



Appeal Decision

Site visit made on 21 November 2023

by **K Lancaster BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26th February 2024

Appeal Ref: APP/F5540/W/23/3321628

Gable House, 18-24 Turnham Green Terrace, Chiswick, W4 1QP

- 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 a condition of a planning permission.
- The appeal is made by Chiswick House Ltd (Chiswick Business Centres Ltd) against the decision of the Council of the London Borough of Hounslow.
- The application Ref 01135/18-24/P2(3-10), dated 30 September 2022, sought approval of details pursuant to condition Nos 3, 6a and 10 of a planning permission Ref 01135/18-25/P2, granted on 2 October 2019.
- The application was refused by notice dated 1 December 2022.
- The details for which approval is sought are:
 - 3) *No development shall take place until samples of the materials to be used in the construction of the external surfaces of the hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.*
 - 6a) *Prior to commencement of development, an Energy Strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall demonstrate how the proposed development would achieve the necessary 35% reduction in carbon dioxide emissions against a Building Regulations Part L (2013) compliant baseline as set out in London Plan Policy 5.2. Development shall be carried out in accordance with the approved details.*
 - 10) *No development shall take place, including any works of demolition, until a Construction Logistics Plan that conforms to current TfL guidance has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period.*
The Plan shall include:
 - i. a site plan (showing the areas set out below)*
 - ii. confirmation that a pre-start record of site conditions on the adjoining public highway will be undertaken with Hounslow Highways and a commitment to repair any damage caused by construction activity*
 - iii. provision for the parking of vehicles of site operatives and visitors*
 - iv. provisions for loading, unloading and storage of plant and materials within the site*
 - v. details of access to the site, including means to control and manage access and egress of vehicles to and from the site for the duration of construction including phasing arrangements*
 - vi. details of vehicle routeing from the site to the wider strategic road network*
 - vii. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate*
 - viii. provision of wheel washing facilities at the site exit and a commitment to sweep adjacent roads when required and at the request of the council*
 - ix. a scheme for recycling/disposing of waste resulting from demolition and construction works*
 - x. measures to ensure the safety of all users of the public highway especially cyclists and pedestrians in the vicinity of the site and especially at the access*
 - xi. commitment to liaise with other contractors in the vicinity of the site to maximise the potential for consolidation and to minimise traffic impacts.*

- xii. avoidance of peak hours for deliveries and details of a booking system to avoid vehicles waiting on the public highway*
- xiii. all necessary traffic orders and other permissions required to allow safe access to the site to be secured and implemented prior to commencement of construction*
- xiv. details of the construction programme and a schedule of traffic movements*
- xv. the use of operators that are members of TfL's Freight Operator Recognition Scheme (FORS).*

- The reasons for the conditions are as follows:

3) *In order that the Council may be satisfied as to the details of the development in the interests of the visual amenity of the area and to satisfy the requirements of policies CC1 Context and character and CC2 Urban Design and Architecture of the adopted Local Plan.*

6a) *To ensure that the development makes the fullest contribution to minimising carbon dioxide emissions in accordance with London Plan Policy 5.2 and the Local Plan Policy EQ1.*

10) *To ensure highway safety is maintained and preserved in accordance with Policy EC2 of the Local Plan.*

Decision

1. The appeal is allowed, and the details submitted pursuant to condition nos. 3, 6a and 10 attached to planning approval 01135/18-24/P2 granted on 2 October 2019 in accordance with the application dated 30 September 2022 and the details submitted with it are approved.

Application for Costs

2. An application for costs was made by Chiswick House Ltd (Chiswick Business Centres Ltd) against the Council of the London Borough of Hounslow. This application is the subject of a separate decision.

Preliminary Matters

3. Planning permission was granted 2 October 2019 subject to a number of conditions including a requirement for development to commence within three years of this date. As such, the planning permission would expire after 2 October 2022 unless it had been lawfully implemented. Furthermore, a number of conditions required that they be discharged prior to the commencement of development, including the three conditions at dispute in this appeal.
4. The appellant has provided evidence in the form of dated photographs and a legal opinion to support their claim that the development commenced prior to this date. They also cite an exception to the 'Whitley Principle'¹, whereby if the condition requires that a detail or design is approved before a given date, and the developer applies for that approval before that date, and the approval is subsequently given so that no enforcement action could be taken, work that is carried out before the deadline and in accordance with the ultimately approved scheme can amount to a lawful start to development. Accordingly, their position is that the development has lawfully commenced.
5. The Council's position is set out as an informative on the decision notice and states that "*the original permission 01135/18-24/P2 has expired without the pre-commencement conditions being discharged. Therefore, the implementation of the permission 01135/18-24/P2 is now unlawful and the applicant need to apply for a new full planning permission for the proposed*

¹ Whitley & Sons v Secretary of State for Wales [1992] 64 P&CR 296

works". There remains a dispute between the parties with regards to the status of the planning permission.

6. Nonetheless, whether or not the planning permission has been lawfully implemented is not a matter for me to decide within the context of an appeal made under Section 78 of the Act. The appropriate mechanism for establishing the lawfulness of an existing development would be to apply for a Certificate of Lawful Development under s191 of the Town and Country Planning Act 1990. I have therefore considered the appeal on this basis.
7. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
8. The appellant has submitted an amended materials schedule with the appeal. I have given consideration to the Holborn judgment² and whether any prejudice would occur to any party if I were to determine the appeal on the basis of the amended information. In this case, the appellant has submitted additional information in respect of the materials, which provide a greater degree of clarity as to the detailed specifications. Although the Council has not provided any comments, they have had sight of it and had the opportunity to comment on it. Therefore, I am satisfied that no party's interests have been prejudiced by my determining the appeal on the basis of the additional information, and I have proceeded accordingly.

Background and Main Issue

9. Planning permission was granted for the erection of a roof extension to form an additional storey of office (B1a) accommodation, together with external alterations to the existing office building, subject to a number of conditions, including pre-commencement conditions, of which three are the subject of this appeal.
10. Condition 3 requires samples of the materials to be used in the construction of the external surfaces to have been submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the approved details. The reason given for the condition is so that the Council may be satisfied as to the details of the development in the interests of the visual amenity of the area and to satisfy the requirements of Policies CC1 and CC2 of the Hounslow Local Plan 2015-2030, adopted September 2015 (HLP).
11. Condition 6 is split into two distinct parts, and part A and part B. The application only sought agreement to the details submitted pursuant to condition 6a, which requires an Energy Strategy to be submitted to and approved in writing by the Local Planning Authority. The strategy shall demonstrate how the proposed development would achieve the necessary 35% reduction in carbon dioxide emissions against a Building Regulations Part L (2013) compliant baseline. The development shall then be carried out in accordance with the approved details. The reason for this condition is to ensure

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

that the development makes the fullest contribution to minimising carbon dioxide emissions in accordance and Policy EQ1 of the HLP.

12. Condition 10 requires a Construction Logistics Plan (CLP) that conforms to current Transport for London (TfL) guidance to be submitted to, and approved in writing by, the local planning authority. The approved CLP shall then be adhered to throughout the construction period. The reason for the condition is to ensure highway safety is maintained and preserved in accordance with Policy EC2 of the HLP.
13. During the course of the application, the Council confirmed that the details submitted in respect of conditions No.6a and 10 were acceptable. However, the details submitted in connection with condition No.3 were deemed insufficient to discharge this condition. The application was subsequently refused in its entirety. However, the Council's reason for refusal relates solely to matters concerning condition 3. As there is no mention of conditions 6a and 10 in the Council's RfR and notwithstanding the Council's concerns regarding the timing of the amendments for condition 10, as set out in its statement, it would appear that the Council is nevertheless satisfied with the information submitted in respect of those conditions. Therefore, I will consider the appeal on this basis.
14. Consequently, the main issue of the appeal is whether sufficient information has been provided in respect of condition 3 and the effect of the materials on the character and appearance of the area, including whether or not the proposed materials would preserve or enhance the Chiswick High Road Conservation Area (CHRCA).

Reasons

15. As referred to above, the appeal site falls within the CHRCA. I therefore have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CHRCA. Moreover, the Framework advises that great weight must be given to the conservation of designated heritage assets and any harm which is less than substantial must be weighed against the public benefits of the proposal.
16. The significance of the CHRCA is derived from its development as a high-quality shopping street in the late 19th and early 20th centuries, and the survival of buildings from this age. The CHRCA Character Appraisal recognises important characteristics as being a strong and consistent parapet line, high quality detailing and use of materials. It recognises that there is a greater variation of the scale of buildings along Turnham Green Terrace.
17. The appeal site, Gable House, is a five-storey, brick and concrete building containing a mix of retail and office uses. It is noted from the Character Appraisal as making a negative contribution to the Turnham Green Terrace Character Area.
18. In determining the original planning application, the officer report explains that materials, which includes the proposed curtain walling glass would create a light and contemporary appearance and that the variation in materials would create a visual break up of the building that would not cause harm to the character or appearance of the CHRCA. However, in considering the details

submitted pursuant to condition 3, they found that there was insufficient information to satisfy the requirement of the condition.

19. Additional details have been submitted with the appeal which sought to address the concerns expressed by the Council's Urban Design Officer. In respect of the 'perforated metal cladding', a cross-sectional drawing has been provided as well as a detailed drawing showing the measurements and separation distances of the perforations. An annotated plan has been provided which includes the measurements of the concrete cladding panels and further details the roof capping has been provided, which includes a cross-sectional drawing. Further clarification has also been provided in relation to proposed use of the Crittal Style Windows and Aluminium Windows. Finally, the appellant has also confirmed that there will be no changes to the existing shop fronts.
20. Whilst I have not been provided with physical samples of the proposed materials. I am satisfied that the additional details submitted provide sufficient clarification in relation to the colour, texture and appearance of the materials which would be used in the development. In addition, the cross-sectional drawings provide additional details as to the profile of the materials to be used including the perforated metal cladding, precast concrete cladding and roof capping. Taken together, the additional information submitted with the appeal are sufficient for me to make an assessment of the finished building in the context of the surrounding area.
21. The appeal site is clearly a modern addition to Turnham Green Terrace, and its scale and design is appreciably different when compared to the more modest, terraced buildings which surround it. The upwards extension, would represent a further modern addition that utilises a palette of modern finishes, providing a visual contrast to its surroundings but that would complement the host building. Therefore, on the basis of the additional information submitted, I am satisfied that the appeal is supported by sufficient detail with regards to the proposed materials to determine that the proposed development would not cause harm to the character and appearance of the area or to the significance of the CHRCA.
22. For the reasons given above, I conclude that sufficient information has been provided to meet the requirements of condition 3 and the materials proposed will not cause harm to the character and appearance of the area, thus preserving the character and appearance of the CHRCA. It therefore accords with Policies CC1 and CC2 of the HLP, which support, amongst other things, high quality urban design and architecture to create attractive, distinctive, and liveable places.
23. As set out previously, the details submitted in relation to condition No 6a and 10 are not in dispute.

Conclusion

24. For the reasons set out above, I conclude that the appeal should be allowed.

K Lancaster

INSPECTOR