



Appeal Decision

Site visit made on 9 January 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2024

Appeal Ref: APP/N5090/W/23/3324230

111 Hadley Road, Barnet, EN5 5QR

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Hadley Gardens Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/5227/S73, dated 26 October 2022, was refused by notice dated 21 December 2022.
 - The application sought planning permission for the demolition of existing dwelling. Erection of new dwelling to provide 4no self-contained flats with rooms in the roof space. Associated amenity space, refuse and recycling storage, cycle store and provision of off-street parking, without complying with a condition attached to planning permission Ref 20/0906/FUL, dated 6 October 2022.
 - The condition in dispute is No 18 which states that: Notwithstanding the details shown in the drawings submitted and otherwise hereby approved, prior to the first occupation of the new dwellinghouse(s) (Use Class C3) permitted under this consent they shall all have been constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future). The development shall be maintained as such in perpetuity thereafter.
 - The reason given for the condition is: To ensure the development meets the needs of its future occupiers and to comply with the requirements of Policies 3.5 and 3.8 of the March 2016 Minor Alterations to the London Plan and the 2016 Mayors Housing SPG.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Hadley Gardens Ltd against the Council of the London Borough of Barnet. This application is the subject of a separate decision.

Preliminary Matters

3. I note there is a draft Barnet Local Plan that has been submitted to the Planning Inspectorate for independent examination. As I have not been provided with any evidence relating to the current stage of examination or whether there are outstanding objections to relevant policies, and as the plan has not been formally adopted, I have attached little weight to the emerging policies.

4. The policy references in the reason given for Condition 18 are now out of date with reference to the March 2016 Minor Alterations to the London Plan. I have been provided with equivalent policy references of D5, D6 and D7 of the London Plan 2021 as set out in the Council's evidence, and I have had regard to them.
5. The National Planning Policy Framework was updated in December 2023, during the consideration of this appeal. Insofar as is directly relevant to the appeal, there are no substantive changes. As such, it was not necessary to ask the main parties for views and no parties have been prejudiced as a result.
6. Where the appellant in their evidence has referenced Circular 11/95, although it is no longer in force, I have had regard to the general points insofar as they relate to the tests set out in the Framework.

Background and Main Issue

7. Planning permission was granted for a new building comprising 4 flats over lower ground, ground, first and second floors. The permission included a condition which requires compliance with Part M4(2) of the Building Regulations, notwithstanding the approved drawings. Part M4(2) sets out Building Regulations optional requirements for accessible and adaptable dwellings, which becomes mandatory when a planning condition is imposed requiring compliance.
8. The Council considers the condition to be necessary to ensure the flats would be accessible and adaptable to the needs of future occupiers. The appellant, however, objects to the condition as they consider it to be unreasonable, not related to the development, unenforceable and ultra vires. The appellant does not consider that the condition relates to the development permitted because it would require substantial alteration to the development to comply with the condition. The necessary alterations would then conflict with condition 1, which requires the development to be undertaken in accordance with the approved plans. The appellant considers that condition 18 would be unenforceable since compliance would mean that condition 1 would be breached.
9. The main issue is whether the condition is reasonable, related to the development and enforceable, having regard to the provision of accessible and adaptable dwellings to meet the needs of future occupiers.

Reasons

10. London Plan policy D7 aims to provide suitable housing and genuine choice for London's diverse population, including disabled people, older people and families with young children. The policy essentially requires that new build dwellings meet Building Regulation requirement M4(2) for accessible and adaptable dwellings. Policies D5 and D6 of the London Plan and DM02 and DM03 of Barnet's Local Plan (Development Management Policies) Development Plan Document 2012 aim for development to achieve amongst other things, the highest standards of accessible and inclusive design. Barnet's Sustainable Design and Construction Supplementary Planning Document 2016 acknowledges the need for accessible and adaptable dwellings in line with the expectations of the London Plan.

11. Given the policy context described above, there is a clear policy justification for attaching condition 18. Without it, the proposals would be contrary to the development plan.
12. Part M4(2) relates to accessible and adaptable dwellings and covers multiple aspects of construction and layout including matters such as level access, car parking and communal facilities. I have no reason to doubt that the provision of level access to the main entrance to the flats could be achieved. In any event, irrespective of the requirements of condition 18, there is another condition (21) which requires details to be agreed of the provision of access for disabled people to the approved building.
13. It is reasonable to assume that internal alterations would be required to enable the approved development to achieve the standards set out in M4(2). No details of the alterations required to achieve this standard have been provided.
14. There is no absolute requirement in this part of the Regulations for a lift within the private domain of each flat where it spans more than a single floor (beyond the stairs being constructed to allow the installation of a stairlift). As such, compliance with M4(2) may not be dependent on removing the split-level elements to the flats. No evidence has been provided to show that a lift overrun at roof level would necessarily be a consequence of compliance with M4(2) and if it were, that it would not be achievable without significant alteration to the approved development. It cannot therefore be determined with any certainty that the alterations required as a consequence of compliance with M4(2) would be unachievable or in conflict with the terms of condition 1. The evidence does not lead me to conclude that any exception to the requirements of the development plan would be appropriate in this case.
15. The advice set out in the Planning Practice Guidance (paragraph 012 reference ID 21a-012-20140306) states that depending on the case, a local planning authority has the power to impose a condition which has the effect of modifying the development applied for, but it would not be appropriate to modify the development in a way that makes it substantially different from that set out in the application.
16. The requirements of condition 18 in this case would not alter the operative part of the permission. In terms of the potential conflict with condition 1, the wording of condition 18 starts with "notwithstanding the details shown in the drawings submitted and otherwise hereby approved...". This makes it clear that the condition acknowledges some changes would need to be made to the scheme. The evidence provided does not demonstrate that the changes required to enable compliance with M4(2) would necessarily be so significant that they would not be within the broad scope of the drawings referred to by condition 1.
17. Given the planning policy context described above, there is a clear policy justification for attaching condition 18 and it is necessary to make the development acceptable in planning terms. Condition 18 is clear in its requirements and would be enforceable against Part M4(2) of the Building Regulations. In the absence of any substantive evidence showing that the adjustments would not be readily achievable or clearly presenting exceptional circumstances, I consider the condition is reasonable. Considering the acknowledgement within the condition that alterations will be required notwithstanding the drawings listed under condition 1, along with it not directly

affecting the operative part of the condition, I find that the condition meets the tests set out in the Framework and the PPG.

Other Matters

18. It is the appellant's position that the Council has demonstrated poor planning practice in using Condition 18 to correct an error. This is a matter between the parties and has not had any bearing on my decision.

Conclusion

19. Without Condition 18, the proposal would be contrary to the development plan and the other material considerations do not suggest that the decision should be taken otherwise than in accordance with the development plan. Condition 18 is reasonable, sufficiently related to the development and enforceable. It is necessary to make the development acceptable in planning terms. The appeal is therefore dismissed.

L Francis

INSPECTOR