



Appeal Decision

Site visit made on 28 May 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Appeal Ref: APP/Z0116/W/23/3334714

11 The Greenway, Speedwell, Bristol, BS16 4EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Missiato Design & Build.
 - The application Ref. 23/03918/X was dated 9 October 2023.
 - The application sought planning permission for double storey side extension together with change of use from C3 dwelling house to Sui Generis large HMO for up to 7 people (resubmission of planning application 21/00985/F) with a variation to condition 11 attached to planning permission Ref. 22/00457/F to remove the restriction on the erection of any detached building.
 - The condition to be varied is No.11 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) no extension or enlargement (including additions to roof) shall be made to the dwellinghouse(s) hereby permitted, or any detached building erected, without the express permission in writing of the Council.*
 - The reason given for the condition is: *The further extension of this (these) dwelling(s) or erection of detached building requires detailed consideration to safeguard the amenities of the surrounding area.*
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Decision

1. The appeal is allowed and planning permission is granted for double storey side extension together with change of use from C3 dwelling house to Sui Generis large HMO for up to 7 people (resubmission of planning permission Ref. 21/00985/F) at 11 The Greenway, Speedwell, Bristol, BS16 4EZ in accordance with the application Ref. 23/03918/X made on the 9 October 2023 with a variation to condition 11 set out in planning permission Ref. 22/00457/F granted on 13 July 2022 by Bristol City Council, subject to the conditions listed in the Annex to this decision.

Preliminary Matters

2. Since the appeal against non-determination was lodged the Council has provided a 'LPA Appeal Statement Note' (LPA Statement) setting out the reasons for which they would have refused permission for the variation of condition 11, had they retained jurisdiction to do so. The Appellant has had the opportunity to respond to this and has done so in their Final Comments.

3. Shortly after the appeal lodged a revised version of the National Planning Policy Framework (Framework) was issued on 17 December 2023. However, the relevant policies of the Framework remain unchanged.
4. The occupiers of 9 The Greenway raised a concern over whether the application red line was correctly drawn on the common boundary between them and the appeal site and if not whether they should have been served notice. However, the layout plan included with their written comments relates to the permission granted on 13 July 2022 (Ref. 22/00457/F) (2022 Permission) which is not a plan that forms part of this appeal, in that the only plan submitted with the appeal is an existing site location plan (drawing no. 438-PLA-001 Rev.A). The accuracy or not of the 2022 Permission approved layout plan is not, therefore, a matter that is before me and it does not in any case affect the issue raised by this appeal.

Main Issue

5. The main issue is whether that part of the condition which restricts permitted development rights to erect any detached building is reasonable and necessary in the interests of safeguarding the amenities of the surrounding area.

Reasons

6. The appeal site is located on the corner of The Greenway with Cherrytree Crescent and comprises a two storey semi detached property that sits within a spacious corner plot. As I observed on my site visit, work on constructing a two storey side extension and other alterations are well advanced and I have assumed that these form part of the implementation of the 2022 Permission.
7. Condition 11 of the 2022 permission removed permitted development rights to extend or enlarge the property (including additions to the roof) as well as the erection of any detached building. The Appellant accepts that the removal of those rights to extend or enlarge the host property are reasonable, a view I concur with given the permitted extension and alterations. The Appellant does contend, however, that the removal of the right to erect any detached building is neither necessary nor reasonable.
8. Paragraph 54 of the Framework states that "*planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so.*" Paragraph 56 also states that planning conditions should be kept to a minimum and only imposed "*where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.*" Paragraph 17 of the Planning Practice Guidance chapter on the 'Use of planning conditions' (last updated July 2019) (PPG) further states that "*Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.*"
9. Within the above context, I concur with the Appellant and do not consider that a restriction on permitted development rights to erect any detached building is necessary or reasonable. Those rights are covered by Part 1 of Schedule 2 and Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). They permit the erection of any building within the curtilage of a house for a purpose incidental to the enjoyment of that dwellinghouse. The limits and conditions that apply to Class E restrict any

building from covering 50% of the total curtilage (excluding the ground floor area of the original dwellinghouse) and from being situated on land forward of the principal elevation to the original dwellinghouse. They also require the building to be no more than single storey, that its height does not exceed 4 metres with a dual pitched roof or 2.5 metres where the building would be within 2 metres of the boundary of the curtilage of the dwellinghouse or 3 metres in any other case, and that the height of the eaves does not exceed 2.5 metres.

10. The principal elevation of the host property faces onto The Greenway and as the Appellant points out given the siting and extent of the permitted two storey side extension (with proposed bin stores) the only location where any detached building could be erected under permitted development rights is in the rear garden. As I observed on my site visit, the rear garden is extensive and more than capable of accommodating a detached building within the limitations and conditions of Class E without resulting in any material harm to the amenities of the surrounding area.
11. The national permitted development rights allow householders to improve and extend their properties without, of course, the need to apply for planning permission. They have been designed, in my view, to ensure that the works permitted are not out of proportion. The limitations and conditions also ensure that the interests of neighbours and the wider environment are protected and safeguarded. The bar for restricting those rights is, in my view, set very high, with the PPG stating that they should only be used in "*exceptional circumstances*". I am not convinced that those circumstances exist here. There is also no substantive evidence before me to demonstrate any "*clear justification*" for removing those rights on the appeal site.
12. The Council contend that the exercising of those rights could lead to the overdevelopment of the site, but as I confirmed, the host property, even as extended, sits on a spacious plot with a very generous rear garden that exceeds the size of most rear gardens on neighbouring properties. With the presence of both existing and proposed boundary treatment (the approved layout plan for the 2022 Permission shows new timber fencing to the boundary with Cherrytree Crescent) and with any new detached building being restricted to single storey and further limitations on its ridge and eaves height, there would be no impact on the living conditions of neighbouring properties. In terms of appearance, the appeal site comprises a standard corner plot and whilst I accept that the garden slopes down towards Haymans Court (to the south west), there is no evidence before me that would lead me to find that a Class E detached building within the rear garden to the host would result in any harm to the amenities of the surrounding area.
13. Whilst I have been provided with copies of various development plan policies and design guidance on extensions, none of these are referred to in the LPA Statement or in the 'Reason' for imposing condition 11. Moreover, they provide policy and guidance for determining applications proposing new extensions or alterations, and not situations involving the removal of national permitted development rights. For these reasons, I have not considered them further.
14. Given the above, I find that the restriction in condition 11 on the permitted development rights to erect any detached building is neither necessary nor

reasonable, and that the variation of this condition to remove this restriction is acceptable and would not conflict with the aims and objectives of safeguarding the amenities of the surrounding area.

Conditions

15. The application sought to vary condition 11 by removing the restriction on permitted development rights to erect any detached building. In doing so, the Appellant has suggested revised wording for condition 11, which I consider to be acceptable. Also, as is required, I have reimposed the remaining conditions from the original planning permission. Even though it appears that work to implement the 2022 Permission is well advanced I have not been provided with confirmation of this or if so, an indication of the pre-commencement conditions that have been discharged. As a consequence, I have had to simply reimpose the conditions from the original permission. These were listed in section 5 of the LPA Statement, to which the Appellant raised no objection in their Final Comments.

Conclusion

16. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be allowed.

G Roberts

INSPECTOR

Annex - Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of the original permission (Ref: 22/00457/F) dated 13 July 2022.
- 2) No development shall commence until: a) a scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past coal mining activity, and; b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is safe and stable for the development proposed. The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.
- 3) No development shall take place until an investigation and risk assessment, in addition to any assessment provided with the planning application, and has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme should be submitted to and be approved in writing by the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to: * human health, * property

(existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, * adjoining land, * groundwaters and surface waters, * ecological systems, * archaeological sites and ancient monuments; (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

- 4) No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been prepared, submitted to and been approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 5) In the event that contamination is found, no development other than that required to be carried out as part of an approved scheme of remediation shall take place until the approved remediation scheme has been carried out in accordance with its terms. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and be approved in writing by the Local Planning Authority.
- 6) No building or use hereby permitted shall be occupied or use commenced until the refuse store and area/facilities allocated for storing of recyclable materials, as shown on the approved plans have been completed in accordance with the approved plans. Thereafter, all refuse and recyclable materials associated with the development shall either be stored within this dedicated store/area, as shown on the approved plans, or internally within the building(s) that form part of the application site. No refuse or recycling material shall be stored or placed for collection on the adopted highway (including the footway), except on the day of collection.
- 7) No building or use hereby permitted shall be occupied or the use commenced until the means of access for pedestrians and/or cyclists have been constructed in accordance with the approved plans and shall thereafter be retained for access purposes only.
- 8) No building or use hereby permitted shall be occupied or use commenced until the car/vehicle parking area (and turning space) shown on the approved plans has been completed and thereafter the area shall be kept free of obstruction and available for the parking of vehicles associated with the development. Driveways/vehicle parking areas accessed from the adopted highway must be properly consolidated and surfaced, (not loose stone, gravel or grasscrete) and subsequently maintained in good working order at all times thereafter for the lifetime of the development.

- 9) No building or use hereby permitted shall be occupied or the use commenced until the cycle parking provision shown on the approved plans has been completed, and thereafter, be kept free of obstruction and available for the parking of cycles only.
- 10) Prior to the occupation of the development, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) no extension or enlargement (including additions to roofs) shall be made to the dwellinghouse(s) hereby permitted, without the express permission in writing of the Local Planning Authority.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking a and/or re-enacting that Order) no windows, other than those shown on the approved plans shall at any time be placed in the elevation of the building/extension hereby permitted without the grant of a separate planning permission from the Local Planning Authority.
- 13) All new external work and finishes and work of making good shall match existing original work adjacent in respect of materials used, detailed execution and finished appearance except where indicated otherwise on the approved drawings.
- 14) The development shall conform in all aspects with the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision: 438-PLA-001-A Site Location Plan, received 10 October 2023; 438-PLA-100-C Proposed Site Plan, received 26 May 2022; 438-PLA-010-A Existing Ground Floor Plan, received 31 January 2022; 438-PLA-011-A Existing First Floor Plan, received 31 January 2022; 438-PLA-013-A Existing Roof Plan, received 31 January 2022; 438-PLA-020-A Existing North Elevation, received 31 January 2022; 438-PLA-021-A Existing West Elevation, received 31 January 2022; 438-PLA-022-A Existing South Elevation, received 31 January 2022; 438-PLA-023-A Existing East Elevation, received 31 January 2022; 438-PLA-110-C Proposed Ground Floor Plan, received 26 May 2022; 438-PLA-111-B Proposed First Floor Plan, received 31 January 202; 438-PLA-112-C Proposed Roof Plan, received 26 May 2022; 438-PLA-130-B Proposed North Elevation, received 26 May 2022; 438-PLA-131-B Proposed West Elevation, received 26 May 2022; 438-PLA-132-B Proposed South Elevation, received 26 May 2022; 438-PLA-133-B Proposed East Elevation, received 26 May 2022.

End of Annex.