Forest Local Plan Core Strategy 2012 and Waltham Forest Local Plan Development Management Policies 2013, to ensure the development would reduce the carbon dioxide emissions of the proposal by at least 35% compared to the 2013 Building Regulations.
7. While condition 10 includes an incorrect reference stating that an Energy Statement (ES) accompanied the planning application, a statement was issued by the appellant in December 2020. This statement detailed the proposed construction measures to be incorporated in the development to meet the required emission reduction. These measures were not disputed by the Council.
8. To discharge condition 10, prior to the development's occupation, the appellant submitted an Energy Statement Developer Confirmation (ESDC) Report with supporting data and details to demonstrate how the scheme achieved the reduction. This report consisted of a signed declaration confirming that the reduction measures detailed in the ES had been completed.
9. The Council considered that this report was not sufficient to meet the requirements of the condition. It acknowledged that the measures detailed in the ES would theoretically achieve the reduction required. However, it considered that, as the condition referred to a 'prior to occupation' timing, then as-built building emission rates for the development compared to the agreed target emission rates were required with an as-built Building Regulation UK Part L (BRUKL) report for the ground floor unit.
10. Paragraph 56 of the National Planning Framework (the Framework) makes it clear that planning conditions should only be imposed where they are necessary; relevant to planning and the development to be permitted; enforceable; precise; and reasonable in all other respects. The Planning Practice Guidance amongst other matters, advises that planning conditions should be clearly seen to be fair, reasonable and practicable.
11. On this basis, to meet the Framework's precision requirement, the wording of condition 10 must be clear as to what is required and by when. Moreover, its

interpretation must be based on the natural and ordinary meaning of the words used within it.

12. Condition 10 requires a report to be submitted demonstrating how the scheme reduces emissions by 35%. The condition requires the report to refer to the measures detailed in the ES and to explain what measures have been implemented in the construction of the development. The condition does include a 'prior to occupation of any part of the development hereby permitted' requirement. This clause however, only defines the timing of when the condition's details have to be agreed with the Council. It does not explicitly stipulate that this needs to be after the development is built.
13. In terms of the condition wording, the submitted ESDC report meets all the requirements set out in condition 10. It explains what measures have been implemented in the construction of the development and, in conjunction with the ES, demonstrates how the scheme reduces the emissions by 35%. It further confirms that these measures have been completed. The report and supporting information were issued 'prior to occupation'.
14. I note the Council's view that a comparison of the as-built building emission rates with the target emission rates and an as-built Building Regulation UK Part L (BRUKL) report for the ground floor unit should be provided. However, for precision, these should have been included in the wording of the condition and could not reasonably have been interpreted as being required from the actual wording in the Council's decision notice.
15. Overall, I conclude that the details pursuant to condition No 10 are sufficient and acceptable for the condition to be discharged.

Other Matters

16. While I appreciate that examples have been provided showing that this general condition wording has been used in other planning approvals, familiarisation with a condition does not remove the need for it to be written precisely. As such this does not change my decision.

Conclusion

17. For the reasons given, I conclude that the appeal should succeed.

J Symmons

INSPECTOR