



Appeal Decision

Site visit made on 2 October 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th October 2023

Appeal Ref: APP/Q5300/W/22/3312892

5 Dysons Road, London N18 2DQ

- 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 conditions of a planning permission.
- The appeal is made by Mr Abrar Khan against the decision of London Borough of Enfield.
- The application Ref 22/01940/CND, dated 30 May 2022, sought approval of details pursuant to Conditions Nos 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 19, 20 of planning permission Ref 19/03150/FUL, granted on 30 July 2021.
- The development granted planning permission is described as: Redevelopment of site including demolition of existing bungalow and erection of a 3-storey block of 5x self-contained flats, comprising 3 x 1-bed and 2 x 2-bed with associated parking and refuse storage.
- The application for approval of details was refused by notice dated 9 December 2022.
- Condition No 3 states that: *The development shall not commence until a construction management plan has been submitted to and approved in writing by the Local Planning Authority. The construction management plan shall be written in accordance with London Best Practice Guidance and contain: a. A photographic condition survey of the public roads, footways and verges leading to the site. b. Details of construction access and associated traffic management. c. Arrangements for the loading, unloading and turning of delivery, construction and service vehicles. d. Arrangements for the parking of contractors' vehicles. e. Arrangements for wheel cleaning. f. Arrangements for the storage of materials. g. Hours of work. h. The storage and removal of excavation material. i. Measures to reduce danger to cyclists. j. Details written in accordance with the 'London Best Practice Guidance: The control of dust and emission from construction and demolition' or relevant replacement. The development shall be carried out in accordance with the approved construction management plan unless otherwise agreed by the Local Planning Authority.*
- The reason given for Condition No 3 is: *To ensure construction does not lead to damage of the nearby public road network and to minimise disruption to the neighbouring properties.*
- Condition No 4 states that: *No above ground works shall commence until plans detailing the existing and proposed ground levels including the levels of any proposed buildings, roads and/or hard surfaced areas have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.*
- The reason given for Condition No 4 is: *To ensure that levels have regard to the level of surrounding development, gradients and surface water drainage.*
- Condition No 5 states that: *Prior to the commencement of above ground works, a Sustainable Drainage Strategy shall be submitted to and approved in writing by the Local Planning Authority. The details shall be based on the disposal of surface water by means of a sustainable drainage system in accordance with the principles as set out in the Technical Guidance to the National Planning Policy Framework and should be in line with our DMD Policy SuDS Requirements: a. Shall be designed to a 1 in 1 and 1 in 100-year storm event with the allowance for climate change; b. Follow the SuDS management train and London Plan Drainage Hierarchy by providing a number of treatment phases corresponding to their pollution potential; c. Should maximise*

opportunities for sustainable development, improve water quality, biodiversity, local amenity and recreation value; d. Overland flow routes for exceedance events must be shown; e. Clear ownership, management and maintenance arrangements must be provided; and f. The details submitted shall include levels, sizing, cross sections and specifications for all drainage features. The drainage system shall be installed/operational prior to the first occupation of the development. The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.

- *The reason given for Condition No 5 is: To ensure the sustainable management of water, minimise flood risk, minimise discharge of surface water outside of the curtilage of the property and ensure that the drainage system will remain functional throughout the lifetime of the development in accordance with Policy CP28 of the Core Strategy and Policies SI 12 & SI 13 of the London Plan and the NPPF and to maximise opportunities for sustainable development, improve water quality, biodiversity, local amenity and recreation value.*
- *Condition No 6 states that: Prior to above ground works on the development hereby permitted, technical specifications, a sample panel and samples for all the external finishing materials hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The sample panel should remain on the application site for the duration of the construction works. The development shall be carried out in accordance with the approved details and permanently retained thereafter.*
- *The reason given for Condition No 6 is: To ensure that the finished appearance of the development will respect the character and visual amenities of the local area.*
- *Condition No 7 states that: No above ground works shall commence until details of the privacy screens to be installed are submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and permanently retained thereafter.*
- *The reason given for Condition No 7 is: To safeguard neighbouring amenity.*
- *Condition No 8 states that: Prior to the commencement of above ground works, full details of soft landscape proposals shall be submitted to and approved in writing by the Local Planning Authority. Soft landscape details shall include: a) Planting plans b) Written specifications (including cultivation and other operations associated with plant and grass establishment) c) Schedules of plants and trees, to include native and wildlife friendly species and large canopy trees in appropriate locations (noting species, planting sizes and proposed numbers / densities) d) Implementation timetables e) Tree protection measures f) How the Landscaping Strategy conforms with the Drainage Strategy. All landscaping in accordance with the approved scheme shall be completed/planted during the first planting season following practical completion of the development hereby approved. The landscaping and tree planting shall set out a plan for the continued management and maintenance of the site and any planting which dies, becomes severely damaged or diseased within five years of completion of the development shall be replaced with new planting in accordance with the approved details or an approved alternative and to the satisfaction of the Local Planning Authority.*
- *The reason given for Condition No 8 is: To minimise the impact of the development on the ecological value of the area, to ensure the development provides the maximum possible provision towards the creation of habitats and valuable areas for biodiversity and to preserve the character and appearance of the area in accordance with Policies CP30 and CP36 of the Core Strategy, Policy DMD81 of the DMD, the Biodiversity Action Plan.*
- *Condition No 9 states that: The site shall be enclosed in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The means of enclosure shall be erected in accordance with the approved detail before the development is occupied.*
- *The reason given for Condition No 9 is: To ensure satisfactory appearance and safeguard the privacy, amenity and safety of adjoining occupiers and the public and in the interests of highway safety.*

- Condition No 10 states that: *Prior to first occupation, details of the internal consumption of potable water shall be submitted to and approved in writing by the Local Planning Authority. Submitted details will demonstrate reduced water consumption through the use of water efficient fittings, appliances and recycling systems to show consumption equal to or less than 105 litres per person per day. The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.*
- The reason given for Condition No 10 is: *To promote water conservation and efficiency measures in all new developments and where possible in the retrofitting of existing stock in accordance with Policy CP21 of the Core Strategy and Policy DMD 58 of the Development Management Document (2014).*
- Condition No 11 states that: *Prior to any above ground works on the site, an updated 'Energy Statement' accompanied by a Built Energy Performance Assessment shall be submitted to and approved in writing by the Local Planning Authority. Submitted details will demonstrate the energy efficiency of the development and no less than a 35% improvement in total CO2 emissions arising from the operation of the development and its services over Part L of Building Regs 2013. Should Low or Zero Carbon Technologies be specified as part of the build the location of the plant along with the maintenance and management strategy for their continued operation shall also be submitted. The Energy Statement should outline how the reductions are achieved through the use of Fabric Energy Efficiency performance, energy efficient fittings, connection to a DEN and the use of renewable technologies. The development shall be carried out strictly in accordance with the details so approved and maintained as such thereafter.*
- The reason given for Condition No 11 is: *In the interest of sustainable development and to ensure that the Local Planning Authority may be satisfied that CO2 emission reduction targets are met in accordance with Policy CP20 of the Core Strategy, policy SI 2 of the London Plan (2021) and the NPPF (2021).*
- Condition No 13 states that: *Prior to the occupation of the development, details of refuse storage facilities including facilities for the recycling of waste to be provided within the development, in accordance with the Enfield Councils Waste and Recycling Planning Storage Guidance, available at <https://new.enfield.gov.uk/services/planning/waste-and-recycling-storage-planning-guidanceplanning.pdf> shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall be provided in accordance with the approved details before the development is occupied or use commences.*
- The reason given for Condition No 13 is: *In the interests of amenity and the recycling of waste materials in support of the Borough's waste reduction targets.*
- Condition No 14 states that: *Prior to the occupation of the development, details of the siting, number and design of secure/covered cycle parking spaces shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall thereafter be installed and permanently retained for cycle parking.*
- The reason given for Condition No 14 is: *To ensure the provision of cycle parking spaces in line with the Council's adopted standards.*
- Condition No 16 states that: *Prior to above ground works on the development hereby approved, details of biodiversity enhancements shall be submitted to and approved in writing by the Local Planning Authority following guidance by a suitable qualified ecologist. The details shall include the exact location, specification, and design of the habitats. The development shall be implemented in accordance with the approved details prior to first occupation of the development and maintained as such thereafter.*
- The reason given for Condition No 16 is: *In order to minimise the impact of the development on the ecological value of the area and to ensure the development provides the maximum possible provision towards the creation of habitats and valuable areas for biodiversity.*
- Condition No 17 states that: *Prior to the commencement of any demolition, an updated ecology survey, no older than six months old, by a suitable qualified ecologist shall be submitted to and approved in writing by the Local Planning Authority. The demolition works and any necessary mitigation shall be undertaken in accordance with the approved details.*

- The reason given for Condition No 17 is: *To ensure the protection of any protected species and in the interests of ecology.*
 - Condition No 18 states: *The development shall not be occupied until details of the siting, number and design of Electric Vehicle charging points have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details before it is occupied and maintained as such thereafter.*
 - The reason given for Condition No 18 is: *To ensure the provision of Electric Vehicle charging in line with the Council's adopted standards.*
 - Condition No 19 states that: *Prior to the commencement of above ground works, details of the surfacing materials to be used within the development including footpaths, access roads and parking areas and road markings shall be submitted to and approved in writing by the Local Planning Authority. The surfacing shall be carried out in accordance with the approved details before the development is occupied and maintained as such thereafter.*
 - The reason given for Condition No 19 is: *To ensure that the development does not prejudice highway safety and a satisfactory appearance.*
 - Condition No 20 states that: *Prior to the commencement of the development hereby approved (including all preparatory work), a scheme for the protection of the retained trees, in accordance with BS5837:2012, including a tree protection plan (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the local planning authority. Specific issues to be dealt with in the TPP and AMS: a) Location and installation of services/ utilities/ drainage; b) Methods of demolition within the root protection area (RPA as defined in BS5837:2012) of the retained trees; c) Details of construction within the RPA or that may impact on the retained trees; d) Tree protection during construction indicated on a TPP and construction and construction activities clearly identified as prohibited in this area; e) Boundary treatments within the RPA; f) Methodology and detailed assessment of root pruning; g) Arboricultural supervision; and h) The method of protection for the retained trees. The development thereafter shall be implemented in strict accordance with the approved details. Should any tree which was identified for retention, be damaged irreversibly the developer will be required to replace said trees with ones of equal size and value.*
 - The reason given for Condition No 20 is: *To ensure the retention of and avoidance of damage to retained trees on and off site in the interest of biodiversity, sustainability, and to ensure that a satisfactory standard of visual amenity is provided and maintained in accordance with policy 80 of the Development Management Document.*
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Decision

1. The appeal is dismissed in so far as it relates to the approval of details for disputed Conditions 4, 5, 6, 8, 9 and 20. The appeal is allowed in so far as it relates to the approval of details for disputed Conditions 3, 7, 10, 11, 13, 14, 16, 17, 18 and 19 in accordance with the terms of application 22/01940/CND, dated 30 May 2022, and the details¹ submitted with it.

Preliminary Matters

2. It is apparent that a block of flats has been constructed upon the appeal site and is now occupied. Nevertheless, the evidence before me indicates that the application for approval of details that is now the subject of this appeal was

¹ Condition 3: Construction Logistics Plan, Schedule of Photos of Road Condition; Conditions 7 and 14: Material Schedule (Rev 4, 9 August 2022) and associated plans annotated with numbers; Condition 10: Water Efficiency Calculator for New Dwellings (Flats 1-5); Condition 11: Energy Statement (May 2022); Condition 13: Material Schedule (Rev 4, 9 August 2022) and associated plans annotated with numbers, Bins to be included; Condition 16: Biodiversity Enhancement Strategy, Biodiversity Net Gain Report (June 2022); Condition 17: Preliminary Roost Assessment (June 2022); Condition 18: Sync EV Data Sheet, Hard Landscaping – Permeable paving; Condition 19: Material Schedule (Rev 4, 9 August 2022) and associated plans annotated with numbers, Hard Landscaping – Permeable paving.

submitted in advance of the commencement of development. Accordingly, a lawful start to development cannot be ruled out². It is thus my duty to assess the submitted details on their planning merits. This is irrespective of the timing element of any condition or the fact that development has now occurred and become occupied.

3. It must be noted that my following assessments are based purely on the submitted details and not what has been built at the site. Accordingly, wherever I have approved submitted details, it does not necessarily follow that what has been implemented on site corresponds with the details accepted. It thus follows that any suggestion made that the development has not been built in accordance with the approved plans is of little relevance to my considerations.
4. I note that, whilst the Council resolved to formally determine submissions with respect to only some of the disputed conditions, the appeal has been made on an all-encompassing basis and I must consider it accordingly.
5. I also note that the appellant sent an email to the Council in July 2022 during its processing of his application for approval of details. This email indicated an assumption of deemed discharge should nothing be received from the Council by a specified date. It is apparent that an email response was forthcoming from the Council, and it has not been clearly demonstrated that deemed consent was gained for any of the disputed conditions. Moreover, an appeal has subsequently been submitted for determination.

Main Issue

6. Whether or not approval should be granted for the submitted details with respect to each disputed condition.

Reasons

Condition 3

7. A Construction Logistics Plan and accompanying photographic condition survey of local roads comprehensively address the listed requirements of the disputed condition. Having also noted the Council's reference to discussions held with its Highways, Traffic and Parking Services Team, I have no reason to doubt that, based on the details submitted, damage to the public road network would be acceptably avoided and disruption to neighbouring properties would be suitably minimised. Thus, approval should be granted for the submitted details.

Conditions 4 and 5

8. The levels details that have been provided, when considered in the context of Condition 4's specific requirements, are not full and comprehensive. Whilst sectional details indicate the finished ground floor level of the building to match the external ground level, the submitted plans, as acknowledged by the appellant, are confusing in the sense it is not possible to clearly understand how existing and proposed ground levels compare. Whilst reference has been made by the appellant to the actual physical situation post-development, it is my responsibility to consider the plans submitted.

² F G Whitley & Sons v SSW & Clwyd CC [1992] JPL 856 refers

9. The matter of site levels is intrinsically linked to the intended arrangements for managing surface water. Condition 5 requires a Sustainable Drainage Strategy incorporating various stipulated details to be submitted, including with respect to the levels, sizing, cross sections, and specifications for all drainage features. The Council has set out that the site is at risk of fluvial and surface water flooding for a 1 in 100-year (+17% climate change) flood event and that associated flood depths would reach up to 400mm. It has been suggested by the Council that finished floor levels should be raised above the relevant fluvial and surface water flood depths, with this being especially important due to bedrooms being located at ground floor contrary to specific advice contained within its Level 1 Strategic Flood Risk Assessment.
10. A Report³ submitted by the appellant asserts that identifiable risks of fluvial or surface water flooding are low such that no raised ground floor is necessary. However, as specific flood risk constraints clearly apply as evidenced by the Council, I do not consider that this position has been satisfactorily substantiated. Moreover, it has not been robustly demonstrated that the alternative mitigation/resilience measures proposed, including threshold treatment and floodgates, would, as a substitute for a raised finished ground floor, provide the necessary degree of certainty that the intended drainage strategy would suitably minimise flood risk.
11. I acknowledge the submitted intention to retain various porous areas on-site and to introduce geo-cellular storage beneath a newly introduced area of permeable paving in accordance with calculations of required storage volumes. However, whilst this approach would appear potentially acceptable in principle, full details of the sizes, sections and specifications of intended drainage features have not been provided. There is also an absence of a clear indication of ownership, management, and maintenance arrangements, and of overland flow routes in the event of exceedance events. Thus, especially in the context of the levels concerns discussed above, I cannot grant approval for the submitted details with respect to either of disputed Conditions 4 and 5.

Condition 6

12. In accordance with the requirements of the condition, technical material specifications have been provided as part of a submitted Material Schedule. However, whilst I was able to view external finishing materials as installed upon inspection, a sample panel, as specifically required by the condition to remain on site for the duration of works, has not been made available for inspection. Based on the evidence before me, no such panel, which would enable agreed external finishes and associated standards of workmanship to be monitored against throughout the construction phase, has ever been erected. Thus, whilst the mixed and varied palette of external facing materials that is in place in the immediate locality offers flexibility in terms of the external materials/finishes to be selected and ultimately utilised, the requirements of the condition have not been fully complied with. As such, I cannot grant approval for the submitted details with respect to disputed Condition 6.

³ FRA and SUDS Planning Report – Drainage Strategy & Calculations NPPF 2019 and PPG 2018 compliant

Condition 7

13. The indicated specification of privacy screens, to be comprised of opaque glass sheets of 1.8 metre height with chrome stainless steel surrounds, offers appropriate assurances that neighbouring amenity would be safeguarded. As such, approval should be granted for the submitted details.

Condition 8

14. A soft landscaping schedule has been submitted, which provides some planting period and management/maintenance details and is supported by an accompanying planting plan. However, inconsistent with the specific requirements of Condition 8, no tree protection measures have been set out and no clear indication of how the Landscape Strategy conforms with the Drainage Strategy (submitted under Condition 5) has been provided. To the contrary, the position/extent of soft landscaped areas differ when these strategies are compared or overlaid.
15. For the above reasons, I cannot be sure that the impact of the development upon the ecological value of the area would be minimised, that habitat/biodiversity creation would be maximised, or the character and appearance of the area would be preserved. As such, I cannot grant approval for the submitted details with respect to disputed Condition 8.

Condition 9

16. The submitted details indicate that close-boarded timber fencing is to be used as boundary treatment as required, and that its height would be 1.8 metres in rear garden locations. However, it has not been made clear on-plan where, precisely, fencing is to be erected. I cannot therefore be sure that the amenities of adjoining occupiers/the public and highway safety would be safeguarded. As such, I cannot grant approval for the submitted details with respect to disputed Condition 9.

Condition 10

17. Comprehensive water efficiency calculations have been carried out for each of the approved flats, which demonstrate that water consumption within each would fall beneath 105 litres per person per day. On the basis that water efficiency has been properly substantiated, approval should be granted for the submitted details.

Condition 11

18. An Energy Statement, dated May 2022 and supported by comprehensive background data, sets out different options for how a 35% improvement in regulated CO2 emissions over Part L of the Building Regulations 2013 would be achieved through, in part, the use of renewable technologies. I am satisfied that relevant CO2 emission reductions targets would be met, such that approval should be granted for the submitted details.

Condition 13

19. Details of a timber-treated compound to the front of the site, to store general waste and recycling bins at capacities tailored to the residential development it would serve, have been submitted. Whilst the Council has referred to the removal of a well-designed storage area for the purpose of increasing parking

to the front of the site, it is my responsibility to consider the acceptability of the details submitted. I am satisfied that the storage arrangements, as illustrated upon the submitted plans, would safeguard amenity and support waste reduction targets. Therefore, approval should be granted for the submitted details.

Condition 14

20. Storage provision for a total of ten cycles is illustrated on the submitted ground floor plan, including eight in a dedicated store to the rear, and two short-stay spaces to the front. As the submission indicates provision in line with adopted standards, approval should be granted for the submitted details.

Condition 16

21. A Biodiversity Enhancement Strategy has been produced that contains commitments to including wildlife-friendly/nectar-rich planting in accordance with a produced planting schedule and associated locational plans, and to the appointment of a Biodiversity Champion to oversee the implementation of the Strategy. I am satisfied that, based on the submitted details, the creation of habitats and biodiversity would be satisfactorily maximised. This is without prejudice to my findings with respect to disputed Condition 20 below. Therefore, approval should be granted for the submitted details.

Condition 17

22. A Preliminary Roost Assessment dated June 2022 has been submitted that establishes that the building formerly in place was not at that point in time being used by bats for roosting. There were also no bird nests identified and limited evidence of bird activity was noted. The safeguarding of protected species has therefore been satisfactorily demonstrated, such that approval should be granted for the submitted details.

Condition 18

23. The siting and specification of three Electric Vehicle charging points to be positioned to the front of the site has been submitted. Such installations would ensure provision of acceptable facilities in line with adopted standards. Thus, approval should be granted for the submitted details.

Condition 19

24. It has been indicated that brindle-coloured permeable paving shall be used to pave external areas. There is no clear reason for me to consider that the use of this surfacing material on-site (whatever markings to be applied to it for the purposes of delineating parking spaces) would prejudice highway safety or be unacceptable in appearance terms. As such, approval should be granted for the submitted details.

Condition 20

25. This disputed condition explicitly requires a scheme for the protection of retained trees including a tree protection plan and an arboricultural method statement. No such scheme has been provided. Indeed, a brief supporting statement to indicate that old trees were removed because they were impinging neighbour's foundations/walls does not offer compliance with the condition's technical requirements. Nor does any intention to plant new trees,

which would inevitably take time to properly establish before potentially offering comparable visual amenity and support to biodiversity. Moreover, as the retention of retained trees has not been ensured, I cannot grant approval for the submitted details with respect to this disputed condition.

Conclusion

26. For the above reasons, the appeal is dismissed in so far as it relates to the details submitted with respect to disputed Conditions 4, 5, 6, 8, 9, and 20, and allowed in so far as it relates to the details submitted with respect to disputed Conditions 3, 7, 10, 11, 13, 14, 16, 17, 18, and 19.

Andrew Smith

INSPECTOR