



Appeal Decision

Site visit made on 9 November 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 06 February 2024

Appeal Ref: APP/M5450/W/23/3317344

79 High Worple, Harrow, HA2 9SX

- 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 Mr Sanjay Raizada against the Council of the London Borough of Harrow.
 - The application Ref P/2472/22, is dated 6 July 2022, was refused by notice dated 30 August 2022.
 - The application sought planning permission for the conversion of dwelling into two flats (1 x 3 bed unit and 1 x 2 bed unit and study); external alterations; parking; bin and cycle store; separate amenity space (retrospective) without complying with a condition attached to planning permission Ref P/0249/21, dated 7 July 2021.
 - The condition in dispute is No 10 which states that: Within one month of the date of this decision, evidence of Secured by Design Certification shall be submitted to the Local Planning Authority in writing to be agreed, or justification shall be submitted where the accreditation requirements cannot be met. The Secured by Design measures shall be carried out in accordance with the approved details, within three months following the approval of the subject details and shall thereafter be retained in perpetuity.
 - The reason given for the condition is: In the interests of creating safer and more sustainable communities and to safeguard amenity by reducing the risk of crime and the fear of crime in accordance with policy DM1 of the Development Management Policies Local Plan (2013)
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of dwelling into two flats (1 x 3 bed unit and 1 x 2 bed unit and study); external alterations; parking; bin and cycle store; separate amenity space (retrospective) at 79 High Worple, Harrow, HA2 9SX in accordance with application Ref P/2471/22, dated 6 July 2022 without complying with condition 10 set out in planning permission Ref P/0249/21 granted on 7 July 2021 by the Council of the London Borough of Harrow, but otherwise subject to the conditions set out in the attached schedule.

Background and Preliminary Matters

2. Two planning permissions have been granted for the conversion of the dwelling into two flats. The first planning permission (P/1315/20) was approved on 09 June 2020 and the second (P/0249/21) was approved on 07 July 2021.
3. The application subject to this appeal is made under Section 73A of the Planning Act. The development appeared to be largely complete and has been carried out without complying with a condition subject to which planning

permission was granted, and an application has been made retrospectively. The application sought the removal of Condition No 10 (Secured by Design).

Main Issue

4. The main issue is the effect of the removal of condition 10 on occupiers, with regard to safety and the risk of crime.

Reasons

5. The appeal site is a two-storey, semi-detached property located in an urban residential area near High Worple, close to the junction with Newlyn Gardens. Constructed in the 1930s, it is typical of dwellings from that era, and has been extended and converted into two self-contained flats. External works were completed prior to the retrospective grant of planning permission for the conversion of the dwelling into two flats.
6. Policy DM2 A(d) of the Harrow Development Management Policies Local Plan (2013) requires that all proposals must be safe and secure for everyone in line with 'Secured by Design' principles. This is supported by Policy CS1E of the Harrow Core Strategy 2012 which requires that all new development must create and maintain accessible, safe and secure neighbourhoods in accordance with best practice standards.
7. Correspondence with the Metropolitan Police¹ does not state that the site cannot meet the requirements of Secured by Design, but instead sets out what is required to comply with the condition. It is also noted that this correspondence pertains to the first planning permission, rather than the second, which this appeal relates to. Nonetheless, the certification itself does not require windows and doors to be replaced, only that they should be of a requisite standard. No evidence has been submitted as to why this cannot be achieved.
8. Additionally, if compliance is not possible, then condition 10 also permits the appellant to submit a justification as to why the accreditation requirements could not be met. No evidence has been submitted as to why they could not be met.
9. Although the development may meet certain PAS:24 requirements and other security standards, there is no evidence before me that they would suffice to comply with any of the 'Secured by Design' principles. I have sympathy for the appellant's circumstances, insofar as the dwelling has already been largely developed. However, from my site visit and the documentation before me, I am not persuaded that the risk of crime has been sufficiently reduced at the appeal site as to justify the removal of condition 10. It is in an urban residential area and while the risk of crime may be reduced by existing measures, there is no evidence before me that they have been minimised to the extent that it is no longer necessary for the development to comply with 'Secured by Design' principles. As such, the removal of the condition would not make the development acceptable in planning terms, as it has not been adequately demonstrated that the condition is no longer reasonable or serves a functional purpose.

¹ Appendix 3 - Email correspondence from Danny McPhail

10. The appellant submits that there had been no historic requirement that the development would need to meet the requirements of Secured by Design and that the Council has not been applying this policy to all proposals. I note that much of the substantive external work was carried out prior to the grant of planning consent (P/0249/21), which was retrospective in nature². In relation to the earlier planning consent (P/1315/20), there is no evidence before me regarding the circumstances behind the earlier approval or the difference between the two schemes. Nonetheless, it is necessary to consider that regulations and policy requirements are subject to change, meaning that there is no reason why different conditions may not be reasonably imposed on a new decision. Additionally, correspondence between the appellant and the relevant Design Out Crime Officer indicates that the appellant has been aware of the requirements of Secured by Design principles since the first planning permission, and as such, would have been aware of these requirements at the appeal site from an early stage.
11. In weighing the limited evidence before me, the balance of risk in this proposal, from my own observations on site, and for the other reasons above, I cannot but conclude that the removal of condition 10 without a suitable replacement would result in an unacceptable impact on safety and the risk of crime.
12. However, the current form of this condition requires amendment, and as such I have allowed this appeal, subject to a new form of this condition being imposed. Without this new condition, the development would not meet the requirements of Policy DM2 A(d) which seeks to ensure that all proposals must be safe and secure for everyone in line with 'Secured by Design' principles. It would also not create and maintain accessible, safe and secure neighbourhoods in accordance with best design practices, contrary to Policy CS1E. It would therefore not comply with the requirement for development to create safe and inclusive places, contrary to paragraph 130 of the National Planning Policy Framework.
13. The Council's reason for refusal also alleges a conflict with Policy D11B of the London Plan 2021, however, this policy relates to the provision of infrastructure to maintain a safe and secure environment and reduce the fear of crime. Accordingly, it has little direct bearing on this issue.

Other Matters

14. I have considered representations regarding the status of the appeal site as an HMO, property damage, loud music, trees being cut down, construction noise and fly tipping. However, these are matters which do not affect my findings on the main issue.

Conditions

15. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As the development has started, it is not necessary to impose a condition requiring commencement. The officer's report refers to conditions that have been discharged and the relevant planning reference that these related to. As such, I have imposed those that I consider remain relevant, meet

² Appendix 2 decisions

the tests of conditions as set out at paragraph 56 of the National Planning Policy Framework, as well as those that have been discharged. In the event that further conditions have been discharged, that is a matter which can be addressed by the parties.

16. I have considered the 'Secured by Design' condition having regard to the tests in the National Planning Policy Framework and the advice in the Planning Practice Guidance. As such, I have made such amendments as necessary to comply with those documents, for the purposes of clarity and consistency. To that extent, I have removed those elements of the condition which require it to be retained for perpetuity and clarified the standard to be met. The main parties had an opportunity to comment on this change during the appeal process.
17. The updated form of the 'Secured by Design' condition (now Condition 9), is imposed to ensure that the required details are submitted, approved and implemented, so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the 'Secured by Design' standards before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
18. With specific regard to the guidance in the Planning Practice Guidance regarding conditions, the revised wording of this condition is necessary to reduce the harm on safety for future occupiers and the risk of crime. It is relevant to planning as it is consistent with planning objectives regarding safety. It is relevant to the development permitted, as it fairly and reasonably relates to the use of an existing residential dwelling, insofar as it ensures that the risk of crime has been mitigated in accordance with policy. It would be enforceable as there is a clear process for remedying any breach of this condition. It is precise, insofar as there is clarity on the appropriate standard which the scheme needs to reach. It is reasonable in all other aspects as it does not place a disproportionate burden on the applicant to comply with policy and provides them with a reasonable timescale to do so.

Conclusion

19. In so far as it relates to the main issue, I have found that the removal, and therefore failure to comply with Condition 10, would have an unacceptable effect on occupiers in terms of safety and the risk of crime. As such, it would be contrary to the development plan as a whole. No material considerations have been demonstrated which would outweigh the development plan conflict.
20. Accordingly, although the condition in dispute remains reasonable and necessary, I have modified the terms to ensure its enforceability and compliance with the National Planning Policy Framework.
21. For the reasons given above, I conclude that the planning permission should be varied as set out in the formal decision.

S Lo

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Flood Risk Assessment Version 4.0; 079-HI-A-00-001 (Pre-Existing Front Visualization); 079-HI-A00-001 (Pre Existing West Elevation); 079-HI-A-00-001 (Pre Existing East Elevation); 079-HI-A-00-001 (Pre Existing North Elevation); 079-HI-A-00-001 (Pre Existing South Elevation); 079-HI-A-00-001 (Pre Existing Section 2); 079-HI-A-00-001 (Pre Existing Section 1); 079-HI-A-00-001 (Pre Existing Roof); 079-HI-A-00-001 (Pre Existing Second Floor); 079-HI-A-00-001 (Pre Existing First Floor); 079-HI-A-00-001 (Pre Existing Ground Floor); 079-HI-A00-001 (Pre Existing Block Plan); 079-HI-A-00-001 (Location Plan); 079HW (Existing Rear Visualization); 079HW (Existing Front Visualization); 079HW (Existing West Elevation); 079HW (Existing East Elevation); 079HW (Existing North Elevation); 079HW (Existing South Elevation); 079HW (Existing Section 3); 079HW (Existing Section 2); 079HW (Existing Section 1); 079HW (Existing Roof); 079HW (Existing Second Floor); 079HW (Existing First Plan); 079HW (Existing Ground Floor Plan); 079HW (Existing Block Plan); 079-HI-A-00-001 (Pre Existing Rear Visualization); RPSEVE02-NA001-HIG05-161220; RPS-EVE02-NA001-HIG05-091220; Building Control Final Certificate PWC/20/3592; SALES INVOICE Invoice Number INV-101681; OOOOXX-A-03-101; 079HW-A-00-105; 079HW-A-00-104; 079HW-A-00-103; 079HW-A-00-102; 079HW-A-00-101; OOOXX-A-03-102; 079HW (Pre-Existing & Existing Rear Visualization); 079-HI-A-00-001 (Pre Existing & Existing Front Visualization); 079HW (Pre-Existing and Existing Block Plan); 079HW (Existing & Proposed Rear Visualization); 079HW (Existing & Proposed Front Visualization); 079HW (As originally Built Rear Visualization); 079HW (As originally Built Front Visualization).
2. The soft landscaping works shall be implemented in accordance with the details as approved under application ref. P/1149/22.
3. The hard landscaping works shall be implemented in accordance with the details as approved under application ref. P/1149/22
4. The permeable paving works shall be implemented in accordance with the details as approved under application ref. P/1149/22.
5. The boundary treatment works shall be implemented in accordance with the details as approved under application ref. P/1149/22
6. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the approval of the subject details. Any existing or new trees or shrubs which, within a period of 5 years from the completion of the development, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season, with others of a similar size and species, unless the local authority agrees any variation in writing.
7. The refuse and cycle storage works shall be implemented in accordance with the details as approved under application ref. P/1149/22
8. The development hereby permitted shall be used for Class C3 dwellinghouse(s) only and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order

revoking or re-enacting that Order with or without modification), no development within Schedule 2, Part 3, Class L shall take place.

9. Within six months of the date of this decision, details of a scheme which demonstrates that the development meets the relevant 'Secured by Design' standard of silver, shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out in accordance with those approved details within three months of the local planning authority's approval.

If a scheme in accordance with this condition has not been approved by the local planning authority and carried out in accordance with the approved details within nine months of the date of this decision, the occupation of the dwellings shall cease until such time as a scheme approved by the local planning authority is implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

10. The refuse bins shall be stored at all times, other than on collection days, in the designated refuse storage area, as shown on the approved drawing.
11. The external lighting works shall be implemented in accordance with the details as approved under application ref. P/1149/22
12. The fire safety measures shall be implemented in accordance with the details as approved under application ref. P/1149/22