



Appeal Decision

Site visit made on 4 June 2024

by A Veevers BA(Hons) PGDipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 July 2024

Appeal Ref: APP/K5600/W/23/3333766

7 Kramer Mews, London SW5 9JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Nanik Daswani, EcoProperties (UK) Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref is PP/23/05025.
 - The application sought planning permission for the erection of a five storey building comprising one studio and four self-contained one-bedroom residential units with communal patio space and Juliet balconies, involving demolition of the existing building, without complying with a condition attached to planning permission Ref PP/19/07479, dated 4 November 2019.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: P100; P101; P102; P103; P104; P105; P106; P107; P108; P109; P110.*
 - The reason given for the condition is: *For certainty.*
-

Procedural Matters

1. The original planning permission, Ref PP/19/07479, was allowed on appeal and planning permission granted on 26 January 2021¹. Condition 1 of the permission required the development to begin before the expiry of three years. That period has now passed. I therefore sought the views of the parties as to the lawful status of the permission.
2. The Council consider that the planning permission has expired due to pre-commencement conditions imposed not being satisfied and that no Lawful Development Certificate has been approved to demonstrate the permission has been lawfully implemented. The appellant disputes the expiry of the planning permission and considers the scheme to be extant.
3. There are two pre-commencement conditions on the original permission. Condition 3 allows for demolition works to take place prior to the agreement of the local planning authority as to the external materials to be used for the development. However, condition 8 requires that no development, including demolition, takes place until a construction method statement has been submitted to and approved in writing by the local planning authority.
4. The appellant asserts that works to start demolition of the existing building commenced on 19 January 2024, prior to the expiration of the permission. Photographs have been provided which show several coping stones removed

¹ Appeal Ref APP/K5600/W/20/3249893

from the flat roof of the building but remaining leaning against the parapet. I was able to see the same part of the flat roof indicated on the photographs at my site visit. The situation had not changed, 4 months after the photographs were taken. From the evidence provided, it is unclear whether the minimal works shown on the photographs relate to general repair and maintenance of the roof, or the commencement of demolition. The existing property was clearly occupied and in good order at the time of my visit, thus I am not convinced the appellants photographic evidence provides a compelling case that demolition began prior to the expiration of the permission.

5. Even if some demolition had taken place, I consider condition 8 penetrates the heart of the permission and thereby represents a condition precedent in this particular case, due to the extremely tight confines of the site, which is surrounded by residential development. Indeed, the site is accessed along a pedestrian-only private right of way through the garden of an adjacent retirement complex. Consequently, the details required by this condition would clearly need to be satisfied before the approved development went ahead in order to protect the living conditions of neighbouring residents.
6. In the absence of a Lawful Development Certificate to confirm that the development has been lawfully implemented, or the approval of conditions precedent on the original permission, I consider there is no compelling evidence that the original permission is extant.
7. Section 73(4) of the Town and Country Planning Act 1990 sets out that section 73 does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun. Consequently, in the absence of substantive evidence to the contrary, as there is no longer an extant permission, section 73 does not apply. It is thus not possible to vary or remove a condition attached to the lapsed permission.

Other Matters

8. I note the appellant's wish for the appeal to continue so that they could be provided with a consideration of the proposal on the basis of the reasons for refusal. However, as there is no extant permission to consider under section 73, it is not appropriate for me to deliberate on the merits of the revised drawings. Moreover, planning obligations are freestanding legal instruments that do not form part of a planning permission. Consequently, any planning obligation completed during the assessment of the original permission would not be binding on the new s73 permission unless it is specifically drafted to do so. If it is not, a new planning obligation would be required.
9. I acknowledge the likely frustrations of the appellant in terms of the costs and time associated in making the appeal. However, it is open to the appellant to liaise directly with the Council, outwith the appeal process, by either submitting a new planning application and/or carrying out pre-application discussions.

Conclusion

10. For the above reasons, there can be no section 73 appeal and no further action will be taken on the appeal.

A Veevers INSPECTOR