



Appeal Decision

Site visit made on 16 January 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 21st February 2024

Appeal Ref: APP/U5930/W/23/3321777

110 Nelson Road, Chingford, Waltham Forest E4 9AS

- 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 to which a previous planning permission was granted.
- The appeal is made by Mrs Masarat Mahmood against the decision of the Council of the London Borough of Waltham Forest.
- The application Ref 230377, dated 8 February 2023, sought planning permission for sub-division of single dwelling house to create 2x3 bedroom houses including the construction of part single, part two-storey rear extension and conversion of garage into habitable room, and replacement of garage door with bay window and access door, without complying with conditions 2, 3, 5 and 7 attached to planning permission Ref 182248, dated 13 March 2019.
- The application was refused by notice dated 6 April 2023.
- The conditions in dispute are Nos 2, 3, 5 and 7 which state that:

Condition 2

The development hereby permitted shall be carried out in accordance with the approved plans and thereafter maintained as such for the lifetime of the development: 2786/1, 2786/2, Design and Access Statement and Block Plan received 22 June 2018, and 2786/3C and 2786/4C dated 13 November 2018.

Condition 3

A schedule of all facing materials to be used in construction shall be submitted to and approved by the Local Planning Authority in writing prior to the commencement of development. The development hereby permitted shall be constructed entirely of the materials in accordance with the approved materials schedule unless otherwise agreed in writing by the Local Planning Authority and shall thereafter be retained as such for the lifetime of the development.

Condition 5

Prior to the commencement of the development on site, notwithstanding site investigation and clearance works, demolition and construction to slab level details relating to the siting, design and height and finish of all new walls, gates, fencing, railings and other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out solely in accordance with the approved details, prior to the first occupation of the use hereby approved and thereafter shall be fully retained and maintained accordingly for the lifetime of the development.

Condition 7

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any Order revoking and/or re-enacting that Order with or without modification, no development under Schedule 2 Part 1 [Classes A, B, C, D, E, F, G, H] shall be carried out unless approved by way of a planning permission granted.

- The reason for the conditions are:

Condition 2

For the avoidance of doubt and in the interests of proper planning.

Condition 3

To safeguard and enhance the visual amenities of the locality, in accordance with Policy CS15 of the adopted Waltham Forest Local Plan – Core Strategy (2012) and Policy DM29 of the adopted Waltham Forest Local Plan – Development Management Policies (2013).

Condition 5

In the interest of general visual amenity, and amenity of neighbouring occupants, in accordance with Policies CS13 and CS15 of the adopted Waltham Forest Local Plan – Core Strategy (2012) and Policies DM29 and DM32 of the adopted Waltham Forest Local Plan – Development Management Policies (2013).

Condition 7

In the interest of general visual amenity, and amenity of neighbouring occupants, in accordance with Policies CS13 and CS15 of the adopted Waltham Forest Local Plan – Core Strategy (2012) and Policies DM29 and DM32 of the adopted Waltham Forest Local Plan – Development Management Policies (2013).

Decision

1. The appeal is allowed and planning permission is granted for sub-division of single dwelling house to create 2x3 bedroom houses including the construction of part single, part two-storey rear extension and conversion of garage into habitable room, and replacement of garage door with bay window and access door at No 110 Nelson Road, Chingford, Waltham Forest E4 9AS in accordance with application Ref 230377, dated 230377 without complying with conditions 2, 3, 5 and 7 attached to planning permission Ref 182248, dated 13 March 2019, subject to the conditions set out in the Schedule attached to this decision.

Applications for costs

2. An application for costs was made against the Council of the London Borough of Waltham Forest. This application is the subject of a separate Decision.

Preliminary Matters

3. Whilst the appeal statement refers to application ref: 223095, submitted on 18 November 2022, the original application is ref: 230377, dated 8 February 2023, as shown in the banner heading above. This is the basis on which I have dealt with the appeal.
4. A revised National Planning Policy Framework (the Framework) was published in December 2023. The sections relevant to this appeal remain unchanged and therefore it has not been necessary to request observations from the main parties.

Main Issues

5. The main issues are whether the disputed conditions are necessary and reasonable, having regard to the character and appearance of the area and the living conditions of neighbouring occupiers.

Reasons

6. Condition 2 sets out the approved plans. This includes the phrase, 'and thereafter maintained as such for the lifetime of the development', effectively removing permitted development rights (PD rights) for the proposed development. To some extent this duplicates condition 7.

7. The stated purpose of the 'plans' condition is to provide certainty as to what has been approved and to add clarity to the description of the development. Whilst the condition remains effective for the lifetime of the permission, in my opinion its purpose is not to require that all features shown on the plans are provided or retained, or that all aspects of the development must be completed. The condition should only ensure that the development accords with the plans insofar as it is carried out.
8. It is commonplace for a 'plans' condition to be retained, even after the implementation of a planning permission for the reasons set out above. It was therefore open to the Council to amend the wording of the condition to reflect the status of the development. Therefore, the condition remains necessary and reasonable, albeit in a revised form to reflect its stated purpose.
9. Condition 3 provides for a schedule of facing materials to be submitted and agreed. Condition 5 relates similarly to boundary treatments. It has been confirmed by both parties that they have previously been discharged¹. Consequently, I am satisfied that these conditions do not need to be retained.
10. Condition 7 removed PD rights relating to Schedule 2, Part 1, Classes A-H of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This amounts to the removal of all PD rights relating to development within the curtilage of a dwellinghouse.
11. The appeal site is a wedge-shaped plot, located on a bend in Nelson Road within a residential area of similar style properties. The appeal property has previously been extended with a two-storey extension to the side which enabled the sub-division of the property to create two dwellings, No 110 and No 110A Nelson Road. This has resulted in No 110 having a linear rear garden, whereas No 110A has a small, triangular rear garden area.
12. The Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. More specifically, paragraph 54 states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Furthermore, the most recent version of the Planning Practice Guidance states that 'conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn.'²
13. Although the Council have set out several examples of potential impacts of extensions to No 110A, I do not share their concerns and consequently consider that they do not amount to clear justification for the removal of these national permitted development rights. Although the plots are small, the ability to extend or alter them is restricted by the space around them and the wedge-shaped plot upon which they are situated. Furthermore, the appeal site is not located in a conservation area or other such designation which may warrant the removal of PD rights.

¹ Ref: 203750

² Paragraph: 017 Reference ID: 21a-017-20190723

14. I therefore conclude that conditions 3 and 5 have been discharged and are consequently no longer necessary. Condition 7 would not meet the tests for the use of conditions and should therefore be deleted. However, condition 2 provides a mechanism to provide clarity over the development to which the permission relates and should therefore be retained, albeit in a revised form. As a result, there would be no harm to the character and appearance of the appeal properties and the area, nor the living conditions of neighbouring occupiers.

Other Matters

15. Reference has been made to an appeal³ at No 6 Arnold Avenue East which was allowed and granted planning permission without compliance with some of the conditions imposed. Whilst the Council has provided photographic evidence showing that the distances between No 4 Arnold Avenue East and No 6 were much greater than that found at No 110 and No 108, this does not affect my finding on the appeal.

Conditions

16. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under Section 73 should also reinstate the conditions imposed on earlier permissions that continue to have effect. However, as the development has commenced, it is not necessary to impose a time limit condition. I have also updated the plans condition to remove the reference to the development being 'thereafter maintained as such for the lifetime of the development'. I have reworded the landscaping condition removing prior to the commencement of development.

Conclusion

17. For the reasons given above, I find that conditions 3, 5 and 7 are neither reasonable nor necessary. They fail the tests set out in the Framework and advice in the PPG, and as such have been removed. A revised form of condition 2 is, however, reasonable and necessary. The appeal therefore succeeds.

M J Francis

INSPECTOR

³ APP/Q5300/W/21/3277496

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the approved plans: 2786/1, 2786/2, Design and Access Statement and Block Plan received 22 June 2018, and 2786/3C and 2786/4C dated 13 November 2018.
- 2) Details of the hard and soft landscaping to be provided on site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of the retained and proposed planting around the site, along with the requirement to demonstrate that all hardstanding areas are permeable. The development shall be carried out solely in accordance with the approved details and all approved planting shall be carried out in the first planting season following the occupation of the development hereby permitted or the substantial completion of the development, whichever is the sooner. Any trees, hedges, shrubs and greenspaces forming part of the approved scheme which within a period of five years, dies, is removed or becomes seriously damaged or diseased shall be replaced with others of similar size and species.
- 3) The new residential dwellings hereby approved at 110 Nelson Road shall not be occupied until the reinstatement of the domestic crossovers and renewal of the footway fronting the site is completed. The works shall be carried out by the Local Highways Authority to the cost of the applicant.

End of schedule