



Appeal Decision

Site visit made on 21 March 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal Ref: APP/T5720/W/22/3307054

Electrical sub-station, Adjacent to 14 Pepys Road Raynes Park

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by A Azouz against the decision of the Council of the London Borough of Merton.
 - The application Ref 21/P3428, dated 7 September 2021, was approved on 6 September 2022 and planning permission was granted subject to conditions.
 - The development permitted is demolition of existing electrical sub-station and erection on site of 3 x self contained flats with external amenity space and access to grounds of Langham Court.
 - The condition in dispute is No 3 which states that: No development shall commence until alternative electrical substation facilities, as confirmed by UK Power Networks, to serve the local area have been provided and made fully operational before any works have commenced on site.
 - The reason given for the condition is: to ensure the continuous provision of electricity utilities in accordance with policy CS11 of the Merton Core Strategy 2011.
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Decision

1. The appeal is allowed and the planning permission Ref 21/P3428 for demolition of existing electrical sub-station and erection on site of 3 x self contained flats with external amenity space and access to grounds of Langham Court at Electrical sub-station, Adjacent to 14 Pepys Road Raynes Park granted on 6 September 2022 by the Council of the London Borough of Merton, is varied by deleting condition 3 and substituting for it the following condition:
 - 3) No development shall commence until written confirmation that alternative electrical substation facilities to serve the local area have been provided and made fully operational has been submitted to and approved in writing by the local planning authority.

Preliminary Matters

2. I have used the address and description of development from the Council's decision notice as that is the permission granted.
3. It is not in dispute that Condition 3 is a pre-commencement condition. The parties are in dispute as to whether its imposition was lawful given the requirements of s100ZA of the Town and Country Planning Act 1990 and The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018. However, it is beyond the scope of this appeal to determine if the condition was lawfully imposed.

4. As the appellant has agreed to the imposition of the pre-commencement condition, it is not necessary for me to examine further if a pre-commencement condition imposed without agreement would be enforceable.

Main Issue

5. The main issue is whether the pre-commencement condition is relevant to planning, reasonable and necessary to ensure the ongoing supply of electricity to the surrounding area.

Reasons

6. The London Borough of Merton LDF Core Planning Strategy Adopted July 2011 (CS) Policy CS11 supports the provision and improvement of infrastructure and requires new development to provide for any necessary, complete infrastructure prior to occupation. The supporting text identifies at paragraph 19.30 that developers must take into account the location and nature of the existing electricity transmission equipment when planning developments. Live sub-stations have an important function in the transmission of electricity.
7. Planning permission has been granted for three flats on the site of a live electricity sub-station. In light of the requirements of CS Policy CS11, I consider it is relevant to planning, reasonable and necessary to ensure that the supply of electricity would not be adversely affected as a result of granting this permission.
8. I have no reason to dispute that it may be a complex and time-consuming matter to secure and deliver an operational sub-station and that this may require a further planning permission. However, this adds weight to the need for the condition to be pre-commencement to ensure that the supply of electricity is not disrupted.
9. The removal of the sub-station is an intrinsic part of this development and inevitably this would incur costs. I do not have any evidence before me as to the viability of the development or the likely costs involved with replacing the sub-station. It is a matter for the developer whether or not to implement a planning permission in light of the full range of considerations that influence such decisions.
10. Accordingly, I find that the disputed pre-commencement condition is relevant to planning, reasonable and necessary to ensure the ongoing supply of electricity to the surrounding area, in accordance with CS Policy CS11.

Other Matters

11. The issues identified around land ownership and leases are private matters for the relevant parties to address. Controls exist through other legislation to ensure that electricity distributors allow alterations to the distribution network. Any issues around a re-located sub-station would be a matter for a future application if one were necessary. There is no requirement for the developer to carry out pre-application consultation with surrounding residents.

Conditions

12. I have concluded that it would be relevant to planning, reasonable and necessary for the disputed pre-commencement condition to be imposed. However, the Planning Practice Guidance is clear that it is not reasonable for a

condition to require that a development is carried out to the satisfaction of a third party¹. I will therefore replace the condition the subject of the appeal with one that does not require this.

13. The appellant has confirmed in writing that they accept the imposition of the pre-commencement condition. I am satisfied that the condition as amended would be relevant to the development to be permitted and would be enforceable. It therefore would comply with the tests set out in paragraph 56 of the National Planning Policy Framework. I have not amended any of the other conditions, which are unaffected by this decision.

Conclusion

14. For the reasons given above, the planning permission should be varied in the terms I have set out.

J Downs

INSPECTOR

¹ Use of planning conditions Paragraph: 016 Reference ID: 21a-016-20140306 Revision date: 06 03 2014