
Appeal Decision

Hearing held on 29 March 2023

Site visit made on 29 March 2023

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 April 2023

Appeal Ref: APP/E5330/W/22/3312996

Development site at former 1 Hyde Vale, Greenwich SE10 8QG

- 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 Mr Dean Freeman of Vision Construct Limited against the decision of the Council of the Royal Borough of Greenwich.
- The application Ref 20/2645/MA, dated 3 September 2020, was refused by notice dated 5 October 2022.
- The application sought planning permission for an application submitted under Section 73 of the Town and Country Planning Act 1990 for a minor material amendment in connection with the planning permission 18/2743/MA dated 29/01/2019 to allow the variation of condition 2 (approved plans); the variation of condition 7 (CO2 emissions); the variation of condition 13 (accessible and adaptable dwellings); and the variation of condition 20 (number of residential units) without complying with conditions attached to planning permission Ref 18/2743/MA, dated 29 January 2019.
- The conditions in dispute are Nos 2, 7, 13 and 20 which state that:
- Condition 2: The development shall be carried out strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:
Drawings from original permission: 084-001 Rev B, 084-020 Rev D, 084-029 Rev E, 084-030 Rev E, 084-032 Rev H, 084-033 Rev H, 084-034 Rev E, 084-040 Rev C, 084-041 Rev E, 084-046 Rev D, 084-051 Rev D, 084-052 Rev A, 084-053 Rev C, 084-090 Rev B, 084-092 Rev C, 084-093, 084-094, 084-100 Rev B, 084-P 900 Rev B, 084-P 901 Rev A, 084-P902 Rev A, 084-P903 Rev A. New drawings: 084-031 Rev I, 084-035 Rev I, 084-042 Rev D, 081-048 Rev D, 084-070 Rev F, 084-072 Rev F, 084-073 Rev 00.
- Condition 7: No development above ground level shall commence until there shall have been submitted to and approved in writing by the local planning authority an Energy Statement demonstrating how the dwellings hereby permitted will apply the Mayor's energy hierarchy to secure a 35% reduction in CO2 emissions over and above Part L of the Building Regulations 2010 (as amended). Development shall be carried out in accordance with the approved Energy Statement and the dwellings hereby permitted shall not be occupied until details of their compliance with the approved Energy Statement have been submitted to and approved in writing by the local planning authority.
- Condition 13: No development above ground level shall commence until there shall have been submitted to and approved in writing by the local planning authority drawings illustrating how the development hereby permitted complies with M4(2) of the Building Regulations (2010) (as amended) relating to accessible and adaptable dwellings. Development shall be carried out in accordance with the approved details prior to first occupation of the dwellings hereby approved.
- Condition 20: The development hereby approved shall consist of 7 residential units comprising 4 x 3 bedroom houses; 1 x 2 bedroom and 2 x 1 bedroom units.
- The reasons given for the conditions are:

- Condition 2: In the interests of good planning and to ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.
 - Condition 7: To minimise further carbon dioxide emissions and mitigate climate change, and to comply with Policy 5.2 of the London Plan (2016) and Policy E1 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (adopted July 2014).
 - Condition 13: To accord with Policy 3.8 of the London Plan (2016) and Policy H5 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014).
 - Condition 20: In the interests of good planning and to ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.
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Decision

1. The appeal is allowed and planning permission is granted for an application submitted under Section 73 of the Town and Country Planning Act 1990 for a minor material amendment in connection with the planning permission 18/2743/MA dated 29/01/2019 to allow the variation of condition 2 (approved plans); the variation of condition 7 (CO2 emissions); the variation of condition 13 (accessible and adaptable dwellings); and the variation of condition 20 (number of residential units) without complying with conditions attached to planning permission Ref 18/2743/MA, dated 29 January 2019 at Development site at former 1 Hyde Vale, Greenwich SE10 8QG in accordance with the terms of the application, Ref 20/2645/MA, dated 3 September 2020, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. In the decision above I have used the description set out on the decision notice and the appeal form as this is more precise than that given on the planning application form.
3. At the hearing, interested parties submitted various photographs and viewpoints of the development. The appellant and the Council indicated that they had no objections to me accepting these documents. I consider that no parties would be prejudiced as a result of me taking these documents into account in my assessment of the appeal.
4. An executed Unilateral Undertaking relating to a car club scheme was submitted by the appellant at the hearing. The Council raised no objection to me accepting this planning obligation as part of my consideration of the appeal. I return to this matter below.
5. An additional condition relating to screening of the bin store was discussed at the hearing. I allowed time following the close of the hearing for the appellant and the Council to agree and submit a form of words for this condition.
6. Interested parties consider that the works undertaken as part of this revised scheme go beyond what can be considered a minor material amendment. However, the main parties agree that the changes fall within the scope of what can be considered to be a minor material amendment.
7. There is no statutory definition of a minor material amendment, but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved. The size and scale of the development are not substantially different to that which was previously approved. It would not result in a fundamental change to the

appearance of the development beyond that which was initially considered. Therefore, the Section 73 application is the appropriate procedure in this case.

8. Interested parties have also queried the compliance of the scheme with other conditions that were imposed by the previous planning permissions. I have not considered these as part of the appeal as they would need to be raised with the Council's Planning Enforcement team.

Background

9. Planning permission and listed building were originally granted on appeal¹ for the demolition of existing buildings in a conservation area; erection of replacement 4 storey including basement development comprising 4 x 3 bedroom houses; 1 x 2 bedroom and 2 x 1 bedroom units; 4 x domestic outbuildings; cycle and landscaping provision, refuse and recycling facilities with associated works and provision of one on-street parking space.
10. A subsequent application, 18/2743/MA, for a minor material amendment was approved to enable changes to be made to the originally approved scheme. A further application, 20/2015/NM, was submitted to revise the development description to remove reference to the number of units being constructed. A condition was added to that consent which stated that the development shall consist of 7 residential units comprising 4 x 3 bedroom houses; 1 x 2 bedroom and 2 x 1 bedroom units.
11. The Council does not object to varying conditions 7, 13 and 20 as proposed. Based on the evidence before me, I have no reason to find otherwise. As such, there is no need for me to consider the merits of those conditions further, but I return to them within the conditions section below.
12. I note from correspondence and from my site visit that the development has been largely completed in accordance with the suggested condition 2 plans, and the dwellings are occupied. I have dealt with the appeal on that basis.

Main Issues

13. The main issues are the effect that varying condition 2 would have on:

- the setting of 63 Royal Hill, a Grade II listed building; and
- the living conditions of the occupiers of 31 and 33 King George Street, with particular regard to outlook and sense of enclosure.

Reasons

Setting of the listed building

14. 63 Royal Hill is a large two storey dwelling faced in stucco and incorporating classical motifs such as the pilasters and cornice. It is a clear landmark and statement building on the corner of Royal Hill and Hyde Vale. The heritage significance of the building is derived from its age, form, and architectural features, together with its strong presence at a focal point of the area. I am required to pay special attention and have regard to the desirability of preserving the setting of the listed building in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

¹ Appeals ref. APP/E5330/W/17/3184879 and APP/E5330/Y/17/3184881

15. The appeal site is within the West Greenwich Conservation Area (the CA) and the buffer zone of the Maritime Greenwich World Heritage Site (the WHS). It is common ground between the main parties that the revised proposal has no adverse effects on the significance of the CA or the WHS. From what I have read and seen I have no reason to disagree with this assessment.
16. The overall height, scale, bulk and design of the new building remain fundamentally the same as previously approved. The main areas of dispute between the main parties relate to the relatively minor changes to the roof form of the development, the rear building line at the upper floor levels and the single storey rear extension situated alongside the boundary with No 63.
17. The changes to the main roof of the building do not increase its overall height but the altered roof profile increases the amount of gable wall exposed above the parapet of No 63. These changes make the roof of the building marginally more visible when viewed alongside the listed building. Consequently, there would be some harm to the listed building arising from the increased prominence of the roof of the building. That said, I do not consider that the roof of the development dominates the listed building. The harm is minor given the low level of visibility of the roof form when viewed from street level.
18. The depth of the rear building line has been increased so that the development projects around 800mm beyond the rear of No 63, which is marginally greater than previously approved. There has also been a small increase to the height and depth of the single storey rear elements compared to the previous scheme.
19. The increased depth of the rear building line and the small increase in the depth and height of the single storey elements mean that the difference between the rear building lines of the appeal building and No 63 and the height of the single storey element above the boundary wall, are more obvious features than previously approved. This results in a minor adverse effect on the setting of the listed building.
20. Consequently, the proposed building is slightly more prominent behind the listed building. However, the changes to the rear of the building are apparent from a limited number of glimpsed views along Royal Hill and from its junction with Royal Place. Importantly, the listed building remains the dominant element on the corner of Royal Hill and Hyde Vale, and its overall status and presence as a landmark building are not adversely affected by the proposal.
21. To conclude on this main issue, I consider that the revisions to the approved scheme have a minor adverse effect on the setting of the listed building, 63 Royal Hill. Therefore, the development conflicts with Policy HC1 of the London Plan (2021) (the LP) and Policies DH3 and DH(i) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014) (the CS). Amongst other things, these policies seek to ensure that proposals affecting heritage assets conserve their significance.
22. The harm to the significance of the listed building would, in the context of Framework paragraph 202, result in less than substantial harm and would be at the lower end of less than substantial. This harm still however carries great weight. Framework paragraph 196 requires that the less than substantial harm be balanced against the public benefits of the proposal including securing its optimum viable use. I address this matter in the Planning Balance below.

Living conditions

23. The appeal site is adjacent to 31 and 33 King George Street, which includes a garden area and rear windows facing towards the site. The neighbour's garden is of irregular shape and is relatively narrow being wider at the north than the south. It is enclosed by the rear of the property itself, the appeal development and by a high boundary wall between the neighbour's garden and the site.
24. Given the size and layout of the neighbour's garden, together with its position at the rear corner of the property and the appeal site and the height of the boundary wall, there was a sense of enclosure and limited outlook to the neighbour's garden prior to the development taking place.
25. As previously approved it is likely that the rear wall of unit 4 and the single storey rear extension would have been clearly visible from the neighbour's garden. In the previous appeals, the Inspector referred to the development increasing the depth of the building at its rear, and noted that although the rear extension would be slightly taller than the existing wall, it would be adequately separated from it and would not constitute an obtrusive feature from the garden area.
26. The Council is concerned that the increased height and depth of the development restricts views above the boundary wall from the neighbour's garden. However, the evidence indicates that the changes to the rear extension are minor. The Planning Committee Report refers to the storey rear extension being 300mm deeper and 325mm higher than previously approved. These alterations do not significantly change the scale of the building or its relationship to Nos 31 and 33. Whilst the extension is higher than the intervening boundary wall, given its modest overall height and flat roof design it is not obtrusive when viewed from the garden.
27. The appellant says the depth of the main rear wall of unit 4 has increased by 210mm. That also represents a very modest change in the context of the development as a whole, bearing in mind that the depth of unit 5 has been reduced by around 115mm which means that this unit has marginally less impact on the neighbour's garden than previously approved. Interested parties refer to the development being closer to the boundary with the neighbour. However, any change in the proximity of the development to the boundary would appear to be very minor.
28. Whilst the revised development does have some impact on the outlook of the narrowest part of the neighbour's garden to the southern end, the previously approved scheme in combination with the high garden boundary wall also resulted in a sense of enclosure to the neighbour's garden. The wider part of the garden continues to have a more open aspect to the north and is largely unaffected by the proposed revision to the scheme. In view of the minor changes to the scheme, I do not consider that the development has any significant additional impact on the neighbour's outlook or sense of enclosure to the extent that would warrant dismissing the appeal.
29. For the above reasons, I conclude that varying condition 2 to reflect the revised plans would not have a significantly harmful effect on the living conditions of the occupiers of 31 and 33 King George Street, having regard to outlook and sense of enclosure. Accordingly, the proposal complies with CS Policy DH(b), which,

amongst other things, seeks to ensure that development does not cause an unacceptable loss of amenity to adjacent occupiers.

Other Matters

30. The signed and dated Unilateral Undertaking would ensure that the outstanding car club obligations are carried over in the interests of occupants of the development. The planning obligation would therefore be directly related to the development; would be necessary to make the development acceptable in planning terms; and would be fairly and reasonably related in scale and kind to the development. Such an obligation would therefore meet the relevant statutory and policy tests set out in the Community Infrastructure Levy Regulations (2010) and paragraph 57 of the Framework.

Planning Balance

31. I have concluded that the development results in less than substantial harm to the setting of the listed building. Balanced against the less than substantial harm to the setting of No 63 are the public benefits of the scheme. The proposal contributes 6 new residential units to the Council's housing stock in a borough which both parties agree does not have a five year supply of deliverable housing sites. The site has good access to public transport, services, facilities, education and employment opportunities. The occupants of the dwellings will contribute towards the local economy and community. Furthermore, the changes to the piling at the basement level of the development creates a straight uniform line which is likely to have less impact on the structural integrity of neighbouring properties, including the adjacent listed building. Other benefits include the increased headroom at upper floor level and the increased unit size to comply with the technical housing standards, and therefore improved living conditions for the occupants. The scheme also includes additional sustainability measures such as improved building fabric and the provision of photovoltaic panels on the roof to achieve a 35% reduction in CO2 emissions.
32. Cumulatively these public benefits are significant and are sufficient to outweigh the less than substantial harm to the significance of the designated heritage asset. The other material considerations that weigh in favour of the appeal scheme justify a decision other than in accordance with the development plan in this case.

Conditions

33. The Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under Section 73 of the Act should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have therefore imposed all of those conditions that remain relevant with some alteration to reflect the revised proposal. In the event that some conditions have in fact been discharged, the parties can address that between them.
34. As development has commenced, the standard time limit condition is not necessary. Conditions relating to the approved plans and the permitted number of residential units are necessary as this provides certainty.
35. In the interests of the character and appearance of the area, I have imposed a condition requiring the submission of details to make good the inconsistency in

the facing brickwork between the development and the adjoining property on King George Street.

36. Conditions requiring compliance with building regulations standards in relation to accessibility and water efficiency are necessary as these are a requirement of the relevant policies of the CS and the LP.
37. In the interests of protecting the living conditions of neighbouring residents and the character and appearance of the area, I have re-imposed conditions to remove permitted development rights for extensions and alterations and any increase in the height of the site's boundary walls. Also to protect the neighbours' living conditions, I have attached a condition to prevent the use of the flat roof areas of the rear single storey elements of the development as balconies or roof gardens.
38. I have imposed a condition to restrict the availability of on-street parking permits in accordance with a scheme to be agreed in the interests of promoting sustainable travel and to satisfy the requirements of Policy T6 of the LP, and Policy IM(c) of the CS. Such a condition would be both reasonable and necessary in this case given the site's public transport accessibility level and as all of the properties were subject to car free obligations as set out in the extant S106 Deed of Variation relating to the granting of application 18/2743/MA.
39. To ensure adequate cycle parking and promote sustainable transport, I have imposed a condition requiring the bicycle parking provision to be kept available for the parking of bicycles.
40. The Council confirms that the conditions relating to submission and subsequent implementation of details of the rainwater recycling system and rated emissions of NOx have been fully discharged. I have not therefore re-imposed those conditions. The Council's suggested condition requiring the development to be carried out in accordance with the approved details set out in the Energy Statement is unnecessary. This is because the Council has since confirmed that the requirements of this condition have been fully complied with. Similarly, the suggested condition relating to hours of demolition and construction on the site is unnecessary as the development is largely complete.
41. Interested parties have suggested a condition requiring additional screening of the bin store on the corner of Hyde Vale and King George Street. However, details of the refuse storage facilities have already been agreed by the Council as part of the condition discharge process for the previous consent. I have therefore not imposed the suggested condition.

Conclusion

42. Although I have found that the proposal results in less than substantial harm to the listed building, the material considerations in this case indicate that I should take a decision other than in accordance with the development plan. For these reasons, and subject to the conditions listed, I conclude that the appeal should be allowed.

M Ollerenshaw

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 7000 P1, 7100 P4, 7101 P4, 7102 P5, 7103 P5, 7104 P5, 7105 P2, 7106 P4, 7107 P2, 7108 P2, 7109 P5, 7110 P2, 7112 P2, 7113 P1, 7201 P1, 7202 P2, 7203 P2, 7204 P2, 7205 P2, 7206 P3, 7207 P1, 7208 P2, 7209 P2, 7210 P2, 7211 P1, 7214 P3, 7215 P1, 7401 P1, 7402 P1, 7403 P1, 7500 P3, 7501 P1, 7502 P2, 7600 P1, Energy Statement dated 30.11.20 (Report Ref. S1581/HV/ES/0919-RT), Rear Extension Height Analysis dated 5.1.21, Cover letter dated 15.3.21 and Covering letter.
2. Within 3 months of the date of this decision, details shall be submitted to and approved in writing by the local planning authority to make good the inconsistency between the brick facing materials between the proposed development and the adjoining properties on King George Street, when viewed from King George Street. The approved details shall be completed within 3 months of the date of the details having been approved.
3. Within 3 months of the date of this decision, the dwellings hereby approved shall be constructed to ensure that Regulation 36 (2) (b) of Part G 2 of the Building Regulations 2010 (as amended) in terms of water efficiency have been complied with.
4. Within 3 months of the date of this decision, units 1-4 of the development hereby approved shall be completed in accordance with Building Regulations Requirement M4(2) and units 5 and 6 shall be completed in accordance with Building Regulation Requirement M4(1), and shall be retained in compliance with such requirements thereafter.
5. No enlargement, or other alterations to the development permissible under Class A, Class C, Class D, Class E, Class F, Class G and Class H of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking and re-enacting that order with or without modification) may be carried out without the prior approval of the Local Planning Authority.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), the height of the site's boundary walls shall not be increased without express consent of the local planning authority.
7. The flat roof areas of the single-storey elements at the rear of the development hereby approved shall not be used as balconies, roof gardens or similar amenity areas.
8. Within 3 months of the date of this decision, a detailed scheme to secure the development as a car-free development shall be submitted to and approved in writing by the local planning authority. The approved scheme shall ensure that:
 - i) no occupiers of the approved development shall apply for, obtain or hold an on-street parking permit to park a vehicle on the public highway within the administrative district of the local planning authority (other than a disabled person's badge issued pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation); and

ii) any occupiers of the approved development shall surrender any such permit wrongly issued or held.

Such scheme shall be implemented within 3 months of the date of the scheme having been approved, and shall be retained and operated for so long as the use hereby permitted continues.

9. The approved bicycle parking facilities shall be kept available for the parking of bicycles.
10. The development hereby approved shall consist of 6 residential units comprising 5 x 3 bedroom houses and 1 x 2 bedroom unit.

APPEARANCES

FOR THE APPELLANT:

Douglas Edwards KC	Counsel
Dr Nigel Barker Mills	Barker Mills Conservation
Richard Quelch	Q Square – Planning Consultant
Andrew Shorten	Shorten Architects

FOR THE LOCAL PLANNING AUTHORITY:

Katherine Barnes	Royal Borough of Greenwich
Joanna Morgan	Royal Borough of Greenwich
Luke Sapiano	Royal Borough of Greenwich

INTERESTED PERSONS

Tim Barnes	Greenwich Society
Philip Binns	Local Resident
Emma Bryan	Local Resident
Dr Bhaskar Chakravarti	Local Resident
Nicholas Haddad	Local Resident
David Johnson	Local Resident
Curtis Trynka	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING:

Signed and dated Unilateral Undertaking submitted by the appellant
Photographs and viewpoints submitted by interested persons