



Appeal Decision

Site visit made on 29 November 2022

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th January 2023

Appeal Ref: APP/H5960/W/22/3298184

134 West Hill, London SW15 2UE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by MFG Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2021/4258, dated 13 September 2021, was refused by notice dated 5 January 2022.
 - The application sought planning permission for Variation of condition 2 (in accordance with approved drawings) pursuant to planning permission dated 10/09/2019 ref 2019/1560 as varied by applications: 2020/3592 and 2020/1397 (Alterations in connection with reconfiguration of petrol filling station including erection of single-storey forecourt shop/sales building, car wash facility, petrol pumps, servicing facilities and parking spaces. Alterations to secure contractors' yard at rear of site including resiting of temporary building.) to allow amendments to the layout to allow for additional EV charging arrangements without complying with a condition attached to planning permission Ref 2021/2693, dated 12 October 2021.
 - The condition in dispute is No 2 which states that:
The development shall be carried out in accordance with the reports, specifications and drawings detailed 190106 - PLNG - 05 (H), 190106-06(B), 190106 - PLNG - 10.
 - The reason given for the condition is:
To ensure a satisfactory standard of development and to allow the local planning authority to review any potential changes to the scheme.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application subject to this appeal is made under Section 73A of the Town and Country Planning Act 1990 (as amended) (the Act) for a minor material amendment. It seeks a revised design for the forecourt shop/sales building to that approved in October 2021¹ (the approved scheme) which superseded two previously approved minor material amendments relating to the approved drawings for the redevelopment of the site. This type of application is possible because a condition was imposed on the original permission specifying the approved plans. The appeal seeks removal of the condition and replacement with a condition specifying the plans which reflect the amended design.
3. The development is retrospective, as at the date of my site visit it had already been carried out in accordance with the submitted plans. Therefore, I intend to

¹ Local Planning Authority reference: 2021/2693

consider the appeal on the basis of the proposal being for the retention of the development as shown on the plans submitted with this appeal.

4. A planning obligation made by way of a Unilateral Undertaking (UU) under Section 106 of the Act was submitted during the course of the appeal. I consider this matter in full below.
5. On my site visit, I observed the site at a request from a third-party property on Lytton Grove. I was able to observe the height of the forecourt building from this vantage point.

Main Issue

6. The main issue is the effect of the development on the living conditions of the occupiers of 132D West Hill with particular regard to outlook.

Reasons

7. The appeal site is a petrol filling station which has recently undergone substantial redevelopment comprising a single storey forecourt shop/sales building, petrol pumps, forecourt canopy, car wash facility and an electric vehicle charging facility. The forecourt shop/sales building is adjacent to the boundary of 132D West Hill, a residential property set back from the highway with a short garden to the rear. The eastern elevation of the forecourt building extends the length of the back garden of No. 132D and beyond.
8. The forecourt shop as built is higher than the approved scheme, irrespective of a change in ground levels between the appeal site and No.132D which were not shown on previous planning submissions to the Council. The change in ground levels shown in the submitted plans for the appeal scheme, and which were apparent upon viewing the respective sites, in my opinion, only serves to exacerbate the impact of the increased height of the building.
9. Having viewed the appeal site and the information submitted I am not persuaded by the appellant's argument that the outlook for occupiers of this property has not been adversely affected by the increased height of the building. The expanse of dark metal clad elevation visible above the fence line is greater than in previous applications, which I consider tips the balance between one which would be significant but acceptable to one which is overbearing and unacceptable.
10. Compared with the approved scheme I consider that the east elevation of the forecourt building would dominate the outlook from the rear-facing windows and back garden of No. 132D. Moreover, it would do so in a manner that the approved scheme would not, because of its lower height. I am not persuaded by the argument put forward by the appellant that the appeal scheme is not overbearing because of the set back of the building from the boundary, the orientation of the forecourt building west of No.132D, the absence of development on the north and west boundaries of No.132D or the amount of sky which is visible from that property.
11. The appellant suggests that trees on the boundary have been removed. I have no substantive evidence to support this claim and I have to consider the scheme on the basis of the evidence before me including my observations of the site and its surroundings at the time that the appeal is made. I therefore give this little weight.

12. I am also mindful of the approved scheme which would result in a forecourt building which is 0.67m lower than that which is the subject of the scheme before me. The eastern elevation of the forecourt building of that scheme would still be visible above the boundary fence and would be the same length as the appeal scheme and I have attached significant weight to this as a fallback position.
13. I therefore conclude that the appeal proposal causes significant harm to the outlook for occupants of No.132D, with particular regard to the extensive elevation along its western boundary. This harm is not diminished by the outlook that remains to the rear and across neighbouring properties. I therefore conclude that the approved plans condition is reasonable and necessary to ensure that an acceptable outlook for the occupiers of 132D West Hill is maintained. Removing this condition and substituting it with an alternative condition would be in conflict with policy DMS1 of the Wandsworth Local Plan Development Management Policies 2016 which, amongst other things, seeks to ensure that development does not harm the amenity of occupiers through unacceptable factors including overbearing impacts or unsatisfactory outlook.

Planning Obligation

14. A Unilateral Undertaking (UU) has been submitted with the appeal which would oblige the appellant to install and undertake landscaping works to the rear of the forecourt shop. I have considered this in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. Thus, it seems to me that this obligation is directly related to the development and is fairly and reasonably related in scale to the development.
15. However, I am mindful that the appeals process should not be used to evolve a scheme to overcome the Local Planning Authority's objection². The merits of the inclusion of a green wall, would, if necessary, be a matter for the main parties to consider as part of a fresh proposal away from this appeal.
16. As I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the main parties. Nonetheless, as it stands, and for the reason given, I am not satisfied that the submitted UU would be necessary or sufficient to make the development acceptable in planning terms. Hence, having regard to Regulation 122 I am unable to take account of this obligation.

Other Matters

17. I have considered the effect of the proposal on the setting of the Rusholme Road Conservation Area (CA) situated immediately to the west of the appeal site. The CA is characterised by Victorian and early Edwardian residential architecture. In considering the effect of the proposal on the CA's setting the impact must be weighed against the harm it would have on the heritage asset as a whole. The scale of the proposal and its relationship with the CA would be such that the setting of the CA would not be affected and would therefore not result in harm to the special interest of the CA. The effect of the proposed

² Annex M of the *Procedural Guide Planning Appeals – England* advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

development on the character and appearance of the CA and therefore the significance of the CA would be preserved.

18. I acknowledge that the proposal would not cause significant loss of daylight or sunlight to habitable rooms at the rear or overshadowing of the garden. However, this is a different matter and whilst it has been raised in third party representations is not one which is in dispute with the Council.

Conclusion

19. For the reasons given above, and taking account of all the matters raised, I conclude that the appeal should be dismissed.

KL Robbie

INSPECTOR