



Appeal Decision

Site visit made on 21 June 2023

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2023

Appeal Ref: APP/U5360/W/22/3296523

1A London Fields West Side, London, E8 3EU

- 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 (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by London Fields West LLP against the decision of London Borough of Hackney.
 - The application Ref 2021/1030, dated 31 March 2021, was refused by notice dated 20 January 2022.
 - The application sought planning permission for the demolition of the existing garages and erection of a three-storey building to create two flats. Proposal includes terraces, roof level conservatory with associated access and green roofs without complying with a condition attached to planning permission Ref 2018/0139 (the original permission), dated 12 June 2018.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details.
 - The reason given for the condition is: To ensure that the development hereby permitted is carried out in full accordance with the plans hereby approved.
-

Decision

1. The appeal is allowed, and planning permission is granted for the demolition of the existing garages and erection of a three-storey building to create two flats. The proposal includes terraces, roof level conservatory with associated access and green roofs without compliance with condition number 2 previously imposed on planning permission Ref 2018/0139, dated 12 June 2018, but subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by London Fields West LLP against London Borough of Hackney. This application is the subject of a separate Decision.

Preliminary Matters

3. At the time of my site visit, I saw that the development of the three-storey building was substantially completed, albeit un-clad on the upper floors. Thus, I had the benefit of seeing the near completed scheme in place. I have dealt with the appeal on this basis.
4. The appeal process should not be used to evolve a scheme and, in the interests of ensuring that no one with an interest in the outcome of the appeal is prejudiced, it is important that the details considered at appeal stage are essentially the same as those considered and consulted upon by the Council at planning application stage. Consequently, I am satisfied that the additional

drawings, documents and images (the additional information) submitted by the appellant does not evolve or materially alter the scheme that was originally submitted. Thus, I accept the additional information and shall consider this evidence along with that originally submitted to the Council for determination. The Council and any interested parties have had the opportunity to comment on the additional information and therefore, would not be prejudiced by this approach.

Main Issue

5. There is no dispute between the parties that the proposal constitutes a Minor Material Amendment (MMA). Based on the evidence before me, I find no reason to conclude otherwise.
6. Therefore, the main issue is the effect of the development, in particular the change in the external material on the upper floors to the character and appearance of the appeal site and the surrounding Graham Road and Mapledene Conservation Area (the GRMCA).

Reasons

7. The site is located within the GRMCA, which was designated in 1997. The development subject of the original permission now occupies the site, albeit without any external cladding on the upper floors. The area surrounding the site is residential in character, although a number of other uses are present in the locality, including but not limited to: Commercial units, a community school, London Fields, which comprises of a lido, tennis courts, cricket pitch and basket ball court, amongst other things. Houses and flats/apartments are predominant in the immediate area of the site, which also includes the Morland Estate tower block.
8. The scheme is 3no. storeys and comprises 2no. units. The original permission proposed charred timber cladding above the external brick elevations at ground floor. The proposal subject of this appeal seeks to change the timber cladding on the upper floors of the development to metal cladding. The proposed brown zinc cladding¹ would be hung in a vertical standing seam arrangement. Due to the siting and location of the development, it is prominent within the street and consequently the GRMCA.
9. The Council has produced the GRMCA Conservation Area Appraisal (the CAA), which was adopted in 1997. I have not been informed of any revisions since this date. Nonetheless, as this document has undergone a period of public consultation, I consider it to be a material consideration, which attracts full weight in the determination of this appeal. Additionally, in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I have paid special attention to the desirability of preserving or enhancing the character or appearance of the GRMCA.
10. The significance of the GRMCA derives from the mid-19th century housing that has resulted in well-proportioned and pleasant streets in a limited range of materials and palette. Although, it is recognised that later developments detract from this significance, particularly through the introduction of mid and high-rise buildings, incorporating alternative materials such as concrete and plastic. I accept that the CAA was produced a number of years ago, but even

¹ Rheinzink Prismo Red

so, 2no. of its principles in relation to materials in new buildings/development should use a simple palette of materials drawn where possible from the local vernacular and depending on the location and nature of new development, it may be possible to use contemporary materials as a contrast to the traditional materials used in the older buildings of the area.

11. I accept the proposed material would result in a visual change to the development through the introduction of metal cladding, rather than timber cladding as originally proposed, but I do not consider this change in material to detract significantly from the original design. With the exception of the property at Pitwell Mews due to its backland nature, I was able to view the other properties referenced by the appellant in their submission from public land. These properties exhibited the use of metal cladding in residential development, and whilst not direct are nevertheless similar in context and application. Thus, whilst noting some timber clad development in the GRMCA, I find the examples referenced by the appellant in their submission to be material considerations of significant weight.
12. Consequently, I do not find that metal cladding, such as that proposed, to be incongruous or incompatible within the GRMCA. Whilst the introduction of metal cladding to the site would bring a visual change to the site, I do not find the change in external material to the upper floors of the scheme to be harmful to the character and appearance of the GRMCA. The successful use of a similar metal cladding to that proposed in this scheme, in other parts of the GRMCA should be considered as a whole and not just in isolation, and by this measure the GRMCA would be preserved in accordance with the CAA. Accordingly, as I have not found any harm to the GRMCA, a finding on overriding public benefits is not required in this instance.
13. For the reasons given above, the proposed development would not harm the character and appearance of the appeal site, surrounding area or the significance of the GRMCA. The scheme therefore complies with the design, heritage, character and appearance aims of Policies D3, CC1 of the London Plan 2021; Policies LP1, LP3 of the Hackney Local Plan 2033 (2020) and the CAA.
14. The above policies and the CAA collectively and amongst other things requires consideration of design options to determine the most appropriate form of development that responds to a site's context, be of the highest architectural and urban design quality and use attractive and durable materials, which complement local character; conserve the significance of a heritage asset through being sympathetic to its significance and appreciation within their surroundings and preserve or enhance the character and appearance of the conservation area. The proposed development would also accord with the Act and the requirements of the National Planning Policy Framework, in particular chapter no's 12 and 16.

Other Matters

15. There has been support for the scheme and an objection. In addition to the character and appearance matters that I have covered above, concerns have been raised with particular regard to the impact of the development and proposed material in the NMA on their living conditions with particular regard to dominance and noise. However, I note that these matters were considered where relevant by the Council when it determined the planning application. Whilst I can understand the concerns of the interested party, there is no

compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Conditions and Conclusion

16. The Guidance makes clear that decision notices for the grant of planning permission under the Act should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. I have had confirmation from the appellant that an application to discharge conditions² attached to planning application 2018/0139 (the original planning application), was submitted and subsequently approved. No formal documentation has been submitted, although I acknowledge email exchanges between the appellant and the Council, particularly those on 27 January 2021 and on 5 February 2021, from the appellant and the Council respectively.
17. In this instance, I accept that it is highly likely that all conditions³ requiring the submission of details and subsequent approval from the Council have been discharged, apart from the external material on the first and second floor of the development. In the absence of substantive evidence to the contrary, I generally find that it is highly likely that the development has been implemented in accordance with the terms of those discharged conditions. Additionally, following comments received from the appellant with regard to suggested conditions, the Council has confirmed that it accepts those proposed by the appellant.
18. Consequently, I have reviewed the conditions imposed on the original permission and those suggested by the appellant and have re-imposed all those that I consider remain relevant. For clarity, and to ensure compliance with the Guidance, I have amended some of the wording on the original conditions that I have included on this decision, particularly to reflect the fact that the development is now substantially completed.
19. The variation of this condition under the Act would result in a new planning permission being created. Therefore, as the development has been implemented, a commencement condition is not required. A condition is required to ensure that the development is carried out in accordance with approved plans for certainty. A condition to submit details for materials, cycle parking, bin enclosure, obscure glazing, swift boxes, window/door details, Construction Logistics Plan (CLP), Sustainable Urban Drainage Scheme (SUDS) and the green roof are no longer required. Although it is reasonable and necessary to condition the details approved under 2018/4609 to ensure that they are implemented and maintained and retained for the life of the development and that the material proposed as the MMA is conditioned accordingly.
20. Conditions for the flat roof, soil samples, accessibility/adaptability, boilers, arboriculture, and dropped crossing are all reasonable and necessary to define the permission, living conditions of future occupants, the environment of future occupants and highway safety, respectively.

² 2018/4609

³ Conditions 3 (materials including ground floor brick, roof conservatory zinc excluding the timber fins sample); 4 (cycle Parking); 5 (Bin Enclosures); 7 (Obscure Glazing); 8 (Swift Boxes); 9 (Window and Door details); 10 (Construction Logistics Plan); 12 (SUDS) and 14 (Green Roof).

Conclusion

21. I have found that the proposed MMA accords with the development plan when taken as a whole. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
22. For the reasons set out above, I conclude that the appeal is allowed. I have granted a new permission with the disputed condition varied to allow the scheme to be undertaken in accordance with the design changes proposed in the MMA.

W Johnson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved: SV01, SV02, SV03, SV04, SV05, SV06, SV07, PL100 A, PL101, PL103, PL104 A, PL200 A, PL201 A, PL301 Rev A, PL302 Rev A, PL303 Rev B, PL304 Rev B, PL305 Rev B, PL306 Rev A, PL307 Rev B, PL308 Rev A, PL309 Rev B, PL310 Rev B, PL311 Rev B, PL400 A, PL401 A, PL402 A, PL403 A, PL410 A, PL411 A, PL412 A, PL413 A, PL414, L(00)23 Rev B, PL312 Rev C, PL313 Rev B, PL314 Rev C, PL315 Rev C.
- 2) Notwithstanding the previously approved materials on the original planning application, the material to be installed on the external surfaces at first and second floor of the development shall be zinc cladding (Rheinzink Prismo Red). The development shall not be carried out otherwise than in accordance with these details.
- 3) Cycle Parking shall be provided in accordance with the details approved by 2018/4609 dated 13/11/2019 prior to occupation of the development hereby approved and retained and maintained in accordance with the approved details thereafter.
- 4) The bin enclosure shall be implemented in accordance with the details approved by 2018/4609 dated 13/11/2019. The bin enclosure/s shall be implemented in full prior to the first occupation of the development, maintained and retained for the life of the development.
- 5) The flat roof areas at 1st and 2nd floor level on the northern façade shall not be used for any purpose other than as a means of escape in emergency or for maintenance of the building. In particular these areas shall not be used as a roof terrace, area for planting (other than as a green roof as shown on the approved drawings and any subsequent approval of details), balcony or any other amenity area.
- 6) The obscure glazing shall be implemented in accordance with the details approved by 2018/4609 dated 13/11/2019. The development shall not be carried out otherwise than in accordance with the details thus approved

which shall be implemented in full prior to the first occupation of the development hereby approved, maintained and retained for the life of the development.

- 7) The Swift boxes shall be implemented in accordance with 2018/4609 dated 13/11/2019. and shall be installed prior to the occupation of the development hereby approved, maintained and retained for the life of the development.
- 8) The window and door detailing shall be implemented in accordance with 2018/4609 dated 13/11/2019 and the details hereby approved in this application. The development shall not be carried out otherwise than in accordance with the approved details.
- 9) The construction of the development shall be implemented in accordance with the CLP approved by 2018/4906 dated 13/11/2019.
- 10) Prior to the occupation of the development, the results and conclusions of soil sampling and analyses exercise will be provided to the satisfaction and written approval of the Planning Authority. Before occupation written and signed confirmation of whether any evidence of significant contamination was encountered during the course of the development will be provided to the Planning Authority by the on-site manager/developer. Any significant evidence of contamination encountered during the course of the development shall be immediately notified to the Planning Authority and Contaminated Land Officer. All development shall cease in the affected area. Any additional or unforeseen contamination shall be dealt with as agreed with the Contaminated Land Officer. Where development has ceased in the affected area, it shall recommence upon written notification of the Planning Authority or Contaminated Land Officer.
- 11) The SUDS system shall be implemented in accordance with the details approved by 2018/4609 dated 13/11/2019. The SUDS system shall be implemented prior to occupation of the hereby approved development.
- 12) All non-Combined Heat and Power space and hot water fossil fuel (or equivalent hydrocarbon based fuel) boilers associated with the development must achieve dry NOx emission levels equivalent to or less than 30 mg/kWh.
- 13) The green roof hereby approved shall be implemented in accordance with the details approved by 2018/4609 dated 13/11/2019. Both the green roof and the PV panels shown on the drawings hereby approved shall be installed prior to the occupation of the development, maintained and retained for the life of the development.
- 14) The development shall be carried out in accordance with BS 5837:2012 Trees in relation to design, demolition and construction and the Arboricultural Impact Assessment and Method Statement submitted in support of the application (prepared by Sharon Hosegood Associates).
- 15) All dwellings within the development hereby approved shall be completed in compliance with Building Regulations Optional Requirement Part M4 (2) accessible and adaptable dwellings' (or any subsequent replacement). prior

to first occupation and shall be retained as such thereafter.

- 16) Prior to the first occupation of the development hereby approved, the cross-over fronting the site which will become redundant as a result of the development hereby approved shall be removed. The works shall only be undertaken by the Local Highway Authority (or by a third party appointed by the Local Highway Authority), and shall be undertaken at the expense of the developer.

**** End of Conditions****