



Appeal Decision

Site visit made on 31 October 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2023

Appeal Ref: APP/V3120/W/22/3308119

56 Hurst Rise Road, Oxford OX2 9HQ

- 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 without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Bouvard Group, c/o Riarch Architects against the decision of Vale of White Horse District Council.
 - The application Ref P20/V2864/FUL, dated 2 November 2020, was refused by notice dated 3 August 2022.
 - The application sought planning permission for the demolition of existing dwelling and associated outbuildings. Erection of 2 new 4 bed dwellings with associated bin and bike stores, without complying with condition 2 attached to planning permission Ref P16/V0508/FUL, dated 19 May 2016.
 - The condition in dispute is Condition 2 which states that: That the development hereby approved shall be carried out in accordance with the details shown on the following approved plans, 1455 P EXT 02, 1455 P EXT 04, 1455 P EXT 03, 1455 P EXT 01, 675_No.56_OS Plan, 675-No65-202, 1455_No.56_201.E, 1455-No56-Block Plan RevB, 212619/001/001, 212619/001/002, 212619/001/003, 212619/001/004 and 212619/001/005, except as controlled or modified by conditions of this permission.
 - The reason given for Condition 2 is: To secure the proper planning of the area in accordance with Development Plan policies.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and associated outbuildings. Erection of 2 new 4 bed dwellings with associated bin and bike stores, without complying with condition 2 attached to planning permission Ref P16/V0508/FUL, dated 19 May 2016 at 56 Hurst Rise Road, Oxford OX2 9HQ in accordance with the application Ref P20/V2864/FUL, dated 2 November 2020 and subject to the following conditions:
 - 1) The development hereby approved shall be in accordance with the details shown on the following approved plans: 1455_001D and 1455_201J.
 - 2) The parking and turning areas as shown on approved plan 1455_201J shall be kept permanently free of any obstruction to such use, and the visibility splays shall be permanently maintained free from obstruction to vision.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), no development within Schedule 2, Part 1, Classes A, B, C and D shall be carried out at the dwellings hereby approved without

express planning permission first being obtained from the local planning authority.

Preliminary Matters

2. In addition to the drawings originally submitted with the application under section 73a of the Act ('s.73A'), during the appeal the appellant has introduced revised drawings: 1455-001D – Planning application _ Block Plan and 1455-201J – Planning application _ Proposed. These revised drawings incorporate the 'as built' roof of the development, which differs from the design shown on previously submitted drawings. The Council has no objection to the revised drawings. Because these drawings seek to regularise a design discrepancy and do not significantly alter the nature of the original proposal, I have accepted these drawings.
3. Because the roof design on drawing: 1455_No.56_Block Plan, originally submitted with the S.73a application is incorrect, this is superseded by revised drawing: 1455-001D.
4. For the above reasons, I have proceeded with the appeal on the basis of revised drawings: 1455-001D and 1455-201J and determined the appeal on this basis and do not consider that the interests of any party have been prejudiced by my having done so.
5. The appellant's appeal statement identifies the relevant approved drawing under planning permission Ref P16/V0508/FUL as: 1455_No.56_201.C. However, this drawing is not referenced under Condition 2 of this permission. The correct drawing is 1455_No.56_201.E, which is in the evidence before me. Accordingly, my assessment of the appeal includes drawing 1455_No.56_201.E.

Background and Main Issue

6. The Council's first reason for refusal alleges that because the plans as originally submitted with the s.73A application, do not include the entirety of the development which has been implemented on site, this fails to provide the correct plans and drawings which must be submitted with a planning application based on the procedural requirements of the Planning Practice Guidance ('PPG').
7. In 2016, planning permission¹ ('2016 permission') was granted for two semi-detached dwellings to be built at the site known as 56 Hurst Rise Road. The Council subsequently approved a non-material amendment to this permission to allow for an alternative choice of brick to be used in the scheme and the discharge of details in respect of this permission relating to levels, materials, trees, badgers and drainage.
8. Notwithstanding the details on the application form, according to the main parties, the approved development commenced in 2019, but was not finalised in accordance with the plans approved under the 2016 permission. A gabion wall had been constructed along the shared boundary with 54 Hurst Rise Road, and a number of alterations were made to the external appearance of the approved dwellings. A further planning application² ('2020 permission') was

¹ Ref: P16/V0508/FUL

² Ref: P20/V0670/FUL

- submitted to address these discrepancies with regard to the scheme as originally approved. This permission was granted in 2020.
9. The red line boundary as shown on drawing 1455_No.56_Block Plan, originally submitted with the s.73A application, is as approved for the 2016 permission and therefore excludes most of the gabion wall and part of the rear gardens and rear boundary treatments associated with the new dwellings but which were subsequently included and approved within a slightly larger site area under the 2020 permission.
 10. Accordingly, the Council is of the view that the 2020 permission is the implemented permission and that the s.73A application should be made in respect of this.
 11. The Council also asserts that as a consequence of the discrepancy in the red line, the proposed arrangement could result in slithers of land to the north and east of the approved dwellings, trapped between boundary treatments of this site and the adjoining housing development. It would therefore result in inaccessible and unmaintained land which could be a potential eyesore between the gardens of dwellings, to the detriment of character and visual amenity of the area, including in views from the surrounding residential plots.
 12. The PPG provides guidance on what plans and drawings must be submitted with a planning application. This says that as a minimum, applicants will need to submit a 'location plan' that shows the application site in relation to the surrounding area. Additional plans and drawings will in most cases be necessary to describe the proposed development, as required by the legislation (see article 7(1)(c)(ii) of the Town and Country Planning (Development Management Procedure (England) (Order) 2015 ('DMPO')). Furthermore, the PPG³ sets out the requirements of a location plan, including that the application site should be edged clearly with a red line on the location plan and include all land necessary to carry out the proposed development.
 13. However, because this appeal is for an application made under s.73A, in accordance with Paragraph 7(1)(c) of the DMPO, this type of application is not required to be accompanied by a plan which identifies the land to which the application relates.
 14. Based on its description, the s.73A application relates to changes to the elevations of the approved dwellings. Irrespective of this, other than the alterations to the roof of the dwellings, which have only been introduced at appeal stage, there is very little difference between the dwellings approved under the 2020 permission and the 'as built' dwellings. Therefore, it is unclear why the appellant made the s.73A application in the first instance.
 15. Nevertheless, s.73A allows planning permission for development already carried out. This includes, without complying with some condition subject to which planning permission was granted. As such, I see no reason why the submitted s.73A application, which relates to the 2016 permission under which the development was begun and therefore is an extant permission, cannot also be the subject of a s.73A application. Therefore, the application before me is procedurally acceptable and does not conflict with the guidance in the PPG.

16. However, because I have determined the appeal on the basis of the revised drawing: 1455-001D, the red line on this drawing includes the extent of the application site as shown on both the 2016 permission and the 2020 permission. Therefore, if the appeal is allowed, a new planning permission would be created with a red line boundary which reflects the 2020 permission. This address the Council's concern that the proposal fails to include the entirety of the development 'as built.'
17. For the above reasons, the main issue is whether the 'variation' of Condition 2 is reasonable and necessary having regard to the overall design of the development and the character and appearance of the area.

Reasons

Character and appearance

18. On the ground, the rear boundaries of the gardens associated with the dwellings at the appeal site are defined by timber fencing and the land to the north of this fencing relates to a separate newly built dwelling.
19. The eastern shared boundary between the righthand dwelling on the appeal site and 54 Hurst Rise Road, which is in residential use, also comprises timber fencing which largely follows the line of the gabion wall.
20. As such, irrespective of the location of the red line on the submitted plans, on the ground, even if the boundaries of the appeal site were altered to reflect the 2016 permission, given the modest size of the resulting areas and because these would be located adjacent to established garden areas, such an arrangement would not unacceptably harm the visual amenity of the area.
21. Based on the information before me, the location on the site, the height and general massing of the approved dwellings remain unchanged from the 2016 permission. However, it appears that the rear terraces and garden areas for the dwellings 'as built' are generous relative to the 2016 permission.
22. Changes to the elevations include the removal of a secondary side-facing window to the front bedrooms for each dwelling, the incorporation of windows instead of the rear French doors and the omission of balconies for each dwelling. Also, the number of approved roof lights on the dwellings have been reduced. There are also some changes to the configuration of the external doors between the open plan family room and the rear garden for each dwelling. These changes are consistent with the approved design and do not significantly alter the appearance of the development. Whilst the form of the roof has been altered, the effects of this are largely imperceptible relative to the approved design under the 2016 permission.
23. The appellant advises that a further alteration to the original permission is that the rear garden access for the righthand dwelling has been moved to the other side of its parking spaces. This is not reflected on the revised drawing: 1455-201J – Planning application _ Proposed. Nevertheless, this alteration would have no discernible effect on the functioning or external appearance of the development.
24. Overall, the 'as built' dwellings are not significantly or unacceptably different to the layout and external appearance of the dwellings as approved on the 2016 permission.

25. For the above reasons, the 'variation' of Condition 2 to include the revised drawings would not harm the overall design of the development or the character and appearance of the area and therefore is reasonable and necessary.
26. Consequently, I find no conflict with Policy HS1 of the North Hinksey Parish Neighbourhood Plan 2031, which requires that all new development should respect and enhance the character of the area in which they are located. Also, the proposal is consistent with the overarching aims of Policy CP37 of the Vale of White Horse Local Plan 2031, Part 1, which requires new development to be of high-quality design.

Other Matters

27. A third party has raised an issue regarding impingement on a wildlife corridor. However, I have limited details in respect of this.

Conditions

28. Condition 1 of my Decision replaces Condition 2 on the 2016 permission and includes the revised drawings. This is necessary in the interests of certainty.
29. In respect of any other conditions on the 2016 permission, the PPG makes clear that when granting planning permission under s.73A they should be repeated on decision notices unless they have already been discharged. In this case Condition 1 of the 2016 permission relates to the time-limit for implementing it. As the original development has been started, it is not necessary for me to impose this condition.
30. The Council has confirmed that with the exception of Condition 11 of the 2016, all other conditions on the 2016 permission have been discharged. I have imposed Condition 3 which reflects Condition 11, for the same reason given in the 2016 permission.
31. Under s.73A, I can also impose new conditions. To this end, I have had regard to those suggested by the Council and included Condition 2. This relates to the retention of parking and turning areas and maintenance of visibility splays. This is necessary in the interests of the satisfactory functioning of the development and highway safety.
32. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.

Conclusion

33. For the above reasons, I conclude that the appeal should be allowed.

M Aqbal

INSPECTOR